IN THE SUPREME COURT OF THE STATE OF DELAWARE

THOMAS SCHNEIDER and LINDA SCHNEIDER,	)	No. 374, 2002
Plaintiff Below, Appellants,	)	Court Below: Superior Court of the State of Delaware in and for New Castle County
v.	)	
	)	C.A. No. 99C-08-106
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,	)	
Defendant Below, Appellee.	)	

Submitted: December 10, 2002
Decided: December 26, 2002

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

O R D E R

This 26th day of December 2002, upon consideration of the briefs of the parties, it appears to the Court as follows:

(1) The appellants, Thomas and Linda Schneider ("Schneider"), filed a complaint seeking Personal Injury Protection benefits from appellee, State Farm Mutual Automobile Insurance Company. The parties refer to this case as *Schneider I*. In March 2001, shortly before trial, *Schneider I* settled.[1] Shortly

[1] *Schneider I* was not automatically dismissed after settlement because Schneider never signed a full and final release. However, Schneider cashed the settlement check issued by State Farm. Understandably, the trial judge found this "disturbing." See Appellants' Appendix at A-13 – A-14.

thereafter, appellants initiated a companion suit against State Farm, alleging bad faith and seeking punitive damages. The parties refer to this case as *Schneider II*.

(2) On October 17, 2001, the Prothonotary issued notice to both parties that *Schneider I* would be dismissed pursuant to Delaware Superior Court Rule 41(e) because no action had been taken in six months. The court sent notice to Schneider's counsel, but Schneider's counsel claim they never received the notice. On December 6, 2001, the Prothonotary sent an order to both parties dismissing *Schneider I*. Appellants' counsel, according to their brief, received the dismissal order on January 8, 2002. Appellants sent a letter to the assigned judge asking that the case be reopened. Appellants needed *Schneider I* reopened because State Farm sought summary judgment in *Schneider II* based on *res judicata*. On May 8, 2002, Schneider filed a formal motion to reopen and stay *Schneider I* until *Schneider II* could be decided on its merits. The trial judge denied Schneider's motion to reopen and stay *Schneider I*. This appeal followed.

(3) Schneider argues that the trial judge improperly denied his motion to reopen and stay because (i) Schneider has no record of receiving the Rule 41(e) notice, and (ii) Schneider had been involved in the companion bad faith case, *Schneider II*, before the Rule 41(e) dismissal notice.[2]

[2] Schneider was advised to include in the formal motion a more persuasive argument on why the Rule 41(e) dismissal should be vacated. In particular, the trial judge advised him that he should include what activity has been taken in the case. In his brief, Schneider does not include any suggestion of activity.

(4) Schneider's primary argument is that he never received the Rule 41(e) notice of dismissal. There is a presumption, albeit rebuttable, that mail, correctly addressed, stamped and mailed was received by the person to whom it was addressed.[3] Merely denying receipt does not rebut the presumption.[4] Appellants have presented no reason why they never received the notice nor why the notice was never returned as undeliverable to the Post Office or to the sender. Schneider's statement that counsel did not receive notice is not enough to rebut the presumption that the notice, addressed and mailed, was not delivered.

(5) Schneider also argues that because *Schneider II* is based on "what occurred in *Schneider I*," and State Farm is raising *res judicata* as a defense in *Schneider II*, *Schneider I* should be reopened and stayed until *Schneider II* can be resolved on the merits. There are two reasons why *Schneider I* should not be reopened. First, Schneider must show "extraordinary circumstances" to reopen a judgment under Rule 60(b)(6).[5] Schneider settled his case with State Farm, and for eight months there was no activity in the case. There is nothing extraordinary

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[3] *Haas v. Indian River Volunteer Fire Co.*, 2000 Del. Ch. LEXIS 116 (Del. Ch.), *aff'd* 2001 Del. LEXIS 126 (Del. Supr.).

[4] *Robledo v. Stratus*, Del Super Ct., C.A. 00A-09-001HDR, Ridgley, President J., (March 29, 2001).

[5] *Bachtle v. Bachtle*, 494 A.2d 1253, 1256 (Del. 1985). Schneider did not cite any section of the Delaware Code under which the court could have reopened the case. State Farm states in its brief "the only conceivably applicable subsections are Rule 60(b)(2), 'newly discovered evidence', and Rule 60(b)(6) which allows the court to open a judgment for 'any other reason justifying relief from the judgment.'" The only "newly discovered evidence" would be Schneider's realization that their counsel never received notice of the Rule 41(e) dismissal.

about a case being dismissed under these circumstances. Second, the trial judge did not abuse his discretion by dismissing the case because there was "nothing else to be done in [*Schneider I*]."[6] *Schneider I* was settled and dismissed. If the trial judge were to reopen the case, there would be nothing else to decide. Schneider abandoned *Schneider I*, and now wants it reopened to preclude State Farm from asserting *res judicata* in *Schneider II*. The trial judge is within his discretion to deny a motion to reopen a case that was dismissed under Rule 41(e) under these circumstances.

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

BY THE COURT:

_/s/ Myron T. Steele_____
Justice

Schneider does not even argue that the lack of notice is newly discovered evidence. In any event, it would not qualify as newly discovered evidence under Rule 60(b)(6).

[6] Appellants' Appendix at A-11 (Transcript of Motion Hearing).