

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JEFFREY C. HURD,)	
)	
Defendant-Below Appellant,)	
)	
v.)	C.A. U407-10-543
)	JP12-07-005771
BETH ANNE SMITH,)	
)	
Plaintiff-Below Appellant.)	

Submitted: April 10, 2009
Decided: June 10, 2009

Sidney Balick, Esquire
Balick & Balick
711 King Street
Wilmington, DE 19801
Attorneys for Appellant

Beth Anne Smith
38 Winterhaven Drive
Apartment #13
Newark, DE 19702
Pro Se

OPINION

This is an appeal from the Justice of the Peace Court’s denial of Jeffrey C. Hurd’s, (hereinafter, “Hurd”) motion to vacate judgment rendered in favor of Beth Anne Smith (hereinafter, “Smith”) for Hurd’s failure to appear for trial.

The facts which lead to these proceedings indicate Smith brought a replevin action in the Justice of the Peace Court to recover personal property. Service was returned non-est on June 13, 2007, but Hurd appeared at the Justice of the Peace Court on June 21, 2007 and the Court held he was served on that date.

On July 9, 2007, Hurd filed a counterclaim for expenses and related costs in the amount of \$51,530.00. Trial was scheduled for July 17, 2007.

On July 17, 2007, the parties entered into a stipulated judgment where Hurd agreed to return all of the items Smith had listed in the victim loss statement attached to her complaint. The stipulation also provided that both parties agree to waive any right to appeal to expedite the process. The counterclaim was dismissed with prejudice. The stipulation was signed by both parties and entered as an order by the Court.

On September 4, 2007, Smith contacted the Court by letter stating when she went with the Constable to get her items, all of the items were there except for \$4,000.00 in jewelry. Smith alleged those items disappeared out of her filing cabinet. The Court scheduled a hearing for Thursday, October 4, 2007 at 2:00 p.m. “to establish the value of the items not returned as required by the Court’s order.”

On October 4, 2007, the Court entered an order which indicated only Smith appeared for the hearing to establish value of the items not returned. The Court entered judgment for Smith against Hurd in the amount of \$4,028.50, plus 10.25% post-judgment interest, per annum.

On October 9, 2007, Hurd filed a motion to vacate the judgment alleging he was present on October 5, 2007. He states in the motion, “I was one hour early, contractors were doing the roof. I went to the State Police and they didn’t know what was going on.” The Court in an Order dated October 16, 2007 denied the

motion on the basis Hurd's actions did not support a finding of excusable neglect under *Justice of the Peace Court Rule 60*.

STANDARD OF REVIEW

A motion to set aside a default judgment is addressed to the sound direction of the trial Court. *Battaglia v. WSFS*, Del.Supr., 379 A.2d 1132 (1977). The Delaware Supreme Court has held that on appeal from a denial of a motion to vacate a default judgment, review is limited to the decision denying the motion and does not bring review of the case for trial *de novo*. *Ney v. Polite*, 399 A.2d 527 (Del.Supr. 1979). Review in these proceedings, therefore, is limited to the issue of whether the trier-of-fact abused its discretion in denying the motion to vacate the default judgment.

ANALYSIS

When considering the issue of judicial discretion, the Delaware Supreme Court stated in *Pitts v. White*, 109 A.2d 786, at 788 (Del.Supr. 1954), that:

“The essence of judicial discretion is the exercise of judgment by conscience and reason, as opposed to capricious or arbitrary action; and where a court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice, so as to produce injustice, its legal discretion has not been abused; for the question is not whether the reviewing court agrees with the court below, but rather, whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made. Where, however, the court in reaching its conclusion overrides or misapplies the law or the judgment exercise

is manifestly unreasonable, an appellate court will not hesitate to reverse.”

Judicial discretion requires action in conformity with law on the facts and circumstances before the Court after hearing and due consideration. A reviewing court is never justified in substituting its discretion for that of the court which is the subject of review. The question is, however, whether the decision subject to review is the product of logic, based upon the facts and reasonable deductions to be drawn therefrom.

It has been held that, “abuse of discretion occurs when the judgment exercised by the trier-of-fact is manifestly unreasonable.” *General Motors v. Farmer*, Del. Super., C.A. No. 89A-DE-10, Del Pesco, J. (1990). An abuse of discretion occurs if the trial court’s decision is based on “clearly unreasonable or capricious grounds.” *Bultron v. State*, 897 A.2d 758, 762 (Del. Supr., 2006) citing, *Wright v. State*, 768 A.2d 472 (Del.Supr., 2001) (Order). Further, when reviewing the motion the Court may take into consideration whether if the motion was granted, is there a likelihood of petitioner prevailing on the merits.

The Justice of the Peace Court stated when denying the motion, the parties had previously stipulated to return of the items in question. The Court sent notice to Hurd of the hearing and he failed to appear on the date for which the hearing was scheduled. Further, the Court which had previously handled these proceedings throughout the case, found Hurd’s reason for failing to appear without merit.

A court has the inherent authority to control its docket and proceeding to ensure orderly disposition of its matters. Absent a showing that there was no notice

or some event which, beyond petitioner's control prevented his appearance, I am unable to conclude that the Court abused its discretion in failing to grant the motion. Moreover, the motion to vacate only states he appeared on a date the hearing was not scheduled. The motion does not indicate why he appeared on the wrong date or why he failed to appear on the date set by the Court.

Accordingly, I find the Court's decision denying the motion to vacate supported by the record and is AFFIRMED.

IT IS SO ORDERED

Alex J. Smalls

Hurd-OP Jun 09

cc: Judge Lucas
Justice of the Peace Court No. 12