

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT A. THURMAN, SR.,	§	
	§	
Petitioner Below-	§	No. 443, 2003
Appellant,	§	
	§	
v.	§	Court Below---Family Court
	§	of the State of Delaware,
	§	in and for New Castle County
ANNA D. THURMAN,	§	Petition No. 02-11653
	§	File No. CN00-11009
Respondent Below-	§	
Appellee.	§	

Submitted: February 27, 2004
Decided: March 9, 2004

Before **HOLLAND, STEELE** and **JACOBS**, Justices

ORDER

This 9th day of March 2004, upon consideration of the appellant’s opening brief and appendix, the appellee’s motion to remand, and the appellant’s answer thereto, it appears to the Court that:

(1) Petitioner-appellant, Robert A. Thurman, Sr. (“Husband”),¹ and respondent-appellee, Anna D. Thurman (“Wife”), were divorced on August 15, 2002. A pretrial conference regarding ancillary matters was held on July 31, 2003, for which Husband failed to appear. On August 6, 2003, the Family Court issued

¹ The Court sua sponte has assigned pseudonyms to the parties. Supr. Ct. R. 7(d).

its final order with respect to property division, alimony, court costs and counsel fees.²

(2) On August 15, 2003, Husband filed a motion to reopen the Family Court's judgment.³ Husband alleged that he did not receive proper notice of the pretrial conference due to a typographical error on the envelope containing the notice.⁴ In her response to Husband's motion, Wife represented that notification of the pretrial conference was sent to Husband at the same address where he had always received mail. On September 3, 2003, the Family Court denied Husband's motion stating that Husband had been informed of the date and time of the pretrial conference during a teleconference with the Family Court on April 16, 2003.

(3) In his appeal, Husband claims that the Family Court erred by a) accepting Wife's untimely pretrial stipulation; b) entering Wife's order as a final judgment when he had not been properly notified of the date of the pretrial conference; and c) denying his motion to reopen the judgment on the basis of Wife's misrepresentation that notice of the pretrial conference had been sent to him at the same address where he always had received mail.

² The Family Court had directed Wife to prepare the order when Husband failed to appear for the pretrial conference.

³ Fam. Ct. Civ. R. 60(b).

⁴ Husband contends that the letter was sent in error to "311 West 28th Street, Wilmington, DE" rather than "311 West 38th Street, Wilmington, DE."

(4) In lieu of an answering brief, Wife filed a motion to remand in which she represents that Husband's appeal may have merit. She suggests that it would be a better use of judicial resources to remand the matter to the Family Court for a hearing on the merits of Husband's claim of improper notice than to brief the issues raised in Husband's appeal.

(5) Following the filing of Wife's motion to remand, Husband filed a responsive pleading captioned "Answer for Motion to Remand." In that filing, Husband lists a number of "irregularities" in the divorce proceedings and ancillary proceedings in the Family Court.⁵ Based on these alleged defects, Husband requests either that the motion to remand be denied or that additional relief be granted to him. Specifically, he requests that this Court maintain jurisdiction over the case; that he be permitted to amend his financial report; that there be additional discovery, another pretrial hearing, and a trial; and, finally, that another Family Court judge be appointed to preside over the proceedings.

(6) We have reviewed the record in this case and it is supportive of Husband's claims. First, with one exception, all documents either sent to Husband by the Family Court or sent by Husband to the Family Court show Husband's

⁵ Among other things, Husband contends that the teleconference referred to in the Family Court's order denying his motion to reopen did not take place. He attaches a copy of a letter from the Family Court's judicial case manager supporting this contention.

address as “311 West 38th Street.” The sole exception is the Family Court’s April 17, 2003 letter to the parties notifying them of the date and time of the pretrial conference and the ancillary hearing, which shows Husband’s address as “311 West 28th Street.”⁶ Second, the record reflects that Wife erroneously represented to the Family Court that its April 17, 2003 notification letter was sent to the same address where Husband always had received mail. Finally, there is no indication that a teleconference ever took place on April 16, 2003 during which Husband was informed of the date and time of the pretrial conference. The Family Court’s September 3, 2003 order was, therefore, based upon a factual error.

(7) Given the circumstances presented in this case, we agree with Wife that the matter must be remanded to the Family Court for proceedings to determine the circumstances of notification to Husband of the date and time of the pretrial hearing. We further conclude that the Family Court’s order denying Husband’s motion to reopen was erroneous. Accordingly, the judgment of the Family Court will be reversed and the matter remanded to the Family Court for further proceedings. Should the Family Court determine that Husband did not receive appropriate notice of the pretrial conference, its subsequent orders should be

⁶ We assume that the envelope containing this letter also showed this same incorrect address. In the letter, the judge noted that this would be the only notification of these dates and times provided to the parties by the Family Court.

vacated and a new pretrial hearing scheduled with new dates for pretrial submissions by the parties. Husband's request for additional relief is not warranted at this stage of the proceedings and, therefore, will be denied.

NOW, THEREFORE, IT IS ORDERED that the Family Court's judgment is REVERSED and this matter is hereby REMANDED to the Family Court for further proceedings in accordance with this Order. Jurisdiction is not retained. Husband's request for additional relief is hereby DENIED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice