

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARK DiPASQUALE and KRISTINE : CIVIL ACTION
DiPASQUALE, h/w :
 :
v. :
 :
BENSALEM TOWNSHIP, :
POLICE OFFICER FRED SCHUMANN, :
POLICE OFFICER ANDY ANISMAN :
and DETECTIVE BOB JUNO : NO. 01-075

MEMORANDUM AND ORDER

Fullam, Sr. J.

November , 2001

Defendants have filed a motion for relief from a default judgment entered against them. The salient facts are not in significant dispute.

Plaintiff Mark DiPasquale was the victim of an armed robbery at his place of employment, a Wawa store. The defendant police officers were called to the scene, interviewed plaintiff, a co-employee, and at least two customers, all of whom had witnessed the robbery. The entire criminal episode had been captured on videotape, but, because of problems with the equipment, the police were able to view only portions of the videotape when they first examined it at police headquarters; apparently, the portion they viewed represented events immediately preceding the robbery. The police became convinced that plaintiff and his co-worker had stolen the money themselves, and had invented the tale of a robbery in order to cover up their

crime. They therefore, without further ado, and despite the accounts furnished by plaintiff, his co-worker, and seemingly disinterested customers, returned to the scene, accused plaintiff and the co-worker of criminal involvement, placed them in handcuffs and escorted them to the police department for interrogation. Eventually, when the police viewed the entire videotape on adequate equipment, it became apparent that plaintiff was entirely innocent, that the crime had indeed been committed by an armed robber, and that the police were completely mistaken. Plaintiff had been in custody for six or eight hours by that time, had been subjected to accusatory interrogation, and had been publicly accused of criminal activity. Plaintiff claims to have suffered psychological damage which continued for some time, and which required extensive treatment. His treating physician agrees.

Plaintiff's counsel sent the defendants a claim letter, outlining these events and seeking satisfaction. That letter was promptly referred to the Township's liability insurance carrier. And, apparently, an internal investigation of some sort was instituted within the police department, and a file established.

In due course, this lawsuit was filed. All of the defendants were properly served with the complaint on January 10, 2001. In May 2001, prompted by a notice from this court, plaintiff filed a proof of service of the complaint. Thereafter,

plaintiff's counsel was notified that, since no responsive pleading had been filed by anyone, plaintiff would be expected to seek a judgment by default by a specified date, or risk dismissal of the case for lack of prosecution. Plaintiff's counsel thereupon duly filed a motion for entry of default, and a motion for default judgment. These motions were granted, as to liability, and the case was scheduled for a hearing to assess damages.

The defendants were all notified that the damages hearing was scheduled for September 17, 2001, and that a deposition of plaintiff's treating physician was scheduled to take place on September 10, 2001, and that it was plaintiff's intention to use the deposition at the damages hearing.

The damages hearing was held as scheduled. No one appeared on behalf of the defendants, nor did the defendants participate in the deposition taken a few days earlier. At the close of the hearing, judgment was entered in favor of the plaintiffs and against the defendants, in the total sum of \$99,925. On October 1, 2001, defendants filed the pending motion for relief from judgment.

Defendants assert that the default should be set aside and the default judgment opened because the Township employee whose duties included sending suit papers to the Township's insurance carrier, and who had apparently been given at least one

copy of the plaintiff's complaint in this action on January 10 or January 11, 2001, was stricken with a heart attack and died at her desk on January 11, 2001. Allegedly, in the confusion immediately following this unfortunate episode, this employee's copy of the complaint in this case was lost or mislaid and never reached the liability insurance carrier.

As detailed by the defendants, the process was as follows: The suit papers were served upon the Police Department, and duly received there. The police officer responsible for handling civil complaints had an assistant, and the complaints in this case were turned over to her. It was her responsibility to set up a file in the Police Department for each such case, and to deliver to the Office of the Director of Administration of the Township one copy of the complaint, for forwarding to the insurance carrier.

The Police Department and the administrative offices of the Township are located in the same building, in different sections. The Director of Administration for the Township had an administrative assistant, to whom suit papers were to be delivered for forwarding to the insurance carrier. It was this administrative assistant whose unfortunate and untimely death resulted in the papers having gone astray.

The first issue to be addressed is whether this series of events entitles the defendants to set aside the default

judgment against them. Obviously, the administrative assistant who died is not chargeable with neglect of any kind, but the real question is whether the Township is chargeable with negligence in its handling of the suit papers in this case and, if so, whether such negligence can properly be regarded as "excusable." It is noteworthy that responsible officials of both the Police Department and the Administrative Office were fully aware that the suit had been filed and the complaint served. Indeed, the Police Department set up a file, and placed three of the four copies of the complaint in that file, where they still remain. Responsible officials of the Police Department and the Township administration were also aware that one copy of the complaint had been delivered to the administrative assistant for forwarding to the insurance carrier, and that the administrative assistant had collapsed and died that very same day. But no one did anything about this case until after the judgment was entered on September 17, 2001.

The explanation offered by the defendants is somewhat speculative, but will be accepted as correct for present purposes. When the administrative assistant collapsed at her desk, the Bensalem police and other emergency personnel were immediately summoned to the scene, and attempted to resuscitate the victim through CPR and attempts to inject intravenous fluids. Allegedly, the papers on the victim's desk became scattered, and

may even have become blood-stained. As the victim was being transported to a nearby hospital, the other employees of the Administrative Office were instructed not to touch anything (presumably, because of possible contamination). The scene was left undisturbed when the employees went home for the day. Later that evening, a contracting firm which performs janitorial services apparently straightened up the office, and, presumably, destroyed the scattered papers.

While this scenario is initially plausible, I doubt that it suffices to excuse the Township's total inaction thereafter. But, assuming for the sake of argument that the Township has shown "excusable neglect," the Township must also show that it has a valid defense to the action. It must be remembered that the default judgment was entered only with respect to liability, and the undisputed facts clearly establish the liability of the defendants. Thus, the defendants are not entitled to have the default judgment as to liability vacated.

The damages were assessed only after an evidentiary hearing. The defendants concede that they received letters from plaintiff's counsel, dated September 4, 2001, notifying them that default judgment on liability had been entered against them, and that damages would be assessed at a hearing scheduled for September 17, 2001. The same letter also informed them that the deposition of plaintiff's treating physician would take place on

September 10, 2001, and that counsel intended to use that deposition as evidence at the evidentiary hearing. Yet no one appeared on behalf of the defendants, either at the deposition or at the hearing. The only attempt to explain their absence is the assertion that, since the letter pertained to a pending lawsuit, all concerned simply assumed that the matter would be properly handled by attorneys. In the circumstances of this case, that "explanation" is totally inadequate and unreasonable.

For the foregoing reasons, defendants' "combined motion for relief from default judgment" will be denied.

An Order follows.

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ORDER

AND NOW, this day of November 2001, upon
consideration of defendants' "combined motion for relief from
default judgment" and plaintiff's response, IT IS ORDERED:

That the defendants' motion is DENIED.

John P. Fullam, Sr. J.