

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

<b>GOVERNMENT EMPLOYEES</b>	)	
<b>INSURANCE COMPANY @1156317, a</b>	)	
<b>foreign corporation, as subrogee of</b>	)	
<b>SHARON WILLIAMS-MCDONALD,</b>	)	
<b>and SHARON WILLIAMS-</b>	)	
<b>MCDONALD, individually,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>C.A. No. CPU4-10-002238</b>
	)	
<b>BOGDAN JOSEPH ZDZIECH,</b>	)	
	)	
<b>Defendant.</b>	)	

**ORDER VACATING DEFAULT JUDGMENT**

Submitted: September 28, 2012  
Decided: October 17, 2012

Erin K. Radulski, Esquire, Wilmington, Delaware, for Plaintiffs  
Bogden Joseph Zdziech, Wilmington, Delaware, self-represented Defendant

**ROCANELLI, J.**

This is a subrogation action for payment of damages resulting from alleged negligence arising from an automobile accident on October 13, 2008. Nathaniel McDonald was operating a motor vehicle with the permission of the owner, Plaintiff Sharon Williams-McDonald. Jessica Riggelmen was a passenger in the vehicle driven by Mr. McDonald. Defendant, Bogdan Joseph Zdziech, was operating a motor vehicle and was travelling behind Mr. McDonald. According to Plaintiffs, Mr. Zdziech operated his vehicle in a negligent manner, causing his car to collide into the vehicle operated by Mr.

McDonald, which caused Mr. McDonald to collide into the rear of a vehicle owned by Zane Crocket, and caused Mr. Crocket's vehicle to collide into the rear of a vehicle owned by Kristen Ford.

On March 26, 2010, GEICO, as subrogee of Ms. Williams-McDonald, and Ms. Williams-McDonald in her individual capacity filed a complaint against Defendant, Mr. Zdziech. Plaintiffs claim that Mr. Zdziech was served with the original complaint on April 17, 2010 by service on Zdziech's father at 748 South Harrison Street, Wilmington, Delaware. On June 18, 2010, Plaintiffs filed an amended complaint that corrected errors in the calculation of damages requested in the original complaint. Plaintiffs claim that Mr. Zdziech was personally served with the amended complaint on July 17, 2010 at 748 South Harrison Street, Wilmington, DE 19805.

Per the amended complaint, Plaintiff GEICO seeks a total of \$9,951.97 as damages including payments made to cover damages to the cars owned by Ms. Williams-McDonald, Mr. Crocket, and Ms. Ford; and payments made to cover personal injuries sustained by Ms. Riggelmen. Plaintiff Williams-McDonald seeks her \$250.00 deductible. Therefore, Plaintiffs seek a grand total of \$10,201.97 plus costs and interest. Mr. Zdziech did not answer the complaint or the amended complaint and, on October 19, 2010, a default judgment was entered against Mr. Zdzeich in the amount of \$10,341.47.

On September 13, 2012, Mr. Zdziech filed a motion to vacate the default judgment entered against him. On September 28, 2012, the Court held a hearing on Defendant's Motion and both parties appeared. Mr. Zdzeich claims that his failures to appear and answer were the result of excusable neglect because he did not receive notice of service.

Mr. Zdzeich also contends that he did not reside at 748 South Harrison Street, Wilmington during the period in which he was allegedly served with process for this action. Mr. Zdzeich provided the Court with his Delaware driver's license for 2010 which reflected that he lived at 108 Glencoe Court, Deerborne, Newark, Delaware. Furthermore, the accident report identifies Zdziech's address as 108 Glencoe Court, Deerborne, Newark.

Additionally, Mr. Zdziech's father, who lives at the address of service on record, informed the Court that the 748 South Harrison Street residence is a duplex, and at the time of service of the Complaint and Amended Complaint, there were young men residing at the other unit in the duplex. Mr. Zdziech's father was an over-the-road truck driver who claims he does not recall being served with process in April 2010.

Even though suit was first filed in March 2010, Mr. Zdziech claims that he did not ever receive copies of the original complaint or the amended complaint. Even though the default judgment was entered almost two years ago, Mr. Zdzeich claimed that he did not have knowledge of a judgment against him until late winter/early spring 2012 when he went to the Delaware Division of Motor Vehicles and was told about it. Mr. Zdzeich stated that he promptly began the process of vacating the default judgment once he discovered the judgment against him. Mr. Zdziech claims that he first filed the motion to vacate immediately after he learned in early 2012 that a judgment had been entered against him, but that it was not accepted for filing by the Court until he had re-filed it several times. Mr. Zdziech claims that the outcome of a trial would be different in that he would not be found responsible for the full amount of damages claimed. Finally, Mr.

Zdziech contends that all the witnesses are available because they reside in Delaware, and that he has a meritorious defense regarding the accident.

Plaintiffs oppose Mr. Zdzeich's Motion and argued that Mr. Zdzeich did not demonstrate excusable neglect, failed to show that the outcome would be different if litigated on the merits, and claim that Plaintiffs would suffer substantial prejudice if the Motion were granted.

"A motion to vacate a default judgment pursuant to . . . Civil Rule 60(b) is addressed to the sound discretion of the Court."<sup>1</sup> "Delaware courts receive such motions with favor because they promote Delaware's strong judicial policy of deciding cases on the merits and giving parties to litigation their day in court."<sup>2</sup> As such, all doubts should be resolved in favor of the movant.<sup>3</sup> Three elements must be proven by the movant before a motion to vacate judgment is 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 its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.<sup>4</sup>

"Excusable neglect is defined as neglect which might have been the act of a reasonably prudent person under the circumstances."<sup>5</sup> While Rule 60(b) does not require a movant to file a motion within a particular time period, the courts have held that

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<sup>1</sup> *Verizon Delaware, Inc. v. Baldwin Line Const. Co., Inc.*, CIV.A.02C-040212JRS, 2004 WL 838610, at \*1 (Del. Super. Apr. 13, 2004).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Lewes Dairy, Inc. v. Walpole*, 1996 WL 111130, at \*2 (Del. Super. Jan. 5, 1996).

unreasonable delay in bringing such a motion will preclude the Court from granting relief.<sup>6</sup>

First, the Court finds that Mr. Zdzeich has demonstrated excusable neglect because Mr. Zdzeich never received notice of the action. Mr. Zdzeich provided a Delaware license proving that he did not reside at the address served in either March or April 2010. While Plaintiff contends that Mr. Zdzeich was personally served, the description of the person served by the process server is a twenty year-old, blonde male. Mr. Zdzeich did not reside at the address at the time of service, persons of approximately twenty years of age rented the separate unit of the duplex, and Mr. Zdzeich's father was out of town as a truck driver. Moreover, Mr. Zdzeich was eighteen years-old in 2010, not twenty, and Mr. Zdzeich had brown hair in his license picture dated 2010, not blonde hair. Mr. Zdzeich's failure to answer a complaint he never received is an act of a reasonably prudent person under the circumstances. Despite the entry of judgment two years ago, Mr. Zdzeich did not unreasonably delay filing the Motion to Vacate because he diligently attempted to file upon discovery of the judgment.

Second, Mr. Zdzeich has shown a meritorious defense that would allow a different outcome if tried on the merits because he will attempt to prove that he should not be held liable for the full extent of damages claimed. Finally, Plaintiffs will not suffer substantial prejudice if this matter were to be tried on the merits. Even though the accident did occur in 2008, the necessary parties are within Delaware and there is ample documentation of the accident. Therefore, Plaintiffs will have the opportunity to try the matter and will not

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<sup>6</sup> *Id.*

suffer substantial prejudice because both witnesses and documentary evidence are readily available.

Now, therefore, after consideration of the Motion, the Response, and the applicable law, the Court hereby GRANTS the Defendant's Motion to Vacate Default Judgment because Zdziech has demonstrated excusable neglect; has demonstrated that he has a meritorious defense to the action that might result in a different outcome after a trial; and the Court finds that Plaintiff would not suffer substantial prejudice. Moreover, such a result is consistent with Delaware judicial policy that favors resolution on the merits.

IT IS SO ORDERED this 17th day of October, 2012.

*Andrea L. Rocanelli*

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The Honorable Andrea L. Rocanelli