

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

CARLTON MCCRARY,)	
Defendant-Below/Appellant,)	
)	
v.)	C.A. No. CPU4-12-001735
)	
TAWANA TONKINS,)	
Plaintiff-Below/Appellee.)	

**MEMORANDUM OPINION AND ORDER
AFFIRMING JUSTICE OF THE PEACE COURT'S
DENIAL OF DEFENDANT'S MOTION TO VACATE**

Submitted: November 16, 2012
Decided: November 20, 2012

Carlton McCrary, Atlanta, Georgia, self-represented Appellant
Tawana Tonkins, Sewell, New Jersey, self-represented Appellee

ROCANELLI, J.

This is an appeal from the Justice of the Peace Court. On May 7, 2012, the Defendant-Below, Carlton McCrary, filed an appeal of the Justice of the Peace Court's denial of his Motion to Vacate Default Judgment. The Plaintiff-Below, Tawana Tonkins, filed a Complaint on Appeal, and filed a Motion for Default Judgment after Mr. McCrary did not file a responsive pleading in the Court of Common Pleas.

On July 27, 2012, both parties appeared before the Court, and the Court determined that this was not a *de novo* appeal from a judgment, but an appeal from a denial of a motion to vacate a default judgment, which is reviewed under the abuse of discretion standard. The Court then gave the parties an opportunity to fully brief the issue of whether the Justice of the Peace Court abused its discretion when that court denied Mr.

McCrary's Motion to Vacate Default Judgment. On November 16, 2012, this Court held oral argument and each party argued its respective positions.

RECORD BELOW

Ms. Tonkins filed a breach of contract action against Mr. McCreary in the Justice of the Peace Court. Trial was set for March 31, 2012, and Mr. McCrary did not appear at the trial. A default judgment was entered in favor of Ms. Tonkins for \$14,000.00 plus court costs and post-judgment interest. However, Mr. McCrary did come to court late, and the record reflects that he told the Court that he never received notice. Mr. McCrary filed a Motion to Vacate Judgment ("Motion") and the parties appeared for a hearing on April 20, 2012.

On May 3, 2012, the Justice of the Peace Court held that Mr. McCrary did not demonstrate that he had a meritorious defense, which is required under the standard required by Justice of the Peace Civil Rule 60(b) and denied his Motion. The Court found, "that while Defendant may have an excusable reason why he was not present for trial, he did not show the end result would be different."¹ The record shows that a contract for \$40,000.00 was presented at the hearing, along with a \$26,000.00 partial payment made by Mr. McCrary.

PARTIES' CONTENTIONS ON APPEAL

Mr. McCrary admitted that he entered into the agreement for \$40,000.00 with Ms. Tonkins, and that he made payment of \$26,000.00. Mr. McCrary argued that the court below would not let him provide the facts necessary for the resolution of the case,

¹ Justice of the Peace Order, JP13-11-017902 (May 3, 2012).

therefore abusing the court's discretion. Ms. Tonkins argued that the court below did not abuse its discretion because the court gave Mr. McCreary the opportunity to provide facts and ultimately found that he failed to demonstrate that there would be a different result if this case were to proceed to trial.

STANDARD OF REVIEW

In this appeal of the motion to vacate default judgment, the standard of review is abuse of discretion. In *Ney v. Polite*, the Delaware Supreme Court held that appeals of the Justice of Peace Court's denial of a motion to vacate "permits only review of the magistrate's order denying relief and not of the nonsuit and default judgments themselves."² The applicable abuse of discretion standard is set forth in *Pitts v. White*:

The essence of judicial discretion is the existence of judgment by conscience and reason, as opposed to capricious 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 of 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 have reasonably reached the conclusion of which complaint is made.³

² 399 A.2d 527, 529 (Del. 1979), *see Integrity Staffing Solutions v. Simmons*, 2008 WL 4456860, at *2 (Del. Com. Pl. Oct. 1, 2008) (Smalls, C.J.) (holding that the Justice of the Peace Court did not abuse its discretion in dismissing the motion to vacate judgment).

³ 109 A.2d 786, 788 (Del. Super. 1954).

Under this standard, “the reviewing court may not substitute its own notions of what is right for those of the trial judge, if his [or her] judgment was based upon conscience and reason, as opposed to capriciousness or arbitrariness.”⁴

DISCUSSION

The Justice of the Peace Court’s Order sets forth the court’s application of the law to the facts of the motion before the court. The record demonstrates that the court correctly set forth and applied the standards of law under Justice of the Peace Civil Rule 60(b). The court found that, whether or not Mr. McCrary could demonstrate excusable neglect, he failed to show a meritorious defense. Mr. McCrary’s failure to show a meritorious defense precludes him, under the standard of 60(b), from vacating a default judgment.

Moreover, the facts from the record show that court reached a reasonable conclusion because Ms. Tonkins brought the contract that Mr. McCrary had signed. Further, Mr. McCrary had made a partial payment to Ms. Tonkins for \$26,000.00. The existence of this evidence from the record demonstrates that the Justice of the Peace Court’s decision “has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law of practice, so as to produce injustice . . .”⁵

⁴ *Dover Historical Soc’y v. City of Dover Planning Comm’n*, 902 A.2d 1084, 1089 (Del. 2006) (quoting *Chavin v. Cope*, 243 A.2d 695, 695 (Del. 1968)).

⁵ *Pitts*, 109 A.2d at 786.

CONCLUSION

Now, therefore, after consideration of the briefs, the oral argument, and the applicable law, the Court hereby **AFFIRMS** the Order of the Justice of the Peace Court, which denied the motion to vacate a default judgment.

IT IS SO ORDERED this 20th day of November, 2012.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli