



The Family Court of the State of Delaware  
In And For Kent County

J--- W-----,	:	File No. CK21-01782
	:	Petition No. 21-09885
<b>Petitioner,</b>	:	
	:	<b><u>ORDER</u></b>
<b>v.</b>	:	<b>Motion to Reopen</b>
	:	
K---- L----,	:	
	:	
<b>Respondent.</b>	:	

Before the **HONORABLE JAMES G. MCGIFFIN JR., JUDGE** of the Family Court of the State of Delaware:

On December 9, 2022, and January 31, 2023, the Court convened an evidentiary hearing for the Motion to Reopen Divorce filed by K---- L---- (Ex-Wife) against J--- W----- (Ex-Husband). Ex-Wife appeared with counsel, Sean M. Lynn. Ex-Husband appeared with counsel, Susan C. Over.

**Procedural History**

Ex-Husband filed the Petition for Divorce April 20, 2021. He did not ask the Court to exercise jurisdiction over any ancillary matter. Ex-Wife filed no answer to the petition. The divorce was granted November 10, 2021. On July 11, 2022, Ex-Husband filed a Petition for Partition of -- ----- --, Smyrna, Delaware, a parcel of real property the parties own jointly. Ex-Wife filed this motion on August 31, 2022.

## FACTS

The parties began their relationship in 2010 and they married September 25, 2017. They acquired the home in Smyrna, Delaware, in January 2018. They are the parents of two children: D---, born ----- -, 2014, and Z---, born ----- --, 2018.

This was a marriage of short duration, approximately 4 years.<sup>1</sup>

Ex-Wife explained the parties talked about separation in December 2019. Ex-Wife understood that Ex-Husband wanted to “walk away” from ownership of the home but would continue to pay the mortgage in lieu of child support. He agreed that Ex-Wife could retain the home if she re-financed the mortgage “quickly” so he would be relieved of the debt. Wife disputes that a “quick” refinancing was part of the deal.

In January 2022 Ex-Wife applied to re-finance the mortgage and learned that she would realize no cash in the process.

When Ex-Husband investigated purchasing a home for himself, he learned that his responsibility under the marital home mortgage made him ineligible for another mortgage on his own home. Ex-Husband reduced his contribution to the marital home mortgage from \$1,800 each month to \$986.34 each month, beginning January 2022.

Ex-Husband’s initial solutions to his debt-to-income ratio problem were ideas rejected by Ex-Wife. He proposed she document she rents the property from him. He also proposed that she document that she does not live in the home and that Ex-Husband’s sister lived in the home. Ex-Wife refused to participate in these schemes.

Ex-Wife sought counsel (Sean M. Lynn) to help resolve this problem. Counsel contacted Ex-Husband on February 11, 2022, with an offer to resolve a variety of matters ancillary to the divorce, and on February 22, 2022, Ex-Husband’s counsel (James Tobia)<sup>2</sup> responded, advising

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<sup>1</sup> September 25, 2017 – November 10, 2021.

<sup>2</sup> Tobia no longer acts as counsel to Ex-Husband.

Ex-Husband “would rather negotiate a resolution to these matters rather than go through the Court, and it is his position that your client need not file anything with the Court at this time.”

Counsel exchanged email communication about informal discovery and the need for an appraisal of the property. Each side claims the other delayed or failed in producing particular pieces of information to the other side, with no progress toward resolution.

Ex-Husband filed his Petition for Partition on July 11, 2022.

Ex-Wife filed her Motion to Reopen Divorce on August 31, 2022.

### **DISCUSSION**

When Ex-Husband filed the divorce petition neither party had legal counsel. They engaged in conversation about the disposition of the marital home, which Ex-Wife occupied with the children after separation.

Ex-Wife asks the Court to reopen the Divorce, a request that sounds under our Rule 60(b), which states: “the Court may relieve a party . . . from a final . . . order . . . for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (6) any other reason justifying relief from the operation of the judgment.”<sup>3</sup> A Rule 60(b) motion requires the movant to satisfy four factors:

- (1) The moving party has established one of the enumerated grounds for relief under Rule 60(b);
- (2) The moving party has established they did not unreasonably delay in filing the motion;
- (3) The outcome of the case would be different if the requested relief is granted; and
- (4) The moving party has shown that the opposing party will not suffer substantial prejudice if the motion is granted.<sup>4</sup>

Ex-wife does not assert a particular reason under this rule but argues Ex-Husband is “unjustly enriched” if the judgment is not reopened. The facts adduced support a finding by clear

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<sup>3</sup> Del. Fam. Ct. Civ. R. 60(b)(1) and (6).

<sup>4</sup> *K. H. v. M. F.*, 2018 WL 4181531, at \*2 (Del. Fam. Ct. Aug. 14, 2018). *See also S.M.S. v. J.C.S.*, 2010 WL 5657049, at \*1 (Del. Fam. Ct. Dec. 15, 2010); *M.C.D. v. F.C.*, 2003 WL 22476207, at \*5 (Del. Fam. Ct. July 7, 2003).

and convincing evidence that Ex-Wife can claim excusable neglect as the basis to reopen the divorce judgment. When the parties discussed their separation, Ex-Husband advised Ex-Wife she could keep the home if she refinanced the mortgage. He did not suggest he would claim the equity value of the home. Later he found himself ineligible for a mortgage of his own and asked Ex-Wife to help him by lying about her occupancy of the home.

Only then did Ex-Wife retain counsel, who contacted Ex-Husband to find a resolution to the situation. Ex-Husband's counsel argued against filing anything in the Family Court, urging negotiation to resolution instead. I find that Ex-Wife acted as a reasonably prudent person would act in this circumstance.

The evidence also supports a conclusion that Ex-Wife's claim satisfies the "any other reason" provision of the rule. In Delaware we use the "extraordinary circumstances test" to evaluate a claim under this provision.<sup>5</sup> This, from *Allen v. Granger*:

The 'extraordinary circumstances' standard defines the words, 'any other reason justifying relief,' in Rule 60(b)(6) as 'vest[ing] power in the courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.'<sup>6</sup>

Ex-Wife points out that the marital home will be divided one way or another, either through a property division or by partition. If the matter is reopened, the property division will be based on the entire marital estate, irrespective of which party controls any asset at this moment. If partition is the only alternative, Ex-Husband will keep the marital estate now in his possession. Ex-Wife claims this path is unjust. I agree.

Our Rules of Court must be "construed, administered and employed by the Court and the parties to secure the just, speedy and inexpensive determination of every proceeding."<sup>7</sup> A denial of Ex-Wife's application does none of those things. Granting the motion allows for a just result. One for three is better than zero for three.

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<sup>5</sup> *Jewell v. D.S.S.*, 401 A.2d 88, 90 (1979).

<sup>6</sup> *Allen v. Granger*, 2015 WL 1243410 at \*3 (Del. Supr. Mar. 18, 2015).

<sup>7</sup> Fam. Ct. Civ. R. 1(a).

