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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0578-16T1

UNION COUNTY DIVISION OF
SOCIAL SERVICES OBO DCF-
CENTRAL-OFFICE TRENTON,

Plaintiff-Respondent,

v.

J.D.,

Defendant-Appellant.

Submitted November 9, 2017 – Decided December 18, 2017

Before Judges Currier and Geiger.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part, Union
County, Docket No. FD-20-1454-14.

J.D., appellant pro se.

Robert E. Barry, County Counsel, attorney for
respondent (Ellen Grod, Assistant County
Counsel, on the brief).

PER CURIAM

Defendant J.D. appeals the August 11, 2016 order denying her
motion to vacate default judgment. After a review of her

contentions in light of the record and applicable principles of law, we affirm.

Defendant's child was removed from her custody in September 2013, and the Division of Child Protection and Permanency (DCPP) was subsequently awarded legal and residential custody. At the time, defendant and her child resided in New Jersey.¹ In March 2014, plaintiff, Union County Division of Social Services, filed a complaint against defendant seeking child support payments and medical coverage.

After four unsuccessful attempts to serve defendant with the complaint and summons at the New Jersey address, it was determined that defendant had relocated to New York. In April 2014, the Family Part judge ordered that defendant be served by regular and certified mail at the New York address. The green return receipt was signed on June 2, 2014, and returned to the court. Defendant failed to appear or answer the complaint. A child support order was entered against her.

In January 2016, the Family Part transferred custody of the child back to defendant and terminated her child support obligation. Because no child support payments had been made, an order for arrears was entered against defendant on March 19, 2016.

¹ Defendant is an attorney licensed to practice in New Jersey. The service address was also the address listed in the New Jersey Lawyers Diary.

Nearly two years after the issuance of the child support order, defendant filed a motion to vacate the default judgment pursuant to Rule 4:50-1(d) and (f), contending that the judgment was void for improper service of process. After oral argument, the judge denied the motion and ordered defendant to pay the arrears. The judge found that plaintiff had complied with the rules by serving defendant at the address that she had provided to DCPD and used in her profession. Furthermore, she had been served at the New York address as evidenced by the signed return receipt for the certified mail.²

In this appeal, defendant argues the Family Part judge abused her discretion in denying the motion to vacate the default judgment and ordering her to make payments on the arrears.³

The decision whether to grant a motion to vacate is "left to the sound discretion of the trial court, and will not be disturbed absent an abuse of discretion." Mancini v. EDS, 132 N.J. 330, 334 (1993). "[W]here the motion is based on [Rule] 4:50-1(f), for any other reason justifying relief from the operation of the

² The judge also noted the favorable child support award, as minimum wage had been imputed to defendant in calculating the award, rather than her actual income.

³ Defendant also argues the initial removal of her son from her custody was unconstitutional. This argument bears no relevance to the complaint that is the subject of this action and, therefore, is not addressed in this decision.

judgment or order,' the motion must be supported by 'truly exceptional circumstances' in the interests of finality of judgments." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 350 (App. Div.) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)), certif. denied, 180 N.J. 151 (2004).

Defendant asserts the judgment should be vacated under Rule 4:50-1(d), "the judgment or order is void", and (f) "any other reason justifying relief from the operation of the judgment or order." We disagree.

The Family Court judge did not abuse her discretion in finding proper service and declining to vacate the default judgment. Service was attempted at the address where defendant was living with her child at the time of his removal: the same address provided to DCPD and used in her professional listing. When those attempts were unsuccessful, plaintiff sought, and was granted, an order permitting substituted service under Rule 4:4-3(a) in which a party may be served via "registered or certified mail, return receipt requested, to the usual place of abode of the" party "[i]f personal service cannot be effected after a reasonable and good faith attempt." Upon the return of the signed receipt, the court was permitted to find service and enter default judgment.⁴

⁴ Service in this case was also proper pursuant to Rule 5:4-4(b)(2). Rule 5:4-4(b)(2) provides, in pertinent part, that in

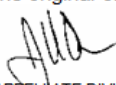
Defendant's argument that she was not served with the complaint is without merit.

Rule 4:50-1(f) permits a judge to vacate a default judgment for "any other reason justifying relief from the operation of the judgment or order," and "is available only when 'truly exceptional circumstances are present.'" U.S. Bank N.A. v. Guillaume, 209 N.J. 449, 484 (2012) (quoting Little, supra, 135 N.J. at 286). The applicability of this subsection is limited to "situations in which, were it not applied, a grave injustice would occur." Ibid. (quoting Little, supra, 135 N.J. at 289).

Defendant reiterates her argument of improper service in support of her assertion that subsection (f) permits the vacating of the default judgment. In light of our discussion, supra, we are satisfied that defendant has failed to show any "exceptional circumstances" required under Rule 4:50-1(f). The Family Court judge did not abuse her discretion in denying defendant's motion.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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Family Part summary actions, "service by mail . . . shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless there is no proof that the certified mail was received." Service here was evidenced by the signed return receipt of the certified mail and was, therefore, proper.