

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

NANTICOKE MEMORIAL	:	C.A. No. 01-07-077
HOSPITAL, INC.		
	Plaintiff	:
vs.		:
ELLEN W. SCHARF,		:
	Defendant.	

Date Decided: January 9, 2003

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**DECISION ON MOTION FOR RECONSIDERATION OF COMMISSIONER'S
ORDER**

Defendants have filed a Motion for Reconsideration of the Commissioner's October 1, 2002 Report denying the Defendant's Motion for Relief from Default Judgment. A motion for relief from default judgment is a case-dispositive motion; therefore the motion for reconsideration is governed by Court of Common Pleas Civil Rule 113 (A) (4) (iv). That rule provides that "a judge of the Court shall make a *de novo* determination of those portions of the report or specified proposed findings of fact or recommendations to which an objection is made.

A judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner. A judge may also receive further evidence or recommit the matter to the Commissioner with instructions.”

On July 11, 2001 the plaintiff filed suit against the defendant for an unpaid balance due on a hospital bill, the vast majority of which was paid by a Maryland workers’ compensation carrier. Defendant was served with the complaint on August 2, 2001. Defendant failed to timely file a response to the complaint with the Court, and plaintiff directed the clerk to enter default judgment against defendant on August 24, 2001. On November 11, 2001 the Sheriff served a *fi fa* writ of attachment and levied upon defendant’s goods and chattels. Prior to final sale, on December 20, 2001 counsel for defendant filed a motion to quash the levy and vacate the default judgment.

A hearing on defendant’s motion was held before the Commissioner of this Court on February 25, 2002. Counsel for the parties appeared, but the defendant did not attend the hearing. The motion was not supported by sworn affidavit, nor was any testimony offered by defendant at the hearing. Thus, no evidence was offered at the hearing in support of the motion. Counsel, however, presented argument upon the motion, and the Commissioner considered this argument and documents filed with the pleadings in making his report.

The Commissioner found that during all relevant times the defendant was represented by Maryland counsel in her workers’ compensation claim. Upon service of process in this matter, defendant’s Maryland counsel wrote to plaintiff’s counsel requesting that the claim be dismissed. Although defendant’s Maryland counsel had communications with plaintiff’s counsel regarding this matter, no attorney entered an appearance on behalf of defendant in this action, and no answer was filed by defendant, prior to plaintiff’s direction to enter a default judgment on

August 24, 2001. The Commissioner found that, although the information in the record and defense counsel's statements raised a possibly meritorious statute of limitations defense, the defendant had failed to offer any evidence on her threshold burden of proving that her mistake or neglect in not filing a response to the complaint was excusable.

A default judgment may be set aside in accordance with Court of Common Pleas Civil Rule 55(c), which states the Court may set aside a judgment by default in accordance with the provisions of Civil Rule 60(b):

(b) Mistake; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

A motion to reopen a default judgment is within the sound discretion of the Court. Battaglia v. Wilmington Sav. Fund Soc'y, Del.Supr., 379 A.2d 1132, 1135 (1977); Model Fin. Co. v. Barton, Del.Super., 188 A.2d 233 (1963); Kaiser-Frazer Corp. v. Eaton, Del.Super., 101 A.2d 345 (1953). When making a determination, the court should resolve any doubts in favor of the petitioner because of the public policy to determine an action on its merits. Keystone Fuel Oil Co. v. Del-Way Petroleum, Inc., Del.Super., 364 A.2d 826, 828 (1976). However, the burden is upon the movant to establish the basis for relief. Weeks v. Wilson, Del.Supr., No. 422, 1989, Walsh, J. (May 31, 1990). To meet that burden when alleging excusable neglect, the moving party must establish (4) factors: 1) that his or her conduct was that of a reasonably prudent person; 2) that the motion was not brought after an unreasonable delay; 3) the presence of a

meritorious defense; and 4) the lack of substantial prejudice to the non-moving party. Concors Supply Co., Inc. v. Berger, Del.Super., Del Pesco, J. 1988 WL 130437 (Nov. 9, 1988). That the defendant has a meritorious defense, alone, is insufficient to warrant relief unless the defendant proves her neglect or mistake was excusable.

The Commissioner found that the defendant had failed to offer any evidence of excusable neglect or extraordinary circumstances justifying relief under Rule 60 (b). The Court concurs in this finding and accepts it, and further holds that the Commissioner properly applied the relevant law to the record before him. Thus, the defendant is not entitled to the relief sought under Civil Rule 60 (b). Defendant's Motion is DENIED, and the Commissioner's Report on Defendant's Motion dated October 1, 2002 is APPROVED in whole.

IT IS SO ORDERED.

Kenneth S. Clark, Jr., Judge