

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT E. NEAL,	§
	§ No. 393, 2005
Petitioner Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ File No. CN-04-06137
MARION L. NEAL,	§
	§
Respondent Below,	§
Appellee.	§

Submitted: December 14, 2005

Decided: December 19, 2005

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

This 19th day of December, 2005, upon consideration of the briefs of the parties and the record below, it appears the Court that:

(1) The petitioner-appellant, Robert Neal (“Husband”), filed this appeal from a final judgment of the Family Court that is based upon two related Family Court orders. The first order, on July 5, 2005, denied the Husband’s motion to reopen. The order on July 27, 2005, denied the Husband’s motion to reargue. Under the unusual circumstances of the case, we reverse the denial of the motion to reopen and the motion to reargue, and order that the ancillary matters be heard and decided on the merits.

(2) On May 5, 2004, the Husband through his legal counsel, David S. Shamers, Esquire filed a Petition for Divorce, which included a request for

retention of jurisdiction for property division. The divorce was granted on July 15, 2004. However, Mr. Shamers failed to file a timely Rule 16(c) Financial Report, necessary for the division of property. Subsequently the Family Court *sua sponte* dismissed the ancillary matter on November 18, 2004. The Husband maintains that he did not learn of the dismissal until April 27, 2005. He then filed a motion to reopen on June 15, 2005. The Family Court denied the motion on July 5, 2005. Thereafter, the Husband filed a Motion to Reargue on July 8, 2005. The Family Court denied the motion on July 27, 2005. The Husband then commenced this appeal.

(3) The Husband's counsel, Mr. Shamers, was suspended from the practice of law in an opinion issued by this Court on May 20, 2005.¹ The transgressions were unrelated to this particular case; however, Mr. Shamers' conduct in this case is indicative of the disorganization that led to his suspension. Mr. Shamers did not file a timely Rule 16(c) Financial Report. Then, he failed to inform the Husband that the case was dismissed as a result of the failure to file.

(4) The decision to vacate a dismissal and reopen a judgment is left to the discretion of the trial court.² Under the unusual circumstances in this

¹ *In re Shamers*, 873 A.2d 1089 (Del. 2005)

² *Battaglia v. Wilmington Sav. Fund Soc.*, 370 A2d 1132, 1135 (Del. 1977).

case, however, a proper exercise of discretion would have been to reopen the case and allow the ancillary matters to be heard on the merits.

NOW, THEREFORE IT IS HEREBY ORDERED that the final judgment of the Family Court is reversed. This matter is remanded for further proceedings in accordance with this Order.

BY THE COURT:

/s/ Randy J. Holland
Justice