

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001284-MR

JIMMY DALE SHOOPMAN
AND PAMELA DEAN SHOOPMAN, WIFE

APPELLANTS

v. APPEAL FROM McCREARY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 00-CI-00193

VANDERBILT MORTGAGE & FINANCE, INC.

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: GUDGEL, CHIEF JUDGE; BARBER AND GUIDUGLI, JUDGES.

BARBER, JUDGE: The Appellants, Jimmy Dale Shoopman and Pamela Dean Chitwood Shoopman ("Appellants"), seek review of an order of the McCreary Circuit Court, denying their CR 60.02 motion to set aside a default judgment. Finding no error, we affirm.

Appellants purchased a mobile home from Clayton Mobile Homes. The Appellee, Vanderbilt Mortgage and Finance ("Appellee"), financed the transaction. Appellants apparently were in default on their payments. On June 30, 2000, Appellee filed a complaint, seeking judgment for \$15,199.43 plus interest, late charges, and attorney's fees, and possession of the mobile home. The record reflects that Appellants were served with

summons on July 2, 2000. Appellants failed to serve an answer within 20 days as required by CR 12.01. On July 27, 2000, Appellee filed a motion for a default judgment against Appellants; on September 23, 2000, the motion was re-noticed to be heard on September 25, 2000. On September 27, 2000, default judgment was entered in favor of Appellee.

On February 16, 2001, Appellee filed a motion to amend the previously-entered default judgment to correct an apparent typographical error in the serial number of the mobile home. The number in the original default judgment was CLM05693TN; it should have been CLM05698TN. Appellee explained that the Sheriff's Department refused to allow them to repossess of the mobile home, due to the clerical error.

On March 22, 2001, eight months after their answer was due, the Appellants, by counsel, filed a notice of appearance in the McCreary Circuit Court. On March 27, 2001, Appellants filed a motion for relief from the default judgment, claiming that:

since entry of said Default Judgment, . . .
[they] have discovered that either there has
been forgery of their signatures on a power
of attorney allegedly granted from . . .
[Appellants] to a transfer agent for the
mobile home . . . or . . . at, the time of
execution of the power of attorney, an agent
for . . . [Appellee] misrepresented the
nature of the power of attorney as being an
innocuous document to be executed by the
. . . [Appellants] (i.e. fraud in the
factum).

Appellants requested relief pursuant to "CR 60.02(b) - (c)." On May 25, 2001, the trial court entered an order, denying Appellants' motion to set aside the default judgment on the

ground that the evidence relied upon by Appellants was "not material to this case." The court granted Appellee's motion to amend to correct the serial number, noting that the "Amended Serial number is the same as was on the contract for purchase and is thus an Administrative Order."

On June 13, 2001, Appellants filed a notice of appeal to this court. On appeal, they contend that the trial court abused its discretion in denying their request for relief from the default judgment. CR 12.01 requires a defendant to serve his answer within 20 days after service of summons. Appellants did not serve an answer. Default judgment was entered two months after the answer was due. Appellants waited another six months before filing a notice of appearance and a motion for relief from the default judgment.

Failure to file a timely answer is sufficient basis for a default judgment. Green Seed Co. v. Harrison Tobacco Whse., Ky. App., 663 S.W.2d 755 (1984). Appellants failed to show good cause why they did not timely file an answer to the complaint. We agree with the trial court that the allegations in the CR 60.02 motion are immaterial to that issue, and we find no abuse of discretion. We affirm the trial court's May 25, 2001 order, denying the Appellants' motion to set aside the default judgment.

ALL CONCUR.

BRIEF FOR APPELLANTS:

NO BRIEF FILED FOR APPELLEE.

James H. Wren, II
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