

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

**JOHN A. PARKINS, JR.**  
*JUDGE*

**NEW CASTLE COUNTY COURTHOUSE  
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**Re: Rosalie J. Perry v. Jean A. Wilson and Christopher Wilson  
C.A. No. 08C-09-034 JAP**

Submitted: May 8, 2009  
Decided: July 8, 2009

On Defendants' Motion to Vacate Default Judgment  
**DENIED.**

Dear Counsel:

Before the Court is Defendants' motion to vacate the default judgment that this Court entered in favor of Plaintiff on January 7, 2009. The issue is whether Defendants, who failed to respond to the complaint, are entitled to

reopen the default judgment. Because the Court finds that Defendants' failure to timely respond to the complaint was not due to excusable neglect, Defendants' motion is **DENIED**.

## **I. FACTUAL AND PROCEDURAL HISTORY**

Plaintiff sustained injuries after colliding with a guardrail while driving Defendants' vehicle. A subsequent inspection of the vehicle revealed that the tires on the vehicle were worn and unsafe. As a result, on September 5, 2008, Plaintiff filed a complaint against Defendant Jean A. Wilson alleging negligence for furnishing to Plaintiff a vehicle in an unsafe condition. Ms. Wilson was served with the complaint on September 24, 2008. On October 15, 2008, Plaintiff amended the complaint to add Christopher Wilson, Ms. Wilson's son, as a defendant. Both Mr. and Ms. Wilson were served with the amended complaint on November 5, 2008.

Defendants did not file an answer to the complaint or any other responsive pleading and Plaintiff filed a motion for default judgment on December 17, 2008. Plaintiff sent notice of the default judgment to Defendants, however, Defendants did not respond to the motion. On January 7, 2009 this Court granted Plaintiff's motion for default judgment.

Three months later, Defendants filed the present motion seeking to vacate the default judgment.

## II. DISCUSSION

A motion to vacate a default judgment pursuant to Superior Court Civil Rule 60(b)(1) is addressed to the sound discretion of the trial court.<sup>1</sup> Although Rule 60(b) should be construed liberally, a party moving to vacate a default judgment must satisfy three elements before a motion under that rule will be granted: “(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.”<sup>2</sup>

The Court should consider the second two prongs of the test “only if a satisfactory explanation has been established for failing to answer the complaint, e.g. excusable neglect or inadvertence.”<sup>3</sup> “Excusable neglect” has been defined as “that neglect which might have been the act of a

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<sup>1</sup> *Battaglia v. Wilmington Sav. Fund Soc’y*, 379 A.2d 1132, 1135 (Del. 1977)

<sup>2</sup> *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at \*1 (Del. Super.).

<sup>3</sup> *Apartment Cmtys. Corp. v. Martinelli*, 859 A.2d 67, 72 (Del. 2004).

reasonably prudent person under the circumstances.”<sup>4</sup> It is the defendant’s burden to establish excusable neglect.<sup>5</sup>

Defendants allege in their motion that “Defendants either did not understand the complaint, how to respond, or were not cognizant of their right, as insureds, to free counsel.”<sup>6</sup> This claim falls well short of excusable neglect. A defendant cannot have a judgment vacated where it has “simply ignored the process.”<sup>7</sup> At oral argument on the motion to vacate the default judgment, Defendants claimed for the first time that they did fax the complaint to their insurance company as soon as they received it. Defendants, however, were unable to give any explanation as to why the insurance company failed to properly respond to the complaint.<sup>8</sup>

Defendants have the burden to prove excusable neglect. The record shows that they received notice of the complaint and the motion for default

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<sup>4</sup> *Battaglia*, 379 A.2d at 1135 n. 4.

<sup>5</sup> *Martinelli*, 859 A.2d at 72.

<sup>6</sup> Defs. Mot. to Vacate, D.I. 8, at ¶ 6.

<sup>7</sup> *Mahoney v. Avantix Labs., Inc.*, 2007 WL 789440 (Del. Super.) (denying the defendant’s motion to vacate a default judgment where the defendant was served with the complaint and given notice of the default judgment but waited until four months after the default judgment was entered before getting involved in the case). *See also Watson v. Simmons*, 2009 WL 1231145 (Del. Super.) (denying the defendant’s motion to vacate a default judgment where the defendant’s insurer failed to process the complaint); *Lee v. Charter Commc’ns VI, LLC*, 2008 WL 73720, at \*2 (Del. Super.) (denying the defendant’s motion to vacate a default judgment and stating that “at a minimum, [the defendant] should have questioned whether its interests were being properly protected by [the entity the defendant believed was representing him]”).

<sup>8</sup> *A Child’s Dream, Inc. v Mills*, 2000 WL 1862240 (Del. Super.) (affirming the trial court’s refusal to vacate a default judgment where the trial court was given no explanation of why the defendant’s insurance company failed to answer the complaint).

judgment and yet filed nothing with this Court until three months after the Court granted default judgment. There is simply nothing in the record before the Court that allows this Court to find excusable neglect and reopen this case.<sup>9</sup> Because Defendant did not establish excusable neglect, the Court need not address whether Defendant has a meritorious defense or whether Plaintiff would be prejudiced by an order vacating the default judgment.

### **III. CONCLUSION**

For the reasons stated above, Defendants' motion to vacate default judgment is **DENIED**.

**IT IS SO ORDERED.**

oc: Prothonotary

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<sup>9</sup> See *Martinelli*, 859 A.2d at 70 (noting that the defendant seeking to vacate the default judgment "offered no affidavits or testimony from any potentially helpful witnesses in support of its motion"); *Thompson v. Colonial Court Apartments, LLC*, 2006 WL 3174767 (Del. Super.) (stating that the defendant did not produce enough evidence in support of its motion to vacate the default judgment to meet its burden of proving excusable neglect).