

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DANA WILLIAMS,	:	
	:	C.A. No. 02C-10-032 HdR
Plaintiff,	:	
	:	
v.	:	
	:	
JOHN MITCHELL, <i>et al.</i> ,	:	
	:	
Defendant.	:	

Submitted: December 3, 2004
Decided: December 23, 2004

ORDER

Upon Defendants' Motion to Vacate Default Judgment
and Plaintiff's Motion to Compel Discovery.
Both Motions are Denied.

Mr. Dana Williams, *pro se*.

Steven F. Mones, Esquire of McCullough & McKenty, P.A., Wilmington,
Delaware; attorneys for the Defendants.

WITHAM, J.

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Before this Court are Defendants' Motion to Vacate Default Judgment and Plaintiff's Motion to Compel Discovery. Based upon the reasons set forth below, both parties' motions are *denied*.

1. Dana Williams ("Plaintiff"), an inmate in the Delaware correctional system, has filed an action against John Mitchell, Richard Dennis, Robert Hampton, Deanna, Barbara, Maria, Claire Reader, and Linda Barnett ("Defendants") alleging various health care related complaints. Defendants in this case are all present or former employees of First Correctional Medical ("FCM"), the health care provider for the Delaware Correctional System. On or about January 14, 2003, Defendant Robert Hampton was personally served with the complaint and also purportedly accepted service at the time for the other Defendants. On August 1, 2003, a default judgment was entered against Defendant Hampton because he failed to respond to the complaint. On November 3, 2003, Plaintiff was granted an extension of time to complete service of process on the remaining Defendants. On February 11, 2004, Plaintiff served Defendants Deanna, Maria, Claire Reader, Barbara, and Linda Barnett by serving Kathy Fox (former medical receptionist) at the Delaware Correctional Center ("DCC").

Plaintiff has filed a motion to compel discovery of vast medical records. Defendants have also filed a motion to vacate the default judgment entered against Defendant Robert Hampton. Defendants claim that they are unable to locate Defendant Hampton as he no longer is employed by FCM. Defendants further contend that Defendant Hampton may not have responded to the complaint because

of his mistaken belief that FCM was handling the matter. Defendants also claim that FCM was unaware that Defendant Hampton was served with Plaintiff's complaint. Accordingly, pursuant to Superior Court Civil Rule 60(b), Defendants request this Court to vacate the default judgment against Defendant Hampton.

2. Superior Court Civil Rule 60(b) enables this Court to vacate a default judgment for reasons of mistake, inadvertence, surprise, excusable neglect, or for any other reason justifying relief.¹ A motion to set aside a default judgment is addressed to the sound discretion of the Court.² Because public policy prefers to have cases decided on their merits, this rule is to be liberally construed by resolving all doubts of error in favor of the petitioner.³ However, absent a valid reason, a mere showing of negligence or carelessness may be deemed insufficient.⁴ In order to vacate a judgment under Rule 60(b)(6), the movant must satisfy the "extraordinary circumstances" test.⁵

Defendants contend that this Court should vacate the default judgment against Defendant Hampton pursuant to Superior Court Civil Rule 60(b)(1) because Mr. Hampton may have mistakenly believed that FCM was handling the case and

¹ Super. Ct. Civ. R. 60.

² *Battaglia v. Wilmington Savings Fund Society*, 379 A.2d 1132, 1135 (Del. 1977).

³ *Model Fin. Co. v. Barton*, 188 A.2d 233, 235 (Del. 1963).

⁴ *See Cohen v. Brandywine Raceway Ass'n*, 238 A.2d 320, 325 (Del. Super. Ct. 1968).

⁵ *Concors Supply Co. v. Berger*, 1988 Del. Super. LEXIS 414, at *7.

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therefore did not respond to the complaint. However, Defendants' contention is just mere speculation because Defendant Hampton is no longer employed by FCM and Defendants have been unable to locate or contact him to confirm the reason he failed to respond to the complaint. Accordingly, this Court will not grant Defendants' motion to vacate the default judgment at this time because their reason is just mere conjecture.

Defendants also contend that the default judgment should be vacated pursuant to Superior Court Civil Rule (b)(6). Defendants contend that the "extraordinary circumstances" test has been satisfied because there are legitimate issues concerning service of process. Specifically, Defendants claim that Defendant Hampton accepted service on behalf of the other defendants and that such service is defective as a matter of law because Defendant Hampton is not the registered agent for the other Defendants. Accordingly, Defendants contend that this Court should vacate the default judgment against Defendant Hampton.

The facts of this case do not satisfy the "extraordinary circumstances" test as required by Superior Court Civil Rule (b)(6). The record indicates that Defendant Hampton was personally served and failed to respond to Plaintiff's complaint. Although Defendants argue that the service of process against them was defective as a matter of law, they have not shown that service was defective as to Defendant

Hampton.⁶ Because Defendants have failed to establish any legitimate reason why this Court should vacate the default judgment against Defendant Hampton, Defendants' motion will be denied.

3. Plaintiff has also filed a motion to compel seeking to discover medical records and other various medical related information. In opposition of Plaintiff's motion, Defendants contend that they are not obligated to respond to Defendant's discovery request because this is an arbitration case. Defendants also contend that the service of process upon the Defendants was defective as a matter of law.

Plaintiff's Civil Case Information Statement ("CIS") form indicates that this is an arbitration case. Moreover, pursuant to Superior Court Civil Rule 16.1, this case is subject to compulsory alternative dispute resolution ("ADR") because the Plaintiff's complaint lacks a certificate of value certifying that the claim for damages is in excess of \$100,000. Rule 16.1(j), which governs discovery in actions subject to ADR, provides:

(j) Discovery. The parties may serve and file motions and discovery as allowed by the Superior Court Civil Rules; provided, however, that all responses thereto, except as provided for under Section (e) above, shall be stayed until a request for a trial de novo is provided by these Rules.⁷

⁶ In opposition of Plaintiff's motion to compel discovery and also in support of their motion to vacate the default judgment against Defendant Hampton, Defendants have asserted that service against the Defendants was defective as a matter of law. Instead of raising this issue to support or defend against various motions, it might be more prudent for Defendants to file a motion directly addressing this issue.

⁷ Super. Ct. Civ. R. 16.1(j).

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Pursuant to this rule, Defendants are not obligated to produce any medical records until one party files for a trial de novo which has obviously not yet occurred. Accordingly, Plaintiff's motion to compel discovery is hereby *denied*.

Based upon the aforementioned reasons, both parties' motions are hereby denied. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File