

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAYMOND MORROW,	§	
	§	No. 382, 2005
Petitioner Below,	§	
Appellant,	§	Court Below: Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
MARY JO MORROW, now known	§	
as Mary Jo Krysiak,	§	File No. CN02-09725
	§	
Respondent Below,	§	
Appellee.	§	

Submitted: February 1, 2006
Decided: February 28, 2006

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

ORDER

This 28th day of February 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Raymond Morrow (“Husband”) appeals from a Family Court Order denying his motion to vacate an order that dismissed its ancillary jurisdiction over a property division between Husband and Mary Jo Morrow (now Krysiak) (“Wife”).

2. Husband contends that the Family Court abused its discretion by denying his motion to vacate the order dismissing ancillary jurisdiction because Husband demonstrated “excusable neglect” justifying relief under Family Court

Civil Rule 60(b)(1). Wife responds that Husband did not demonstrate excusable neglect, and that Husband has not shown that the outcome would be different if his motion were granted, as required by Rule 60(b)(1).

3. We conclude that Husband satisfied the requirements for relief under Rule 60(b)(1), and that the Family Court abused its discretion in denying his motion. We therefore reverse the judgment and remand the matter to Family Court.

4. On February 13, 2003, Husband and Wife divorced after about seven years of marriage. Both Husband and Wife are retired. Husband is in his eighties and suffers from physical disabilities. Before they were married, Husband and Wife signed a pre-nuptial agreement in which each disavowed any rights in property owned by the other party, unless either made a financial contribution to the property. On that basis, the real estate became marital property and was subject to division.

5. At the time of the divorce decree, ancillary jurisdiction was retained for the purpose of property division.¹ The parties filed pre-trial financial reports and conducted a pre-trial conference. A trial date was set for March 1, 2004, but the Family Court set that date aside and raised, *sua sponte*, the issue of whether Wife's counsel had a conflict of interest because he had represented Wife during the

¹ Pursuant to 13 *Del. C.* §§ 1507 and 1513 (2005).

refinancing of certain marital real estate. A new trial date was set for February 5, 2005. The conflict of interest issue was not resolved, but during a teleconference, the parties agreed, and the Family Court determined, that the matter could be tried on a set of stipulated facts. Those stipulated facts were to be filed on or before April 28, 2005.

6. Husband and Wife, after negotiations, could not agree on a set of stipulated facts, and it was apparent to both sides that the April 28, 2005 deadline would be missed. Husband's counsel drafted a letter advising the Family Court of the delay, but the letter was not sent. No explanation was given for the attorney's omission. Husband's counsel was involved in several cases through the week of May 23, 2005, and Husband and Wife continued to negotiate on the stipulated facts after the April 28 deadline.

7. On May 5, 2005, the Family Court entered an Order vacating its retention of ancillary jurisdiction for the division of property. Husband filed a motion to vacate that Order on June 13, 2005. The Family Court denied Husband's motion on June 23, 2005.

8. A decision to reopen a default judgment under Rule 60(b) rests in the sound discretion of the trial court.² Under Rule 60(b)(1), the Family Court may

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

relieve a party from a default judgment for “mistake, inadvertence, surprise, or excusable neglect.”³ To show excusable neglect, the conduct of the party must have been that of a reasonably prudent person under the circumstances.⁴

9. To further the policy of favoring a hearing on the merits over the entry of a default judgment,⁵ Rule 60(b) is afforded a liberal construction, resolving any doubts in favor of the moving party.⁶ To determine whether the Family Court has abused its discretion under Rule 60(b), this Court considers two factors: (1) whether the moving party has shown that the outcome of the action would be different if the motion were granted; and (2) whether substantial prejudice would be caused to the non-moving party if the motion were granted.⁷

10. The sole issue on this appeal is whether the Family Court erred in denying Husband’s motion to vacate under Rule 60(b)(1). The claim is that Husband demonstrated excusable neglect, by his attorney, in failing to meet the deadline for submitting the stipulated facts. Wife argues that carelessness on the part of Husband’s counsel does not constitute excusable neglect.

³ FAM. CT. R. CIV. P. 60(b)(1) (2005).

⁴ *Donohue v. Donohue*, 2005 WL 1421023, at **1 (Del. Supr. Jun. 16, 2005).

⁵ *Harper v. Harper*, 826 A.2d 293, 297 (Del. 2003).

⁶ *Ross v. Ross*, 1994 WL 590494, at *2 (Del. Supr. Oct. 11, 1994).

⁷ *Id.*

11. Carelessness and negligence do not automatically constitute excusable neglect.⁸ Rather, there must be a valid reason given for the neglect in light of the surrounding circumstances.⁹ The inquiry becomes whether the behavior by Husband's counsel was excusable given the totality of the circumstances. In other words, the test is whether the actions were those of a reasonably prudent person.¹⁰

12. We conclude that Husband's counsel's behavior was that of a reasonably prudent person in the totality of the circumstances, for the following reasons. First, the parties were ready to proceed to trial but were delayed on two occasions. Second, both parties knew that they had not reached an agreement, and would miss the deadline to submit the stipulated facts, but there is no evidence that Wife informed the Family Court of that fact. Third, Husband's counsel was busy with several other matters before the Family Court dismissed the ancillary jurisdiction. Upon receiving notice of the Family Court's Order vacating ancillary jurisdiction, Husband's counsel realized his error and promptly moved under Rule 60(b) to vacate that order.

⁸ See *Model Finance Co. v. Barton*, 188 A.2d 233, 235 (Del. Super. Ct. 1963).

⁹ See *Cohen v. Brandywine Raceway Assoc.*, 238 A.2d 320, 325 (Del. Super. Ct. 1968).

¹⁰ *Donohue*, 2005 WL 1421023, at **1.

13. The Family Court cited *Donohue v. Donohue*¹¹ to support its denial of Husband's motion. Husband argues that *Donohue* is distinguishable because here, unlike *Donohue*, Husband had complied with all deadlines set by the Court save one, had filed pre-trial reports, had participated in pre-trial conferences, and on two occasions was prepared to proceed to trial.

14. In *Donohue*, the husband delayed filing a financial report for 3 months and then argued excusable neglect by blaming the wife's counsel's move to a different law firm.¹² This Court found the husband's argument unpersuasive, because husband's counsel had wife's counsel's new address, and because a reasonably prudent person would not have delayed for 3 months to file the financial report.¹³ In this case, Husband and Wife had not agreed on the stipulated facts and they both knew that the deadline was going to be missed. This case is distinguishable from *Donohue* because of the continuing negotiation of the parties, the fact that Husband's counsel had drafted (although not sent) a letter to inform the Family Court of the delay, and the compliance by Husband with all other previous deadlines. In these circumstances, the neglect of Husband's counsel was excusable.

¹¹ 2005 WL 1421023 (Del. Supr. June 16, 2005).

¹² *Id.* at **2.

¹³ *Id.*

15. Wife also argues that Husband has not shown that the outcome of the matter would be different if his motion were granted. To make such a showing, the moving party must establish a meritorious defense to the underlying action.¹⁴ Wife argues that the dispute involves rights to a Rehoboth property that Wife purchased before marriage, not marital property under the prenuptial agreement. Husband responds that he provided consideration for the Rehoboth property and is able to produce cancelled checks to support his contention. Therefore, (Husband claims) he has a meritorious claim that the property is marital property and subject to division.

16. In our view, Husband has presented a meritorious claim for Rule 60 purposes. What is involved is a factual dispute over the intentions and actions of the parties that at this procedural stage should be resolved in favor of allowing Husband's claim to be heard.

17. Given the liberal policy of favoring a trial upon the merits and the absence of any showing of prejudice to Wife, the Family Court abused its discretion in denying Husband's motion to vacate the order dismissing ancillary jurisdiction.

¹⁴ *Battaglia*, 379 A.2d at 1135.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is **REVERSED** and this matter is **REMANDED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice