

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PATRICIA R. KLEIN, ¹	§
	§ No. 588, 2011
Respondent Below,	§
Appellant,	§
v.	§ Court Below—Family Court
	§ of the State of Delaware, in
	§ and for Sussex County
RAYMOND D. LITTMANN,	§ File No. CS10-02649
	§ Pet. Nos. 11-22691 and 11-27962
Petitioner Below,	§
Appellee.	§

Submitted: April 6, 2012

Decided: June 4, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of June 2012, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Patricia Klein ("Wife"), filed this appeal from a decision of the Family Court dated September 23, 2011, which found Wife in contempt of a prior ancillary order and denied Wife's motion to reopen that ancillary judgment. We find no merit to Wife's appeal. Accordingly, we affirm the Family Court's judgment.

¹ The Court previously assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

(2) The record reflects that the parties were married on June 20, 2009 and separated on July 16, 2010. Raymond Littmann (“Husband”) filed a petition for divorce in September 2010. Wife failed to file an answer. The Family Court entered a final decree of divorce on October 22, 2010. At Husband’s request, the Family Court retained ancillary jurisdiction to address property division issues. When Wife failed to file her financial report by the January 21, 2011 deadline, Husband filed a motion for sanctions. The Family Court held a hearing on the motion on April 8, 2011. Husband appeared with his counsel. Wife, who was incarcerated, appeared at the hearing *pro se*. At the conclusion of the hearing, the Family Court expressed concern regarding certain actions by Husband that resulted in Husband placing himself in a beneficial position in acquiring assets inherited by Wife following her father’s death on January 11, 2009. The Family Court thus granted Wife an extension until May 11, 2011 to file her financial report and comply with Husband’s discovery request.

(3) Wife failed to comply with the Family Court’s May 11, 2011 deadline or request a further extension of time. On May 25, 2011, the Family Court entered a default judgment, which granted Husband’s

proposed division of property² and also awarded him attorney fees. Wife filed a motion to reopen the default judgment on June 30, 2011, contending that her failure to comply with the Family Court's deadline was the result of her hospitalization from April 21-25, her incarceration on a violation of probation from May 6-June 17, and the medications she was taking that left her unable to make decisions. The Family Court denied the motion to reopen on July 7, 2011. Wife did not appeal that ruling. On July 21, 2011, August 18, 2011, and September 12, 2011, Husband filed separate petitions contending that Wife was in contempt for failing to abide by the Family Court's prior ruling ordering Wife to cooperate in the appraisal and sale of the marital home, to allow Husband reasonable access to obtain his belongings, and to pay Husband's attorney fees. On September 13, 2011, Wife filed a second motion to reopen the property division order contending that her mental health issues rendered her unable to comply with the Family Court's prior orders. On September 22, 2011, the Family Court held a hearing on the petitions after which it denied Wife's second motion to reopen and also found her in contempt of its prior orders. Wife now appeals.

² Among other things, the property division order provided that the marital home was to be sold with Wife receiving 70% of the net proceeds. Husband was allowed to retain a 2001 truck and a motorcycle as his sole property. Wife was permitted to remain in the home until it was sold and to retain the furnishings.

(4) Wife contends in her opening brief on appeal that the Family Court erred in failing to reopen the property division judgment. Wife argues that: (i) she established excusable neglect because of her mental illness; (ii) opening the judgment might lead to a different result; and (iii) Husband would not suffer significant prejudice if the judgment was reopened.

(5) We disagree. A motion to open a default judgment pursuant to Rule 60(b) is addressed to the sound discretion of the trial court.³ In reviewing whether the trial court abused its discretion, this Court will consider: (i) whether the conduct resulting in the entry of the default judgment was the result of excusable neglect; (ii) whether the outcome of the action *may* be different if the judgment is reopened; and (iii) whether the nonmoving party will suffer substantial prejudice if the judgment is reopened.⁴ To constitute excusable neglect, the conduct of the moving party must have been that of a reasonably prudent person.⁵

(6) In this case, Wife's own documentation reflects that she has suffered from and received treatment for mental health issues since at least 2009, prior to her marriage. Despite her mental health issues and despite her incarceration, the record reflects that Wife was able to appear and participate

³ *Tsipouras v. Tsipouras*, 677 A.2d 493, 495 (Del. 1996).

⁴ *Id.* at 495-96.

⁵ *Howard v. Howard*, 2009 WL 1122116 (Del. Apr. 28, 2009).

fully in the April 8, 2011 hearing on Husband's motion for sanctions. At that hearing, the Family Court gave Wife until May 11, 2011 to file her financial report, which had been due in January 2011. Wife did not indicate that her mental health issues would leave her unable to comply with that deadline. Moreover, when Wife failed to comply with the May 11 deadline and the Family Court entered a default judgment against her, she did not contend in her first motion to reopen that her failure to comply had been the result of her mental health issues. Under these circumstances, we find no abuse of discretion in the Family Court's conclusion that Wife's mental health issues did not constitute "excusable neglect" under Rule 60(b).

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice