

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000983-MR  
NO. 2000-CA-001142-MR

NATIONAL HEALTH LABORATORIES,  
INC.

APPELLANT

v. APPEALS FROM FAYETTE CIRCUIT COURT  
HONORABLE LAURANCE B. VANMETER, JUDGE  
ACTION NO. 92-CI-00414

LYNN B. CAUDILL

APPELLEE

OPINION  
VACATING AND REMANDING  
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BEFORE: DYCHE, GUIDUGLI, AND KNOPF, JUDGES.

DYCHE, JUDGE: National Health Laboratories, Inc. (hereinafter "National") appeals from an order of the Fayette Circuit Court granting judgment to Lynn B. Caudill on her claim of retaliatory discharge against National and from the court's order denying National's motion for a new trial (No. 2000-CA-001142). National also appeals from an order of the Fayette Circuit Court denying its motion to set aside the judgment as void pursuant to Kentucky Rules of Civil Procedure (CR) 55.01, 55.02, and 60.02 (No. 2000-CA-000983). By previous order of this Court, the appeals were consolidated for review. Having reviewed the record and

applicable law, we vacate the judgment and remand for further proceedings.

This case has an unusual and extraordinarily protracted procedural history. Caudill began working for National in October, 1981. She suffered two work-related injuries while in National's employ. The first was in September, 1987, after which she returned to work; the second, which is of more concern in this appeal, was in January, 1991. Following the second injury she filed an unsuccessful claim for workers' compensation. In July, 1991, she was released to perform light-duty work, but National informed her that at the time none was available, and her job was terminated.

Caudill filed this action for retaliatory discharge against National on February 4, 1992. National's response was filed in March, 1992, by attorney Barry Willett. After Caudill filed amended answers to interrogatories in June, 1992, she took no further action in the case until after National filed a motion for pretrial conference in April, 1993. On April 30, 1993, Caudill was given ninety days to complete her discovery. On June 28, 1993, Caudill filed a motion requesting ninety additional days to complete discovery. On September 23, 1993, National filed a motion for summary judgment.

Caudill propounded interrogatories to National on April 18, 1994; National responded in mid-November, 1995. On March 17, 1997, Caudill moved to have the case assigned to mediation. The case was mediated on August 20, 1997, and was not settled. On February 10, 1998, the court denied National's renewed motion for

summary judgment. On February 23, 1998, Caudill filed a motion to again set the case for a pretrial conference, which was held on March 13, 1998.

At that pretrial conference, the initial trial judge in this case, Judge Rebecca M. Overstreet, revealed that she might have a conflict of interest. She recused herself from the case on March 20, 1998; it was then assigned to Judge Sheila Isaac. Caudill filed a motion that Judge Isaac also recuse herself, because Caudill's counsel had engaged in a "heated debate" with Judge Isaac in district court and did not believe Caudill could obtain a fair hearing. On May 4, 1998, the case was assigned to then-Judge James E. Keller. Justice Keller's election to the Kentucky Supreme Court required that the case again be transferred, this time to Judge Laurance B. VanMeter.

On September 16, 1999, Caudill filed a motion that the case be set for yet a third pretrial conference, which was held on October 15, 1999. At that time Willett was a candidate for circuit judge in Jefferson County, and Judge VanMeter inquired of Willett as to whether an attorney would be available to try the case should he win the election. Willett responded affirmatively, and the case was set for trial on February 7-8, 2000. The order setting the case for trial indicated that there would be no extensions of dates set in the order. Willett was elected as circuit judge in Jefferson County, and his last day in private practice was December 28, 1999. He underwent double hernia surgery the following day.

When the case was called for trial on February 7, 2000, only Caudill and her counsel were present. The trial court granted Caudill's motion to waive a trial by jury, ruling that National's failure to appear for trial constituted a waiver of its right to a jury trial. Caudill then testified concerning the amounts of paid and unpaid hospital and doctor's expenses she had incurred. Her attorney then announced that he had concluded his examination, but was reminded by the court that part of her case was that she was wrongfully terminated for filing for workers' compensation benefits. Caudill's counsel stated that "the facts [spoke] for themselves," but proceeded with the following exchange:

Counsel: Yeah, the fact is that she filed this workers comp[ensation] claim and we were unsuccessful. Linda, I think I helped you with that, didn't I?

Caudill: Yeah, and we had some kind of hearing and they just kept digging up a lot of other things and, like I tried to explain, you know, I mean, I come [sic] back and gave them nearly four years, and I wanted more than anything to return to work . . . .

Counsel: Okay . . . . But you were unable to because you would have gone back to light duty . . . . Tell the court what you thought you could have done with light duty.

Caudill: I think if given a chance I could have probably proceeded doing the port office manager duties that I did . . . ever since we started this with National Health in the Lexington area . . . .

Counsel: Ma'am, let me ask you one other question. You had almost ten years' service, right?

Caudill: Yes, sir.

Counsel: And in ten years you would have become fully vested, right?

Caudill: Fully invested [sic], yes, sir.

Counsel: [So], . . . in October of '91 you would have been a vested employee, right?

Caudill: Yes, sir.

The trial judge and counsel then calculated Caudill's damages, and as the trial ended, the trial judge remarked, "I guess I need to include in [the order] a finding that she was discharged due to the workers' compensation and due to the fact that she was going to become a vested employee, based on the evidence heard here today, there being no evidence to the contrary." The court denied National's motion for new trial or relief from the judgment on March 22, 2000. On April 20, 2000, the court granted the portion of National's motion setting aside the award of unpaid medical expenses, but denied the balance of the motion to set aside the judgment. This appeal followed.

The first question we must address is the nature of the judgment entered by the trial court. National asserts that it was a default judgment, and as such they were entitled to notice prior to its entry. Caudill disputes this claim, and the trial court, in its order denying the motion to set aside the judgment, stated that CR 55.01 – the rule dealing with default judgment – was inapplicable to this case. The court cited Pound Mill Coal Company v. Pennington, Ky., 309 S.W.2d 772 (1958), in support of its order. In Pennington, the appellants failed to file an answer or enter any appearance in the action and did not appear for trial. Pennington's motion that the allegations in his

complaint be taken as true was granted, and the trial court heard evidence concerning damages. The appellants argued that the default judgment was not entered following the provisions of CR 55.01, and the Court held that “[a]ppellants had failed to ‘appear’ in the action, and **in such cases** it is not necessary to serve written notice of the application under CR 55.01, and this section does not require a written motion for judgment to be filed during the course of the trial.” Id. at 773 (emphasis added).

The facts of this case are markedly different. National had diligently defended the case for over seven years at the time of trial, while Caudill had on several occasions sought to have the trial delayed; nevertheless, the trial was conducted without even a representative from National present. While the judgment might not have been entered according to the literal language of CR 55.01, it operated as the functional equivalent of a default judgment by depriving National of its ability to present a defense on the merits. As such, we will apply the same standard in reviewing this case as we would apply a proper CR 55.01 judgment.

The standard of review of a trial court’s ruling on a default judgment is whether the court abused its discretion. “This discretion, however, is not unbridled, but must rest upon a finding of willfulness or bad faith on behalf of the party to be sanctioned.” Greathouse v. American National Bank and Trust Co., Ky. App., 796 S.W.2d 868, 870 (1990). Even in light of the trial

court's pretrial conference order entered on October 18, 1999,<sup>1</sup> National's motions for a new trial pursuant to CR 60.02(a) (providing relief from a final judgment on the grounds of "mistake, inadvertence, surprise or excusable neglect"), or National's motion to set aside the judgment were well-taken. See CR 55.02 ("For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02."). The failure to grant relief from what was, in effect, a default judgment against a party who had faithfully defended an action for over seven years was an abuse of the trial court's discretion.

Even had we determined that the trial court had not abused its discretion, the evidence presented at trial by Caudill was insufficient to establish that she had been discharged in retaliation for her claim to workers' compensation benefits. "The employee carries his burden by proving that retaliation for filing or pursuing a workers' compensation claim was a substantial motivating factor in causing his discharge." First Property Management Corp. v. Zarebidaki, Ky., 867 S.W.2d 185, 189 (1993). Caudill merely testified that she filed an unsuccessful workers' compensation claim. She also testified that when she tried to return to work, National told her it had no light duty work for her to perform. There was no testimony that the filing of the claim was a substantial factor in the termination. She

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<sup>1</sup> The order concluded with the following language: "THERE WILL BE NO EXTENSION OF A DEADLINE OR DATE ESTABLISHED IN THIS ORDER BY AGREEMENT OF THE PARTIES. A MOTION AND ORDER ARE REQUIRED FOR ANY MODIFICATION."

failed to meet her burden of proof. We are unwilling to draw from her testimony the inference drawn by the trial court, that "she was discharged due to [her filing of a] workers' compensation [claim]."

Given our decision in this case, the remaining two issues raised by National – whether the trial court erred in its determination that sufficient evidence was presented to establish the terms of Caudill's disability policies, and whether the trial court erred in awarding front and back pay to Caudill – are not properly before us, and any opinion rendered in that regard would be advisory in nature.

The judgment of the Fayette Circuit Court is vacated, and this case is remanded for further proceedings not inconsistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Raymond G. Smith  
Edward H. Stopher  
David William Hemminger  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Samuel H. Whitehead  
Lexington, Kentucky