

IN THE SUPREME COURT OF THE STATE OF DELAWARE

A CHILD'S DREAM, INC.,	§	
	§	No. 153, 2000
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	
	§	
DEBRA MILLS, et al.,	§	
	§	
Respondents Below,	§	
Appellees.	§	

Submitted: October 24, 2000

Decided: December 15, 2000

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

O R D E R

This 15<sup>th</sup> day of December, 2000, on consideration of the briefs of the parties, it appears to the Court that:

1) A Child's Dream, Inc. ("ACD") appeals from the Superior Court's denial of its motion for relief from a default judgment. ACD notified its insurer when it was served with the complaint, but the insurance company failed to file an answer. ACD contends that it acted responsibly and that it should not be held liable for its insurance company's failure to respond to the complaint.

2) ACD operates a child care facility at which Catherine A. Mills allegedly was injured. Catherine's parents filed suit, and the complaint was served on Carol

Rabe, an ACD employee, on October 28, 1999. The following day, Rabe contacted ACD's insurer, Frontier Insurance Company. "Georgia" at Frontier instructed Rabe to fax her the summons and complaint. Rabe complied, and in a follow up call a few days later, Georgia told Rabe that the matter was being handled by Frontier.

3) No answer was filed on behalf of ACD, and the Millses filed a motion for default judgment on December 8, 1999. ACD was not given notice of the motion, which was granted on December 22, 1999. By letter dated February 14, 2000, the Superior Court advised all parties that an inquisition hearing was scheduled for March 9<sup>th</sup>. On receipt of the court's February letter, ACD learned for the first time that a default judgment had been entered against it. ACD promptly moved to vacate the default judgment, pursuant to Superior Court Civil Rules 55(c) and 60(b)(1), on the ground of excusable neglect. The Superior Court denied that motion, as well as ACD's motion for reargument. The court held that, although ACD had acted responsibly in notifying its insurer, there was no showing of excusable neglect on the insurer's part.

4) ACD argues on appeal that it should not be responsible for its insurance company's neglect. As the trial court noted, ACD acted prudently by immediately

contacting Frontier and faxing it the summons and complaint. Since ACD was told that Frontier was handling the case, ACD contends that its failure to file an answer was, at the very least, excusable neglect. According to ACD, Frontier's conduct should not be imputed to ACD for purposes of determining the existence of excusable neglect.

5) ACD relies on *Williams v. Delcollo Electric, Inc.*<sup>\*</sup> for the proposition that an insurance company does not have to establish its excusable neglect when the insured party moves to vacate a default judgment. But the trial court in *Williams* expressly considered the insurance company's conduct, and found it excusable, before setting aside the default. Here, although the trial court asked to hear evidence of what Frontier did after receiving the complaint, ACD presented nothing. Since the trial court was given no explanation of the reasons for Frontier's failure to answer the complaint, we find no abuse of discretion in the trial court's refusal to vacate the default judgment.

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<sup>\*</sup>Del. Super., 576 A.2d 683 (1989).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice