

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

Aamco Transmissions,	)	
	)	C.A. No. CPU5-09-003004
Appellant,	)	
Defendant-Below	)	
v.	)	
	)	
Alvaro Merlo and	)	
Cristian Tijerino,	)	
	)	
Appellees,	)	
Plaintiffs-Below	)	

August 2, 2010

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*Pro Se* Appellees

**DECISION ON APPEAL**

Appellant, Defendant-Below, Aamco Transmissions (“Defendant”), has filed a civil appeal with this Court pursuant to 10 *Del. C.* § 9571 and *Ney v. Polite*, 399 A.2d 527 (Del. 1979), for a review of a denial by the Justice of the Peace Court of its motion to vacate a default judgment. Defendant contends that the court below abused its discretion when it made its decision pursuant to the “excusable neglect” standard to vacate a default judgment, as set forth in Justice of the Peace Civil Rule 60(b), instead of the “willful negligence” standard, as set forth in 10 *Del. C.* § 9538. After a careful review of the court-below’s decision and the parties’ arguments, this is the Court’s decision. The

decision of the Justice of the Peace Court denying the defendant's motion to vacate is affirmed.

### **BACKGROUND**

On or about June 9, 2009, Alvaro Merlo and Cristian Tijerino ("Plaintiffs") filed a complaint against Aamco Transmissions ("Defendant") in the Justice of the Peace Court, seeking the return of \$2,764.95 paid to Defendant for the repair of their vehicle. Defendant filed a timely answer and requested a Bill of Particulars. The Justice of the Peace Court issued a Notice of Demand for Bill of Particulars on July 28, 2009. The following language appeared in the middle of the notice:

**NOTICE TO PLAINTIFF AND DEFENDANT OF HEARING:** Trial has been scheduled for AUGUST 31, 2009 at 09:30 AM. You must appear at the Justice of the Peace Court named above at the time and date scheduled for trial.

The defendant failed to appear for trial on August 31, 2009, and default judgment was entered against it.

The defendant filed a motion to vacate the default judgment with the court-below, which was denied on November 20, 2009. The trial judge considered the motion pursuant to the Justice of the Peace Civil Rule 60(b) "excusable neglect" standard to vacate a default judgment and in his decision reasoned as follows:

Excusable neglect is neglect which might have been the act of a reasonably prudent person under the circumstances. Carelessness or negligence are not necessarily excusable neglect. . . [a] mere showing [of] negligence or carelessness without a valid reason may be deemed insufficient. In this case, missing a trial date on a Court document by an attorney who is experienced in the practices, procedures, and forms of this Court and who is paid to manage those on behalf of the client does not rise to the level of inadvertence or excusable neglect.<sup>1</sup>

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<sup>1</sup> *Alvero Merlo, et al v. Aamco Transmissions*, J.P. Ct., No. JP16-09-003900, Sweet, J. (Nov. 20, 2009) (ORDER) (internal citations omitted). The Justice of the Peace Court cited *Apartment Comtys. Corp v.*

The defendant's motion for reargument of the motion to vacate was denied on December 4, 2009, at which time the defendant filed this appeal.

### **STANDARD OF REVIEW**

The defendant contends that the court-below abused its discretion in denying its motion to vacate the default judgment. When reviewing a Justice of the Peace Court's ruling for abuse of discretion, this Court determines whether the decision "is a product of logic, based upon the facts and reasonable deductions to be drawn therefrom." *Hurd v. Smith*, 2009 WL 1610516, at \*2 (Del. Com. Pl.). A reviewing court may not substitute its own discretion for that of the lower court. *Id.* Only judgments that are manifestly unreasonable, capricious, or not based on recognized rules of law or practice are considered an abuse of discretion. *Id.*

### **DISCUSSION**

Justice of the Peace Civil Rule 60(b)(1) provides the "excusable neglect" standard for the Justice of the Peace Court to use when deciding whether to vacate a default judgment. Rule 60(b)(1) provides:

(b) Mistake; inadvertence; neglect; newly discovered evidence; fraud, etc.  
-- On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or *excusable neglect*.

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*Martinelli*, 859 A.2d 67, 70 (Del. 2004) and *McDonald v. S&J Enters., LLC*, 2002 WL 1978933, at \*2 (Del. Super.) for the "excusable neglect" standard of review. These two cases rely on Super. Ct. Civ. R. 60(b), which is identical to J.P. Civ. R. 60(b).

J.P. Civ. R. 60(b)(1) (emphasis added). Title 10, Section 9538(c) of the Delaware Code, on the other hand, appears to provide a less stringent “willful negligence” standard to vacate a default judgment entered in Justice of the Peace Court, as follows:

Application to vacate default judgment.

(c) If, upon the hearing, the justice is satisfied that there ought to be a trial, and that the defendant was not guilty of *willful negligence* in letting judgment go against the defendant by default, the application shall be granted, and a day appointed for trial, whereof the plaintiff, or the plaintiff’s agent, shall have notice.

10 *Del. C.* § 9538 (emphasis added).

The defendant maintains that the trial court should have applied the “willful negligence” standard provided in statute rather than the “excusable neglect” standard provided in court rule, because Delaware courts favor disposing of cases on their merits. The defendant’s argument, however compelling, does not answer the question of whether a rule or a statute should control when there is a conflict. American Jurisprudence provides:

Where a conflict between a court rule and a statutory provision cannot be resolved, “a procedural rule generally prevails over a statute on procedure, absent a constitutional provision subordinating the court’s rulemaking authority to the legislature in regard to practice and procedure.”

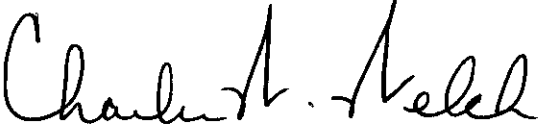
20 *Am. Jur. 2d Courts* § 53 (2010).

The Delaware Constitution does not contain a provision subordinating the Justice of the Peace Court’s rulemaking authority to the legislature in regard to practice and procedure. In fact, the Delaware Code confers on the Justice of the Peace Court the authority to promulgate rules of civil procedure, and provides that “[n]othing in [Title 10], anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any such rules heretofore prescribed under authority of law.” 10 *Del. C.* §

9202(a), (c).<sup>2</sup> The effective date of Justice of the Peace Civil Rule 60 precedes the enactment of 10 *Del. C.* § 9202(c). Therefore, even under an analysis of Delaware statute, the rule prevails over the statute.

In this case, the trial judge in the Justice of the Peace Court correctly applied the “excusable neglect” standard contained in Civil Rule 60(b)(1). This Court may not substitute its own discretion for that of the lower court and it is clear that the trial judge’s decision in the lower court was logical, and was neither unreasonable nor capricious. Therefore, I find that the Justice of the Peace Court judge did not abuse his discretion when he denied the defendant’s motion to vacate the default judgment. The decision of the Justice of the Peace Court is affirmed.

**IT IS SO ORDERED THIS 2<sup>nd</sup> DAY OF AUGUST, 2010.**

  
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**CHARLES W. WELCH**  
**JUDGE**

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<sup>2</sup> Section 9202 of Title 10 was enacted on June 30, 2002. Rule 60 has an effective date of June 15, 2000.