

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON HARDY and)
HEATHER HARDY,) No. 595, 2006
)
Plaintiffs Below,) Court Below: Superior Court
Appellants,) of the State of Delaware in
) and for New Castle County
v.)
) C.A. No. 06C-06-074
LESTER HARVELL and)
ELEANOR BAER,)
)
Defendants Below,)
Appellees.)

Submitted: June 13, 2007

Decided: July 3, 2007

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

ORDER

This 3rd day of July 2007, it appears to the Court that:

(1) Appellants-plaintiffs Brandon and Heather Hardy appeal a Superior Court judge's dismissal of their complaint against Lester Harvell and Eleanor Baer arising from a November 8, 2004 automobile accident. Harvell and Baer responded to the Hardys' complaint by filing a motion to dismiss. A Superior Court scheduling letter set a September 27, 2006 hearing for Harvell and Baer's motion to dismiss and imposed a September 1, 2006 deadline for the Hardys to respond to the motion. When the Hardys did not respond by September 1, 2006, the Court dismissed their complaint. The Hardys then moved for relief from that

judgment. The Hardys offered no explanation that constituted “excusable neglect” under Rule 60(b) for their failure to meet the deadline. Therefore, the Superior Court judge did not abuse her discretion when she denied the Hardys’ motion for post judgment relief under Super. Ct. Civ. R. 60(b). Accordingly, we **AFFIRM**.

(2) On June 7, 2006, the Hardys filed a complaint against Harvell and Baer in the Superior Court seeking damages for injuries sustained in an auto accident. Harvell and Baer moved to dismiss the complaint on the basis that the Hardys had signed a “Full Release of All Claims with Indemnity” arising from the accident.¹ On July 25, 2006, the Superior Court scheduled a hearing for September 27, 2006 on the motion to dismiss. The scheduling letter informed the Hardys that they must respond on or before September 1, 2006 or the motion would be considered unopposed.

(3) The Superior Court did not receive a response from the Hardys on or before September 1, 2006. Therefore, a Superior Court judge granted Harvell and Baer’s motion to dismiss as “unopposed pursuant to Superior Court Civil Rule 107(b)² and Superior Court New Castle County Civil Case Management Plan § IV

¹ Oddly, the motion to dismiss does not allege a 12(b)(6) failure to state a claim but does raise an affirmative defense.

² Super. Ct. Civ. R. 107(b). A citation that governs filing briefs and appears to be unrelated to any issue in the case.

§§ A(3)(b).”³ On September 14, 2006, the Hardys filed a motion for “relief from order” pursuant to Super. Ct. Civ. R. 60(b) and noticed it for presentation on September 25, 2006. The Hardys, however, did not file that motion “10 days prior to the[ir] noticed date” as prescribed by the Case Management Plan and the Prothonotary rejected it. The rejection apparently means the Prothonotary made no docket entry confirming that filing.⁴ The Hardys then refiled their motion for post judgment relief on October 5, 2006.⁵

(4) In a written order on October 27, 2006, a Superior Court judge denied the Hardys’ motion for post judgment relief:

³ See Superior Court New Castle County Civil Case Management Plan, § IV §§ A 3(b) at 8 (Nov. 2004) which is facially inconsistent with the scheduling letter in that it calls for a response “no later than 4 days prior to the hearing date” (September 27, 2006) i.e. September 23, 2006.

⁴ There is, however, a bizarre September 20, 2006 docket entry of “PLTFS MOTION FOR RELIEF FROM ORDER DATED 9/12/2006 DISMISSING THE ACTION SCHEDULED FOR 10/30/2006 AT 9:00 A.M.” which appears to have no readily recognizable relationship to the September 14, 2006 filing “rejected by the Prothonotary” as untimely or to the October 5, 2006 “refiling” of the second motion for “relief from order.”

The Hardys filed on September 14, 2006 and noticed the motion for September 25, 2006, a putative “10 days prior to the noticed date.” Super. Ct. Civ. R. 6 governs counting time, and if Saturdays and Sundays are not counted, the 10 day requirement is not met – this despite the fact that the case management plan does not specify “business days” – an oddity that adds confusion to this scenario.

⁵ In their opening brief, the Hardys’ appendix shows a date stamped motion for post judgment relief filed on September 14, 2006 and then refiled on October 5, 2006. The docket, however, shows no action related to an issue in the case between the docketing of the dismissal on September 12 and the “refiling of a motion for relief from order” on September 29, 2006. The docket entries show that the Superior Court received their motion on September 29, 2006 and received the re-notice on October 5, 2006. We cannot reconcile these entries.

Plaintiffs' counsel was admittedly in receipt of the Court's correspondence dated July 25, 2006, which stated that the Plaintiffs' response to the motion was due on or before September 1, 2006. The fact that counsel assumed that a response to the motion was not due until four days before the hearing, when the Court's correspondence clearly stated otherwise, is not a "valid reason" to excuse counsel's failure to act. What is more, even after the receipt of the Court's Order granting the motion to dismiss, counsel failed to file a motion for reargument and waiting almost a month before filing the instant request for relief – an unreasonable delay in the Court's judgment.⁶

(5) We review the denial of the Hardys' motion for post judgment relief for abuse of discretion.⁷ Super. Ct. Civ. R. 60(b) permits the Superior Court to "relieve a party or a party's legal representative from a final judgment, order, or proceeding for . . . [m]istake, inadvertence, surprise, or excusable neglect."⁸ Excusable neglect under Rule 60(b) is "neglect which might have been the act of a reasonably prudent person under the circumstances."⁹ "A mere showing of negligence or carelessness without a valid reason may be deemed insufficient."¹⁰

⁶ *Hardy v. Harvell*, 2006 WL 3095947 (Del. Super.).

⁷ *Wife B. v. Husband B.*, 395 A.2d 358, 359 (Del. 1978).

⁸ Super. Ct. Civ. R. 60(b).

⁹ *Battaglia v. Wilmington Sav. Fund. Soc.*, 379 A.2d 1132, 1135 n.4 (Del. 1977).

¹⁰ *Cohen v. Brandywine Raceway Ass'n*, 238 A.2d 320, 325 (Del. Super. 1968).

A party must also “act without unreasonable delay (after knowing that his action had been dismissed) in making his motion [for relief].”¹¹

(6) The Hardys argue that their failure to respond by September 1, 2006 constituted “excusable neglect.” The Hardys’ counsel acknowledges receiving the July 25, 2006 letter and admits that he “mistakenly and/or inadvertently” failed to note and comply with the September 1 deadline the Superior Court judge imposed. Counsel maintains that he intended to file a response to the motion pursuant to the deadlines prescribed in the New Castle County Case Management Plan – where a response to a dispositive motion is due “no later than 4 days prior to the hearing date” (i.e. September 23, 2006). Counsel fails, however, to explain why he failed to recognize that the judge’s September 1 imposed deadline controlled. The Superior Court judge’s letter, dated July 25, 2006, clearly indicates that a response was due on September 1, 2006. The entire letter read as follows:

I have scheduled Defendant’s Motion to Dismiss to be heard on Wednesday, September 27, 2006 at 9 a.m.

Plaintiff’s response shall be due on or before September 1, 2006. Failure of plaintiff to file a response by that date will be deemed lack of opposition to the motion.

(7) The Hardys have offered no “excuse” for failing to comply with the Superior Court judge’s letter directive. The Case Management Plan provides a

¹¹ *Schremp v. Marvel*, 405 A.2d 119, 120 (Del. 1979).

default schedule for certain filings. In the absence of a judge's order setting a response date, that default date would otherwise be applicable. Here, however, the judge's specific filing date must be respected. It was not. The Hardys do not in any way explain how "excusable neglect" caused the failure to follow the schedule imposed by the Superior Court judge in her letter. A failure to note and comply with the judge's imposed deadline, despite that deadline's departure from The Case Management Plan, does not constitute "excusable neglect" under Rule 60(b). Therefore, the Superior Court judge did not abuse her discretion when she dismissed the Hardys' complaint and denied their motion for post judgment relief. Accordingly, we **AFFIRM**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice