

THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND OF NEW CASTLE COUNTY

J. B.

Petitioner/Respondent-below

v.

S. E.

Respondent/Petitioner-below.

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File No.: CN18-06314

Pet. No.: 19-06346

AMENDED¹ REVIEW OF COMMISSIONER'S ORDER

Date of Order: 4/5/2019

Date of ROCO Filed: 5/22/2019

Transcript Received: 7/26/2019

Order Entered: 8/21/2019

J. B. , Pro Se, Petitioner on ROCO

S. E. , Pro Se, Respondent on ROCO

Kerr, F., Judge

¹ Amended to correct typographical error on last page

PROCEDURAL HISTORY

Pending before the Court is a Request for Review of a Commissioner's Order ("ROCO") filed by J. B. ("Father"). Father is seeking a review of the Order entered by Commissioner Jennifer Mayo on April 5, 2019 entering a five-year Protection from Abuse ("PFA") Order, following a hearing on a Petition filed by S. E. ("Mother") alleging that Father committed acts of abuse against her and that there are aggravating circumstances warranting the five-year Order. Father did not appear for the hearing and the commissioner entered an Order against him by default. Father filed the Review of Commissioner's Order on May 22, 2019 alleging that the allegations were false and that he did not get notice as he had moved to his current address in January. The Court notes that there was an attempt to serve Father at his new address on March 17, 2019 and that the return of service came back as unsuccessful as the current resident advised that Father did not live there.

STANDARD OF REVIEW

A party may seek a review of a Commissioner's Order pursuant to 10 *Del. C.* § 915(d)(1), which provides:

Any party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the Court by filing and serving written objections to such order, as provided by the rules of Court, within 30 days from the date of the Commissioner's order. A judge of the Court shall make a *de novo* determination of those portions of the Commissioner's order to which objection is made. A judge of the Court may accept, reject, or modify in whole or in part the Order of the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instruction.²

² 10 *Del. C.* § 915(d)(1).

ANALYSIS

Rule 53.1 is clear that a party who is in default of appearance cannot appeal the Commissioner's ruling. The PFA Order was entered by default. Additionally, an appeal of the Commissioner's ruling must be done within 30 days and Father filed this Petition approximately 17 days past the deadline. These rules are jurisdictional in nature and as such the ROCO must be denied. While the Court understands that Father is not an attorney and may not be versed in the law, he must abide by the rules. Father's remedy is to file a Motion for Relief from the PFA Order pursuant to Rule 60(b), which would be heard by the Commissioner. Father must set forth a basis pursuant to Rule 60(b)³ in his Motion.

CONCLUSION

The ROCO is DENIED as it was filed untimely and as Father cannot review an Order entered by default.

IT IS SO ORDERED.

FELICE GLENNON KERR, Judge

Cc: Parties/Counsel
The Honorable Jennifer L. Mayo

Date mailed:

³ A copy of Rule 60(b) is attached.