

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CARLA COWAN,

Petitioner Below,
Appellant,

v.

JAMES FURLOW,

Respondent Below,
Appellee.

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§ No. 44, 2024

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§ Court Below—Court of
§ Chancery of the State of
§ Delaware

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§ C.A. No. 2018-0915

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IN THE MATTER OF THE ESTATE OF ALVIN DAVID SMITH, JR.¹

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Submitted: July 26, 2024

Decided: September 30, 2024

Before **SEITZ**, Chief Justice; **VALIHURA** and **GRIFFITHS**, Justices.

ORDER

(1) Alvin David Smith died intestate on November 5, 2017. In March 2018, the New Castle County Register of Wills granted the appellee, James Furlow, letters of administration, and Furlow began administering Smith’s estate (the “Estate”). The appellant, Carla Cowan, is Smith’s niece; Furlow is not related to Smith. In December 2018, Cowan filed an action in the Court of Chancery seeking

¹ The appellant asserts, and the Magistrate in Chancery determined, that the decedent’s name is Alvin David Smith, not Alvin David Smith, Jr. We include “Jr.” in the caption for consistency with the Register of Wills docket, but otherwise refer to the decedent as Alvin David Smith.

to remove Furlow as personal representative (the “Removal Action”). Cowan also filed exceptions² to the Estate accounting (the “Accounting Action”).³ In a final, post-trial report dated June 30, 2023, a Magistrate in Chancery recommended that judgment be entered in favor of Furlow (the “Post-Trial Report”).⁴ The Magistrate determined that Furlow was lawfully appointed as personal representative and that Cowan had “failed to prove any breaches of fiduciary duty or surcharge-worthy conduct in connection with” the challenged accounting.⁵

(2) The Post-Trial Report stated that it was a final report and that exceptions could be filed under Court of Chancery Rule 144.⁶ On July 21, 2023, Cowan filed notices of exceptions to the Post-Trial Report.⁷ On August 1, 2023, the Chancellor entered orders in the Removal Action and the Accounting Action (i) stating that Cowan’s notices of exceptions were untimely and Cowan had not moved

² Two types of “exceptions” are relevant to this appeal: exceptions to an estate accounting under Delaware law, *see* 12 *Del. C.* § 2302(d); DEL. CT. CH. R. 197, and exceptions to a Magistrate in Chancery’s report under Court of Chancery Rule 144. Other than in the text appurtenant to this footnote, “exceptions” as used in this order refers to exceptions to a Magistrate’s report under Court of Chancery Rule 144.

³ In a third action, the Court of Chancery granted Furlow’s petition seeking to sell Smith’s residence to pay debts of the Estate, over Cowan’s objections. *See In re Real Estate of Smith*, 2021 WL 5764878 (Del. Ch. Dec. 3, 2021). That proceeding is not directly at issue in this appeal.

⁴ *Cowan v. Furlow*, 2023 WL 4614678 (Del. Ch. June 30, 2023) (Magistrate Final Report).

⁵ *Id.* at *14.

⁶ *Id.*

⁷ The Court of Chancery’s decision overruling the exceptions describes the timing somewhat differently. *Cowan v. Furlow*, 2024 WL 36563, at *1 ¶ B (Del. Ch. Jan. 2, 2024). Based on the manual filing stamps, in the interest of simplicity, and because this date is most favorable to the appellant, we use July 21.

for an extension of time nor articulated excusable neglect; and (ii) adopting the Post-Trial Report as an order of the court under Court of Chancery Rule 144(c).

(3) Cowan then filed an out-of-time motion for an extension of time to file exceptions. She asserted that the Post-Trial Report was postmarked July 7, 2023, and that she received it on July 14, 2023.⁸ On or after August 14, 2023, Cowan filed opening briefs asserting the merits of her exceptions to the Post-Trial Report.⁹ In a final report dated August 17, 2023, the Magistrate recommended that the court deny the motion for an extension of time to file exceptions and close the case.¹⁰ The Chancellor then assigned the matters to a Vice Chancellor for resolution.

(4) On January 2, 2024, the Vice Chancellor overruled Cowan's exceptions and approved the Post-Trial Report.¹¹ The court determined that Cowan's exceptions were untimely because Cowan did not file a notice of exceptions by July 11, 2023, eleven days after the date of the Post-Trial Report. The court found that Cowan had not demonstrated that her late filing was the result of excusable neglect, emphasizing that Cowan did not act sufficiently promptly after receiving the Post-Trial Report to justify a finding of excusable neglect. The court also stated that

⁸ Cowan actually stated the dates as September 7 and September 14, but it is apparent from the context and the timing of the filings that she intended to indicate dates in July.

⁹ There is some ambiguity in the record as to when Cowan filed the opening briefs. The earliest date was August 14, 2023; because that date is most favorable to the appellant, we use that date.

¹⁰ *Cowan v. Furlow*, 2023 WL 5321804 (Del. Aug. 17, 2023). Cowan later filed exceptions to the Magistrate's decision regarding the extension.

¹¹ *Cowan*, 2024 WL 36563.

Cowan's opening briefs in support of the exceptions were untimely because they were not filed by August 10, 2023, twenty days after Cowan filed the notices of exceptions. The court concluded that Cowan's pattern of missed deadlines further weighed against a finding of excusable neglect.

(5) Cowan filed a timely appeal from the court's January 2, 2024 order. In her opening brief, Cowan challenges the Magistrate's substantive decisions in the Post-Trial Report; she does not meaningfully, if at all, address the Court of Chancery's determination that her exceptions were untimely. Furlow contends that this Court should address only the untimeliness of the exceptions, arguing that Cowan failed to preserve her substantive claims by failing to raise them in procedurally proper exceptions under Court of Chancery Rule 144. And he asserts that the Court of Chancery correctly determined that the exceptions were untimely and that Cowan did not demonstrate excusable neglect. Cowan replies that the Court of Chancery abused its discretion by denying the out-of-time motion for an extension to file exceptions.

(6) After careful consideration, we have determined that the Court of Chancery's judgment should be affirmed. This Court has long held that substantive challenges to a Magistrate's final report that are not raised in exceptions under Court

of Chancery Rule 144 are not preserved for review on appeal to this Court.¹² Thus, if the Court of Chancery did not err by determining that Cowan’s exceptions were untimely and that she had not demonstrated excusable neglect, no substantive issues are preserved for this Court’s review and the Court of Chancery’s judgment must be affirmed.¹³

(7) Court of Chancery Rule 144(c)(1) provides, in relevant part:

Any party may take exception to a final report Exceptions to a final report shall be heard by the Court. . . . If a notice of exception to a final report is not timely filed, then the parties shall be deemed to have stipulated to the approval and entry of the report as an order of the Court.

¹² See *Sutor-Banks v. Moffett*, 2013 WL 4538570, at *2 (Del. Aug. 22, 2013) (“Because the [appellants] took no exceptions to the Master’s reports in accordance with the Court of Chancery Rules, any claims they purport to assert in this appeal are procedurally barred. Because the [appellants’] claims may not be considered in this appeal, the judgment of the Court of Chancery must be affirmed.” (citations omitted)); *In re Marta*, 672 A.2d 984, 986 (Del. 1996) (holding that appellant’s argument on appeal (i) was “procedurally barred” because the appellant’s exceptions to the Magistrate’s final report did not assert the argument and (ii) under Supreme Court Rule 8, “[could]not be considered” by the Supreme Court because it had not been presented to the Vice Chancellor); see also *Chilaka v. Emory Hill & Co.*, 2023 WL 6996280, at *2 (Del. Oct. 23, 2023) (holding that “any claims [the appellant] purports to assert in this appeal . . . are procedurally barred” because the appellant did not file exceptions to the Magistrate’s final reports that he sought to challenge); *In re Gillen*, 2017 WL 2823011, at *1 (Del. June 29, 2017) (“Despite his procedural default below [by failing to file an opening brief on exceptions after filing notice of exceptions], the respondent filed this appeal from the Court of Chancery’s [order adopting the Magistrate’s report] and seeks to have us address the merits. We will not. As the [appellees] argue, the [appellant’s] failure to file an opening brief in the Court of Chancery properly led the Court of Chancery to dismiss the respondent’s exceptions and also bars the [appellant’s] claims on appeal.”).

This case does not involve a stipulation by the parties to submit their dispute to a Magistrate for final decision under 10 *Del. C.* § 350.

¹³ *Cf. Mennen v. Fiduciary Tr. Int’l of Del.*, 167 A.3d 507 (Del. 2016) (holding that Vice Chancellor erroneously determined that appellants’ exceptions were untimely and remanding for consideration of the merits of the exceptions); *Xu v. Cheng*, 2015 WL 1160809 (Del. Mar. 13, 2015) (finding no abuse of discretion in Superior Court judge’s decision dismissing appellant’s untimely request for review of Commissioner’s order, which appellant filed one day late).

In non-expedited cases, “any party taking exception shall file a notice of exceptions within eleven days of the date of the report.”¹⁴ Moreover, “[t]he party taking exception shall file its opening brief in support of its exceptions within twenty days after filing the notice of exception.”¹⁵

(8) “When a party has missed a scheduling deadline, the trial court may extend the deadline if the party’s failure to meet it resulted from excusable neglect.”¹⁶ A finding of excusable neglect is appropriate when the party seeking the extension demonstrates good faith and some reasonable basis for noncompliance within the applicable time.¹⁷

(9) We find no reversible error in the Court of Chancery’s determination that Cowan did not establish excusable neglect. The Magistrate’s Post-Trial Report was dated June 30, 2023. Thus, under Court of Chancery Rule 6(a) and the plain language of Rule 144(d)(1), a timely notice of exceptions was due on July 11, 2023. Cowan filed the notices of exceptions on July 21. She later argued that the untimely filing should be excused because the court did not mail the Post-Trial Report until

¹⁴ DEL. CT. CH. R. 144(d)(1).

¹⁵ *Id.*

¹⁶ *Mennen*, 167 A.3d at 511-12. *See also* DEL. CT. CH. R. 6(b)(2) (providing that the Court of Chancery, in its discretion and “for good cause shown,” may “upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect”).

¹⁷ *Mennen*, 167 A.3d at 512.

July 7 and she did not receive it until July 14.¹⁸ Delays that are attributable to court personnel do sometimes excuse an untimely filing.¹⁹ But court personnel are not responsible for delays in mail *delivery*, and any delay in court personnel’s deposit of the Post-Trial Report into the mail does not account for the untimely filing of the notices of exceptions here, because Cowan did not file the notices within eleven days of the date of mailing either.²⁰ Moreover, as the Court of Chancery observed, after Cowan purportedly received the Post-Trial Report on July 14—that is, fourteen days after the date of the report and seven days after its postmark—she waited another week to file the notices of exceptions. Finally, Cowan also failed to file her opening brief on the exceptions within twenty days after she filed the notices of exceptions.

¹⁸ For purposes of this decision, we assume the accuracy of Cowan’s representation that the Court of Chancery mailed the decision on July 7, 2023.

¹⁹ See *Mennen*, 167 A.3d at 511-12 (stating that, when a party asserts that an untimely filing of exceptions was the result of excusable neglect, the court should consider whether the untimely filing was attributable to court personnel).

²⁰ Cf. *Reese v. Pettitt-Mimikos*, 1999 WL 485177, at *1 (Del. Mar. 1, 1999) (dismissing appeal that was filed one week too late as untimely and holding that the untimely filing was not attributable to court personnel because, even assuming the accuracy of appellant’s assertion that he did not receive the Family Court’s final order until one week after it was docketed, the appellant “still had ample time in which to perfect his notice of appeal” by the deadline). Cf. also *Imbragulio v. Unemp. Ins. Appeals Bd.*, 223 A.3d 875, 881 (Del. 2019) (rejecting argument that untimely filing of appeal to Superior Court from decision of UIAB should be excused because the UIAB mailed its decision to the party instead of the party’s counsel); *Wyatte v. Unemp. Ins. Appeal Bd.*, 2016 WL 3389911 (Del. May 18, 2016) (holding that interests of justice did not require UIAB to consider an appeal filed one day late, where appellant argued that untimeliness should be excused because the decision from which he appealed was mailed to his former address, but he had not provided an updated address); *Aiken v. State*, 2010 WL 4702447 (Del. Nov. 18, 2010) (finding “nothing in the record before us reflecting that the appellant’s failure to file a timely notice of appeal is attributable to court-related personnel” where the appellant argued that the United States Postal Service failed to deliver his notice of appeal to the Court in a timely fashion).

(10) We recognize that it can be difficult for a self-represented litigant to comply with filing deadlines, especially when the litigant relies on mail to receive notice of litigation events.²¹ But we find no abuse of discretion in the Court of Chancery’s decision that the exceptions were untimely and Cowan did not establish excusable neglect.²² In light of that conclusion, no substantive issues have been preserved for this Court’s review.

NOW, THEREFORE, IT IS ORDERED that judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Chief Justice

²¹ The rules of the Delaware courts establish many deadlines that run from when a court takes some action, rather than from when a party becomes aware of the court’s action. *See, e.g.*, DEL. SUPR. CT. R. 6(a)(i) (civil appeal must be filed within thirty days after the trial court docket its decision); DEL. SUPER. CT. R. 59(e) (motion for reargument must be filed within five days after the court files its decision); DEL. CT. CH. R. 144(d)(1) (notice of exceptions must be filed within eleven days of date of report). *But cf.* DEL. CT. CH. R. 59(f) (providing that a motion for reargument must be filed within five days after “the filing of the Court’s opinion *or the receipt* of the Court’s decision” (emphasis added)).

²² *Cf. Xu*, 2015 WL 1160809 (finding no abuse of discretion in Superior Court judge’s decision dismissing appellant’s untimely request for review of Commissioner’s order, which appellant filed one day late).