

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY**

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|------------------------------|---|-------------------------|
| VINCENT N. STEERS AND |) | |
| JANULYN MCKANIC-STEERS, |) | |
| |) | |
| Appellants/Defendants Below, |) | |
| |) | C.A. No. CPU6-18-001315 |
| v. |) | |
| |) | |
| SUMMERFIELD HOMEOWNERS |) | |
| ASSOCIATION INC., |) | |
| |) | |
| Appellee/Plaintiff Below. |) | |

Submitted May 7, 2019
Decided June 3, 2019

Janulyn McKanic-Steers, Pro Se for Appellant/Defendant Below
Chad J. Toms, Esq. for Appellee/Plaintiff Below

ORDER ON APPEAL

The Justice of the Peace Court's Order denying Appellant Steers' Motion to Vacate Default Judgment is **AFFIRMED** and **REMANDED**.

Procedural History and Facts

Appellee Summerfield Homeowners Association initiated this action in the Justice of the Peace Court on August 31, 2016, seeking a judgment against Appellant Vincent Steers for unpaid assessments on property owned in Ocean View, Delaware. On November 15, 2016, the Justice of the Peace Court entered a Default Judgment against Appellant Vincent Steers.

Appellant Janulyn McKanic-Steers filed a letter with the Justice of the Peace Court on December 1, 2016, stating that Vincent Steers was deceased and requesting that the Default Judgment be vacated. In response to Appellant McKanic-Steers' letter, Appellee filed a motion to substitute parties. A hearing was held on December 28, 2016 to consider

Appellee's motion to substitute parties and Appellant McKanic-Steers' request to vacate the default judgment. Appellant McKanic-Steers did not attend the motion hearing. At the motion hearing Appellee agreed to vacate the default judgment and was granted leave to file an alias complaint naming Appellant McKanic-Steers as Defendant.

Appellee's Alias Complaint was filed on January 31, 2018. On April 13, 2018 the Justice of the Peace Court entered a Default Judgment against Appellant McKanic-Steers. Appellant McKanic-Steers filed a Motion to Vacate Default Judgment on May 2, 2018. A motion hearing was held on July 31, 2018. Appellant McKanic-Steers failed to appear at the hearing and the Justice of the Peace Court denied Appellant's motion.

Appellant filed this Notice of Appeal on August 13, 2018 and a motion hearing was held on March 7, 2019. This Court reserved decision to allow the parties to engage in mediation. The Court was notified Appellee rescinded its authorization for mediation on May 7, 2019.

Discussion

The denial of an application to vacate a default judgment possesses all the attributes of finality, and thus, is subject to appeal.¹ The Delaware Supreme Court has held that an appeal of a denial to vacate a default judgment "will be a review of the order denying the motion and will not constitute a trial *de novo*."² Defendant failed to timely file an appeal of the April 13, 2018 entry of default judgment in the court below, but did file a timely review of the lower court's denial of her Motion to Vacate. Review in this Court therefore is limited to the issue of whether the trier-of-fact abused its discretion in denying the motion to vacate the default judgment. An abuse of discretion will only be found

¹ *Ney v. Polite*, 399 A.2d 527, 529 (Del. 1979).

² *Id.*

“when the trial judge exceed[s] the bounds of reason in view of the circumstances and has so ignored recognized rules of law or practice so as to produce injustice.”³

The record reveals that Appellant’s motion below was denied due to Appellant’s failure to appear at the July 31, 2018 motion hearing and prosecute the motion. Pursuant to *Ney v. Polite*, this Court’s jurisdiction on appeal permits only review of the magistrate’s order denying relief and not of the underlying suit itself. Here, the Appellant failed to appear at the hearing to vacate judgment. Therefore, there is no basis for this Court to find that the magistrate below abused his or her discretion in denying the motion to vacate default judgment.

Conclusion

For the foregoing reasons, the Justice of the Peace Court’s Order denying Appellant Steers’ Motion to Vacate Default Judgment is **AFFIRMED** and **REMANDED**.

IT IS SO ORDERED this ____ day of June, 2019.

The Honorable Kenneth S. Clark, Jr.

³ *State v. Wright*, 131 A.3d 310, 320 (Del. 2016).