

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

NANCY M. HAGGERTY,	)	
Defendant-Below/Appellant,	)	
	)	CPU4-13-000177
v.	)	
	)	
RIVER TERRACE	)	
COOPERATIVE INC.,	)	
Plaintiff-Below/Appellee.	)	

Submitted: April 5, 2013
Decided: May 6, 2013

**On Plaintiff-Below/Appellee's Motion to Dismiss
GRANTED**

Nancy M. Haggerty
302 River Road, Apt. D-10
Wilmington, DE 19809
Defendant-Below/Appellant

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On January 18, 2013, the Defendant-Below/Appellant, Nancy M. Haggerty, filed this appeal from an Order of the Justice of the Peace Court denying a motion to vacate a default judgment. On March 4, 2013, Plaintiff-Below/Appellee, River Terrace Cooperative, Inc., filed a motion seeking dismissal of the appeal filed by Haggerty on the grounds that Haggerty failed to file a brief on appeal within 20 days, as required by Court of Common Pleas Civil Rule 72.1(g). Moreover, according to River Terrace, even if Haggerty had filed her brief in a timely manner, the decision below must be affirmed because the trial court did not abuse its discretion.

PROCEDURAL HISTORY

On November 2, 2012, River Terrace filed a landlord-tenant action against Haggerty in the Justice of the Peace Court. Trial was held on December 11, 2012. Haggerty failed to appear for trial, and a default judgment was entered against her on December 18, 2012.

On December 28, 2012, Haggerty filed a motion to vacate the default judgment. On January 17, 2013, a hearing on the motion was held. The Justice of the Peace Court issued an order denying the motion to vacate the default judgment on January 23, 2013. On January 18, 2013 (prior to the date on which the court docketed its order), Haggerty filed the appeal in this Court from the Order of the Justice of the Peace Court denying the motion to vacate.

On March 4, 2013, River Terrace filed the Motion to Dismiss now before the Court. A hearing on the Motion was held on April 5, 2013. At the hearing, both parties presented oral argument. It is River Terrace's position that, under Court of Common Pleas Civil Rule 72.1(g), Haggerty was required to file a brief by February 7, 2013 – twenty days from the filing of the record below. Haggerty never filed a brief. Additionally, River Terrace maintains that the Justice of the Peace Court decision did not constitute an abuse of discretion. Therefore, River Terrace contends, the appeal should be dismissed. Haggerty's position, on the other hand, is that the appeal should proceed because the Justice of the Peace Court's decision was based on inaccuracies.

DISCUSSION

An appeal on the record is subject to the procedural requirements of Court of Common Pleas Civil Rule 72.1(g), which states:

[t]he Clerk of the Court shall give all parties written notice of the date of the filing of the record of the proceedings below. The appellant's brief shall be served and filed 20 days after the date of said filing of such record as provided in Rule 72.1(e). The appellee's answering brief shall be served and filed 20 days thereafter. The appellant shall serve and file the reply brief, if any, not later than 10 days thereafter. If appropriate, the assigned judge shall schedule the case for argument.

Pursuant to Court of Common Pleas Civil Rule 60(b)(1), “ the Court may relieve a party... from a final judgment, order or proceeding for...(1) Mistake, inadvertence, surprise, or excusable neglect.” To prevail on a motion under Rule 60(b), the moving party must establish three elements:

“(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted.”¹

Haggerty failed to file and serve a brief within 20 days as required by Rule 72.1(g). However, even if the Court were to permit Haggerty to file a brief on appeal, it would not survive the Rule 60(b) three-prong analysis because Haggerty cannot prevail on the merits.

¹ *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del.Super.).

An appeal from a denial of a motion to vacate default judgment is reviewed under an abuse of discretion standard.² Review is limited to the decision denying the motion.³ The reviewing court does not consider whether it would have reached a different conclusion; rather, the inquiry is whether the magistrate's decision "[was] the product of logic, based upon the facts and reasonable deductions to be drawn therefrom."⁴ "Only judgments that are manifestly unreasonable, capricious, or not based on recognized rules of law or practice are considered an abuse of discretion."⁵

Default judgment was entered against Haggerty after she failed to appear for trial. In the motion to vacate default judgment she filed in the Justice of the Peace Court, Haggerty claimed she did not receive notice of the trial because she was out of state. Haggerty also argued that she believed the matter to be settled, as she made a substantial payment towards the outstanding balance.

In the order denying Haggerty's motion to vacate the default judgment, the Justice of the Peace Court explained its reasoning as follows:

In this case, when the Defendant left the state, she made no arrangements with the post office, nor did she have her son, who was in the rental unit, send her the Plaintiff's correspondence. The Court did not find this to be the action of a reasonable and prudent person, and found no excusable neglect. Further Defendant's payment was not payment in full. Moreover, if rent was paid in full, Plaintiff had reserved their right to go forward with the possession pursuant to 25 Del. C. § 5502(d). Defendant's motion is Denied.

² Court of Common Pleas Civil Rule 72.2(b)(3).

³ *Hurd v. Smith*, 2009 WL 1610516, *1 (Del. Com. Pl. June 10, 2009).

⁴ *Id.*

⁵ *Gibson v. Car Zone*, 2010 WL 3958776, *1 (Del. Com. Pl. Aug. 3, 2010).

The trial court has inherent authority to control its own docket.⁶ The Justice of the Peace Court found that Haggerty's explanations for failing to appear on the scheduled trial date were without merit. There is nothing in the record to indicate that this decision was unreasonable or capricious. The court acted within its discretion, and based its decision upon reason and logic. The decision denying Haggerty's motion to vacate default judgment therefore must be affirmed.

CONCLUSION

Accordingly, even if Haggerty's failure to comply with the procedural requirements of Rule 72.1(g) was excusable neglect, Haggerty cannot prevail on the merits because there was no abuse of discretion.

AND NOW, THEREFORE, this 6th day of May 2013, IT IS HEREBY ORDERED that Plaintiff-Below/Appellee's Motion to Dismiss is hereby GRANTED and the decision is of the Justice of the Peace Court denying the motion to vacate the default judgment is hereby AFFIRMED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli

⁶ See *Belfint, Lyons & Shuman, P.A. v. Pevar*, 844 A.2d 991; See also *Alston v. Delaware State University*, 2011 WL 1225465 (Del. Super. March 31, 2011).

