

**SUPERIOR COURT  
OF THE STATE OF DELAWARE**

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, SUITE 10400  
WILMINGTON, DELAWARE 19801  
(302) 255-0669

Submitted: December 13, 2004.  
Decided: March 31, 2005

MARC C. MATHIS,	)	
	)	
Defendant - Appellant,	)	
	)	
v.	)	C.A. No. 04A-03-011-FSS
	)	
GERVEL WATTS,	)	
	)	
Plaintiff - Appellee	)	

**ORDER**

Upon Appeal From the Court of Common Pleas - - ***AFFIRMED***

1) Marc C. Mathis appeals from a Court of Common Pleas decision denying his motion to vacate a default judgment. He argues that the decision should be reversed because: i) his failure to answer interrogatories or to attend the hearing on the motion for sanctions constituted excusable neglect, and ii) the trial court's sanction, a default judgement, was too harsh.

2) On February 3, 2003, Gerval Watts, acting *pro se*, filed suit against

Mathis seeking \$50,000 in damages for alleged breach of contract and conversion. She alleged that Mathis, who had been her boyfriend, misused her credit cards, defaulted on loans, and removed personal items from her house.

3) On August 13, 2003, Watts served the interrogatories that eventually led to this appeal. At about the same time, her attorney entered his appearance, and after that both sides were represented.

4) Mathis answered the complaint and participated in the litigation. But he failed to answer the interrogatories, and Watts's unopposed motion to compel answers was eventually granted in October 2003. After the trial court's November deadline for answering the interrogatories had passed, on January 23, 2004 the trial court heard Watts's motion for sanctions. Mathis did not appear, and the trial court entered a default judgment, as requested.

5) As it turned out, while Watts was in court attending the sanctions hearing, Mathis delivered a set of draft answers to the interrogatories. Watts promptly notified Mathis that a default judgment had been entered, also pointing out that the answers were neither verified nor responsive.

6) Mathis filed a timely motion for relief from judgment. After oral argument, the trial court issued a one paragraph decision denying the motion. It appears that the denial was based on the fact that Mathis never asserted, much less

presented evidence which showed, that he had a meritorious defense to the action.

7) Before addressing the merits, the court must consider Watts's jurisdictional argument. She contends that since the default was entered on January 23, 2004, Mathis's appeal to this court was untimely. The problem with this argument is that Mathis is not appealing the entry of default; he is appealing the denial of his motion for relief from judgment. Under 10 *Del. C.* § 1326, an appeal must be filed within 30 days of the final order, which was announced on March 1, 2004. Thus, Mathis's appeal, filed on March 25, 2004, was timely.

8) In deciding whether to set aside a default judgment, the trial court should consider: i) whether defendant's conduct constituted excusable neglect; ii) whether defendant has a meritorious defense to the underlying claim; and iii) whether plaintiff will be prejudiced.<sup>1</sup> This court reviews the trial court's decision for abuse of discretion.<sup>2</sup>

9) Although it is not clear from the trial court's summary order, it appears that the trial court may have found excusable neglect. Assuming the trial court was satisfied on that prong, it is clear from the record that Mathis provided no

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<sup>1</sup> *Apartment Communities Corporation v. Martinelli*, 859 A.2d 67, 69 (Del. 2004).

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

support for the second requirement – the existence of a meritorious defense. The only “defense” that Mathis apparently intended to present was that this was a “boyfriend-girlfriend situation, where these folks broke up.” The trial court acted well within its discretion in deciding that Mathis’s conclusory description of the dispute did not provide evidence of a meritorious defense. Thus, Mathis failed to meet the second requirement for obtaining relief from a default judgment. Finally, since there is no record anywhere of a possibly meritorious defense, it follows that Watts would be prejudiced if forced to go to the time and expense of a trial only to reach the same outcome.

10) On the record presented, this court has no basis to find that the trial court abused its discretion when it refused to vacate the default judgment.

**NOW, THEREFORE, IT IS ORDERED** that the judgment of the Court of Common Pleas is *AFFIRMED*.

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Judge

oc: Prothonotary (Civil Appeals Division)  
pc: Kester I.H. Crosse, Esquire  
Douglas A. Shachtman, Esquire