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[***Hagaman v. Hagaman***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7WST-GM20-Y9NK-S0VG-00000-00&context=)

Superior Court of New Jersey, Appellate Division

November 13, 2006, Submitted; December 5, 2006, Decided

DOCKET NO. A-0546-05T1

**Reporter**

2006 N.J. Super. Unpub. LEXIS 1384 \*; 2006 WL 3487139

ADRIANNE HAGAMAN, Plaintiff-Respondent, v. CHARLES HAGAMAN, Defendant-Appellant.

**Notice:** NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** **[\*1]**On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FM-7-2583-04.

**Core Terms**

notice, suppression, equitable distribution, divorce

**Counsel:** Elliot H. ***Gourvitz***, attorney for appellant (Mr. ***Gourvitz*** and Ari H. ***Gourvitz***, on the brief).

Respondent did not file a brief.

**Judges:** Before Judges S.L. Reisner and C.L. Miniman.

**Opinion**

PER CURIAM

Defendant Charles Hagaman appeals from the entry of a final judgment of divorce by default, which determined all issues including alimony and equitable distribution. Plaintiff Adrianne Hagaman has not participated in this appeal. We affirm.

Adrianne filed a complaint for divorce based on extreme cruelty on May 26, 2004, and Charles filed an answer in July 2004. On September 7, 2004, the court scheduled 120 days for discovery. However, Charles failed to provide discovery and Adrianne filed a motion to suppress his answer returnable on November 19, 2004. On January 7, 2005, Charles' answer was stricken and his defenses were suppressed without prejudice for failure to provide discovery. That order did not galvanize Charles into action, and a second motion was filed returnable April 7, 2005, to dismiss Charles' answer with prejudice. That relief was granted on April 1, 2005. On July 19, 2005, Adrianne **[\*2]**filed a notice of application for equitable distribution and other relief returnable on August 15, 2005.

On August 8, 2005, Charles' attorney signed a certification in opposition to the notice of application for equitable distribution. In that certification he stated:

My information comes from my client who had had a meeting at the end of July. Before that date, he had not contacted me since October 2004, despite many letters that I have sent to him concerning other applications before the [c]ourt. He has informed me, and I am trying to verify this by getting reports from doctors, that he has been clinically depressed since his wife has left him and he lost his job, and has been unable to function. He told me that all of my letters, as well as all of his other mail have gone unopened in various boxes in his house, which he rarely leaves.

Charles' counsel then addressed several of the assets and took positions with respect to equitable distribution of them.

Charles did not sign a certification nor did he move for relief under [*R. 4:50-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YF0-004F-J2PB-00000-00&context=) from the order striking his answer and suppressing his defenses with prejudice. He did not submit a certification from a physician attesting to his clinical **[\*3]**depression and inability to participate in the litigation. Instead, Charles and his counsel appeared on the date set for equitable distribution. The attorney made a verbal application to vacate the default on the ground that Charles had been in deep clinical depression.

The court did not entertain the application but gave counsel and his client half an hour to confer with plaintiff's counsel and attempt to settle the case. Charles' counsel replied that a settlement offer had already been made but had not been accepted and asked for a two-week adjournment in order to obtain some limited discovery. The court refused to carry the matter. The court then took testimony from Adrianne and reserved decision on the distribution of assets. The court issued an opinion on August 26, 2005, and the final judgment of divorce was entered that day. A timely appeal was filed thereafter.

Charles contends that the trial judge abused his discretion in six respects: (1) by refusing to vacate the default; (2) by accepting plaintiff's proofs as true; (3) by calculating spousal support incorrectly and improperly imputing income to Charles; (4) by not invoking the doctrine of laches; (5) by failing to equitably **[\*4]**distribute the parties' assets; and (6) by awarding counsel fees to Adrianne.

After carefully reviewing the record in light of the written arguments advanced by Charles, we conclude that the issues presented are without sufficient merit to warrant extensive discussion in this opinion. *[R.](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YG0-004F-J3MP-00000-00&context=)* [*2:11-3(e)(1)(A)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YG0-004F-J3MP-00000-00&context=), [*(E)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YG0-004F-J3MP-00000-00&context=), and we affirm substantially for the reasons expressed by the trial judge in his written opinion delivered on August 26, 2005. The findings and conclusions of the judge are supported by substantial credible evidence in the record. *[Rova Farms Resort, Inc. v. Investors Ins. Co.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-XDM0-003C-N34X-00000-00&context=)*[*, 65 N.J. 474, 483-84, 323 A.2d 495 (1974)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-XDM0-003C-N34X-00000-00&context=). However, we add the following.

*[Rule](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YD0-004F-J2JC-00000-00&context=)* [*4:23-5(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YD0-004F-J2JC-00000-00&context=) requires counsel for a delinquent party "[u]pon being served with [an] order of dismissal or suppression . . . [to] forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-F of these rules." That notice should have been served by Charles' counsel on Charles in January 2005. No copy of that notice to Charles is included in the record on appeal.

Once the motion to dismiss with prejudice was filed, Charles' counsel was required **[\*5]**to send a notice to Charles in the form provided in Appendix II-G of the pendency of the motion. *See* [*R. 4:23-5(a)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YD0-004F-J2JC-00000-00&context=). That notice to Charles is not included in the record on appeal. In addition, counsel was required to serve and file, no later than seven days prior to the return date of the motion, an affidavit reciting that Charles had previously been served with a notice respecting the order of dismissal without prejudice and that Charles had been served with the additional notice required in advance of the ruling on the motion to dismiss or suppress with prejudice. *See ibid.* That affidavit is not contained in the record on appeal. Charles' counsel was required to appear on the return date of the motion to dismiss with prejudice on April 7, 2005, *ibid.*, but no transcript of the proceedings that day have been filed with the Appellate Division. There is no competent evidence in the record that Charles did not receive the notices his counsel was required to serve upon him.

Over the next four months Charles did nothing to protect his interests in the divorce proceeding. Although he met with his attorney in July, he took no affirmative action at that time to secure any relief from the **[\*6]**order of suppression with prejudice. He did not secure a report from a treating physician or examining physician. He did not file a written motion under [*R. 4:50-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YF0-004F-J2PB-00000-00&context=) seeking relief from the order of suppression with a brief in support of the application. The record does not disclose the precise date on which Charles and his attorney met during the month of July, but Charles clearly had more than adequate opportunity between January 2005 and August 15, 2005, to protect his interests. He failed to do so. There was no *competent* evidence in the record of any justifiable excuse. Clearly, the opinion of his attorney that Charles was clinically depressed had no evidential value whatsoever. Accordingly, we find no abuse of discretion in the trial judge's refusal to vacate the order suppressing Charles' defenses and in striking his answer with prejudice.

Our affirmance of the final judgment of divorce is without prejudice to a properly supported application for relief from the financial aspects of the dissolution pursuant to *[Lepis v. Lepis](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-WXY0-003C-N1F6-00000-00&context=)*[*, 83 N.J. 139, 416 A.2d 45 (1980)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-WXY0-003C-N1F6-00000-00&context=).

Affirmed.

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