

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EVERETT C. RITCHIE,	§
	§
Respondent Below,	§
Appellant,	§ No. 604, 2001
	§
v.	§ Court Below: Family Court
	§ of the State of Delaware in and
JOCELYN W. LORING,	§ for New Castle County
	§ File No. CN89-9565
Petitioner Below,	§ Petition Nos. 00-21227 & 00-22489
Appellee.	§

Submitted: May 7, 2002

Decided: May 15, 2002

Before WALSH, HOLLAND, and BERGER, Justices.

ORDER

This 15<sup>th</sup> day of May 2002, upon consideration of the briefs of the parties it appears that:

(1) This is an appeal from a decision of the Family Court that refused to reopen a default judgment entered against the Appellant, Everett C. Ritchie, in a custody proceeding. The Appellant contends that the Family Court abused its discretion in entering a default judgment because of Appellant's failure to appear for a deposition and his late appearance for trial.

(2) While the Appellant's conduct in this case reflects a casual attitude toward the processes of the Family Court, and it is not to be condoned, after a full

review of the record, we conclude that the Family Court abused its discretion in imposing the drastic sanction of dismissal where other less punitive sanctions were available under Family Court Rule 37. A default judgment is the ultimate sanction for discovery violations and should be used sparingly. *In re Rinehardt*, 575 A.2d 1079, 1083 (Del. 1990). Moreover, we do not believe that Appellant's tardiness warrants a default judgment in a situation where, as here, the interests of a third party, the child, are paramount. Accordingly, we conclude that the Family Court abused its discretion in failing to reopen the default judgment under Family Court Rule 60(b).

(3) The judgment of the Family court is REVERSED and this matter REMANDED to that court for the entry of other appropriate sanctions for Appellant's conduct. We expressly do not reach the merits of the underlying custody dispute.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court be, and the same hereby is REVERSED and REMANDED.

BY THE COURT:

s/Joseph T. Walsh  
Justice