

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

February 2, 2010

Mr. Kevin Bruce Wix  
17 Hogtown Road  
Harrington, DE 19952

RE: Constantine Koutoufaris and Kent Sophia Koutoufaris  
v. Kevin B. Wix, d/b/a Wix Lawn Care Service  
C.A. No.: CPU5-08-000386

Decision on Motion to Reargue Denial of Motion to Vacate Default Judgment

Dear Mr. Wix:

Our court is in receipt of your letter of January 14, 2010, concerning the above-referenced matter. I consider your correspondence a motion for reargument of your motion to vacate a default judgment that was entered against you in this case.

Court records indicate that default judgment was entered against you on February 12, 2009, for failure to file an Answer to the plaintiff's Complaint, which was personally served on you on December 30, 2008. You filed a motion to vacate the default judgment and reopen your case on November 20, 2009. The Court held a hearing on your motion on January 13, 2010, at which time the Court explained the criteria by which it would decide the motion.

The Court explained to you that a party moving to vacate a default judgment under Court of Common Pleas Civil Rule 60(b) must satisfy three elements before the motion would be granted: "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted." *Perry v. Wilson*, 2009 WL 1964787, at \*1 (Del. Super.) (quoting *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at \*1 (Del. Super.)). The Court will only consider the last two elements if the defendant has provided a satisfactory explanation that the failure to answer the Complaint was due to excusable neglect. *Id.* "Excusable neglect" is defined as "that neglect which might have been the act of a reasonably prudent person under the circumstances." *Id.*

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When the Court asked you about the circumstances surrounding your failure to file an Answer to the plaintiff's Complaint, you indicated that you had no legitimate excuse. Therefore, your motion to vacate the default judgment was denied.

In your correspondence, you indicate that you now have an excuse for not filing an Answer that you believe to be excusable neglect and request that the Court allow you an opportunity to reargue the motion to vacate the default judgment. For the following reason, your request must be denied.

Pursuant to Court of Common Pleas Civil Rule 59(e), a motion for reargument may not advance a new argument not previously raised that could have been made prior to the Court's ruling. *Plummer v. Sherman*, 2004 WL 63414, at \*2 (Del. Super.). Allowing a party to raise an argument in his motion for reargument that could have been addressed previously does not promote the efficient use of judicial resources, is unfair to the other party and does not promote an orderly process of reaching closure on the issues previously argued. *Id.*

The fact that you were under the care of a doctor and were taking several medications at the time default judgment was entered could have been addressed at the January 13, 2010, hearing. Your failure to make these arguments at that time precludes you from raising them now. Therefore, your motion for reargument is denied.

**IT IS SO ORDERED.**

Sincerely,



Charles W. Welch, III

CWW:mek  
pc: Patrick Scanlon, Esq.