

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MATTHEW J. DONOHUE,	§	
	§	No. 063, 2005
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
ALICIA M. DONOHUE,	§	No. CN01-07784
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: May 16, 2005
Decided: June 16, 2005

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 16th day of June 2005, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The petitioner-appellant, Matthew Donohue (“Husband”), filed this appeal from an order of the Family Court dated January 19, 2005.¹ The Family Court’s order denied Husband’s motion to vacate another order of the Family Court dismissing the ancillary matters of property division, court costs and counsel fees. Husband appeals from the denial of his motion to vacate the order dismissing the ancillary matters.

¹ The Family Court incorrectly dated its order for July 19, 2005. However, both parties agree that the correct date of the Family Court’s order was January 19, 2005.

This appeal followed. We find no abuse of discretion by the Family Court. Accordingly, we affirm.

(2) Husband and the respondent-appellee, Alicia Donohue (“Wife”), were married on August 22, 1998. The couple separated on November 26, 2002. Husband, through his legal counsel, filed a petition for divorce on February 25, 2004 and requested the retention of jurisdiction over ancillary matters. Wife, through her counsel, filed her answer to the petition on March 11, 2004 and also requested that the Family Court retain jurisdiction over property division matters.

(3) In the Summer of 2004, Wife’s counsel left her previous law firm to join a new law firm. Wife elected to be represented by the same counsel. A stipulation of substitution of counsel was filed with the Family Court on June 29, 2004 to indicate that Wife’s counsel had changed law firms. A copy of the stipulation of counsel and certificate of service was submitted to Husband’s counsel.²

(4) The Family Court entered the final divorce decree on September 9, 2004. Pursuant to Family Court Civil Rule 16(c),³ Husband was to complete his portion of

² DEL. FAM. CT. CIV. R. 5(c).

³ DEL FAM CT. CIV. R. 16(C)(1). This rule, in relevant part, states:

After the entry of a divorce decree, a petitioner requesting ancillary relief shall complete a written report in the form approved by the Court known as a Rule 16(c) Financial Report, attaching thereto such documents as may be required by the instructions accompanying the form and shall forward an original notarized copy to the respondent or attorney for respondent within 30 days of the granting of the final decree of divorce and advise the Court in writing that same has been

the necessary Financial Report (the “Report”), which was due to be submitted to the Family Court no later than November 9, 2004. Husband completed and signed the Report in front of a notary in New Jersey on November 1, 2004. However, neither Wife nor her counsel received a copy of the Report, with the copy dated January 5, 2005, until January 11, 2005. The copy was dated two days after the Family Court entered an order of dismissal of the above ancillary matters for failure to complete the Report.

(5) Thereafter, Husband filed a motion to vacate the order of dismissal. On January 19, 2005, the Family Court denied the motion to vacate. Husband then commenced the instant appeal.

(6) Husband’s sole argument on appeal is that the Family Court erred and abused its discretion in denying his motion to vacate the order of dismissal. He argues that his counsel’s failure to supply opposing counsel with the Report, as well as file the Report with the Family Court, was due to mistake and excusable neglect, thus falling under the purview of Family Court Civil Rule 60(b)(1).⁴ This Rule allows the Family Court to relieve a party from final judgment for “mistake, inadvertence,

accomplished. Respondent shall then complete the form, attaching required documents, deliver the original document to the Clerk, and forward a copy to the petitioner or petitioner’s attorney within 30 days of receipt.

⁴ DEL FAM CT. CIV. R. 60(b)(1).

surprise, or excusable neglect... .”⁵

(7) It is well settled in Delaware that a decision to vacate a dismissal and reopen a judgment is left to the discretion of the trial court.⁶ Although Delaware courts afford Family Court Civil Rule 60(b)(1) “liberal construction,”⁷ the movant must satisfy three elements before a motion under that Rule will be granted.⁸ These elements require the defaulting party to show (1) excusable neglect in the conduct that resulted in the default judgment (or order of dismissal) being taken, (2) the outcome of the action may be different, if relief is granted, from what it will be if the judgment is permitted to stand and (3) substantial prejudice will not be suffered by the nonmoving party if the motion is granted.⁹ To constitute excusable neglect, the conduct of the moving party must have been that of a reasonably prudent person.¹⁰ Husband made no proffer that he submitted any report to the Court, or communicated his compliance with the Family Court Rules, in a timely manner. It was within the discretion of the Family court to dismiss the ancillary matters.

⁵ *Id.*

⁶ *Reynolds v. Reynolds*, 595 A.2d 385, 389 (Del. 1991) (citing *Battaglia v. Wilmington Sav. Fund Soc.*, 379 A.2d 1132, 1135 (Del. 1977)).

⁷ *Id.*

⁸ *See Verizon Delaware, Inc. v. Baldwin Line Constr. Co., Inc.*, 2004 Del. Super. LEXIS 124, at *3-*4 (applying the Superior Court counterpart of Rule 60(b)).

⁹ *Id.* at *4.

¹⁰ *Battaglia*, 379 A.2d at 1135 n.4 (citing *Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. Ct. 1968)).

(8) Husband's argument of mistake and excusable neglect in failing to file the Report in a timely manner stems from confusion over the identity and location of Wife's counsel. Husband argues that, because no attorney was listed for Wife in the Family Court's order granting the divorce, Husband's counsel was delayed in delivering the Report and, with the Thanksgiving, Christmas and New Years holidays adding to the confusion, was not able to deliver the Report until January 11, 2005.

(9) Presumably, the Family Court did not list Wife's counsel on the order granting divorce because Wife's counsel changed law firms in the Summer of 2004. Husband's counsel, however, did receive timely notice of the substitution for counsel, which contained the Wife's counsel's new law firm and contact information. The stipulation was filed with the Family Court and a copy was provided to Husband's counsel so that, in the event of this very type of confusion, Husband's counsel could still contact Wife's counsel. Even with this information, Husband's counsel did not contact Wife's counsel until two days after the Family Court had granted the dismissal of the ancillary matters. Given the fact that the Report was signed and notarized in November 2004, a reasonably prudent person would not have waited until January 2005 to send the Report to Wife's counsel for completion. The record shows that Wife's counsel regularly received forwarded mail from her former law firm and never before January 11, 2005 had she received any correspondence from Husband's

counsel.

(10) Family Court Civil Rule 16(c) provides, in relevant part, that a “petitioner requesting ancillary relief shall complete a written report ... and shall forward an original notarized copy to the respondent or attorney for respondent within 30 days ... and *advise the Court in writing that same has been accomplished.*”¹¹ However, the record is silent as to any contact between Husband and the Family Court prior to the order of dismissal. We conclude that the Family Court did not err or abuse its discretion by denying Husband’s motion to vacate the dismissal.

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

BY THE COURT:

 /s/ Henry duPont Ridgely
Justice

¹¹ DEL. FAM. CT. CIV. R. 16(c)(1) (emphasis added).