

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-002147-MR

RACHEL EVA STRICKLAND POLLARD  
AND ALBERT L. POLLARD

APPELLANTS

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN HAYDEN, JUDGE  
ACTION NO. 05-CI-00468

KEVIN FRANCKE

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE JUDGE; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE; HOWARD,<sup>2</sup>  
SPECIAL JUDGE

HOWARD, SPECIAL JUDGE: Albert Pollard appeals from a Findings of Fact,  
Conclusions of Law and Default Judgment entered against him in the Henderson Circuit  
Court.<sup>3</sup> That judgment was entered in an action brought by Kevin Francke against Mr.

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> Judge James I. Howard, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

<sup>3</sup> Rachel Eva Strickland Pollard was also named as an Appellant on the Notice of Appeal filed in this matter. However, only Albert Pollard filed a brief seeking any relief in this Court. It appears from the record that Ms. Pollard was dismissed as a party defendant in the trial court, post-judgment, after filing bankruptcy. We will therefore consider only Mr. Pollard as an Appellant herein.

Pollard and his wife, Rachel Eva Strickland Pollard, seeking to recover attorney's fees allegedly owed to Mr. Francke. For the reasons stated below, we affirm.

Mr. Francke filed a complaint in the Henderson Circuit Court, alleging that Mr. Pollard and his wife were indebted to him in the sum of Four Thousand Seven Hundred Thirty-one Dollars and Sixty-one Cents (\$4,731.61) for legal services. Mr. Francke attached an invoice setting out the fees and interest claimed.

Because Mr. Pollard and his wife were residents of Carmi, Illinois, personal service of the complaint was made through the Kentucky Secretary of State, pursuant to KRS 454.210. Both summonses were issued on July 12, 2005 and received by the Secretary of State on July 14, 2005. Mr. Pollard was served with a copy of the complaint, by certified mail from the Secretary of State, on July 25, 2005. The complaint was accompanied by a summons informing Mr. Pollard that he had twenty (20) days to respond to the complaint. No response was filed within that time.

On August 18, 2005, Mr. Francke filed a motion for default judgment. On August 25, 2005, the Pollards filed, *pro se*, their only circuit court pleading, styled, "Motion for Order of Release of Default Judgment." This pleading stated, in its totality, as follows:

Defendants Albert L Pollard is not the one the bill is owed buy (sic). I Eva R. Pollard is the one that owes this bill. and would like to get this resolved. and talk with Mr. Hayden about it.

The motion for default judgment was re-noticed and default judgment was eventually granted by the court on September 19, 2005, for the amount sought plus interest and court costs. Mr. Pollard filed a *pro se* notice of appeal on October 17, 2005.

On this appeal, Mr. Pollard attempts to raise various substantive defenses to Mr. Francke's claim, but these defenses may not be considered by this Court. Except for the claim that this was his wife's debt and not his, these issues were not raised in the trial court and therefore are not preserved for appellate review, *Howard v. Hamilton*, 612 S.W.2d 345 (Ky. App. 1981) and *Lawrence v. Risen*, 598 S.W.2d 474 (Ky. App. 1980). Moreover, although it is permissible to appeal from a default judgment, such an appeal is limited and this court is able to consider only two issues, whether the pleadings were sufficient to uphold the judgment and whether the appellant was actually in default. *Jeffrey v. Jeffrey*, 153, S.W.3d 849 (Ky. App. 2004) (disc. review denied 2005) and *Rouse v. Craig Realty Co.*, 203 Ky. 697, 262 S.W. 1083 (1924).

On its face, the complaint filed by Mr. Francke alleges a cause of action by stating that the Pollards were indebted to him, the amount claimed and the services rendered. Clearly this was sufficient to support a default judgment, if uncontroverted.

Likewise, the record is clear that Mr. Pollard was in default. CR 55.01 provides that default judgment is proper if a response to a complaint is not filed as provided in the Kentucky Rules of Civil Procedure. Pursuant to CR 12.01, Mr. Pollard had twenty (20) days from date he was served to file a responsive pleading. Mr. Pollard did not file any pleading within that 20 days, thus placing him in default.

As noted above, the Pollards did file a *pro se* pleading in response to the motion for default judgment, styled "Motion for Order of Release of Default Judgment." This pleading was unsigned, but apparently was intended to be filed on behalf of both defendants. If it had been timely filed and properly signed, it would appear to be a

sufficient responsive pleading to preclude default judgment against Mr. Pollard, as it does assert that the debt was owed by Mrs. Pollard and not by her husband. Under Kentucky's "notice pleading," wide latitude is allowed in the exact language used in pleadings, and "liberal interpretation" will be used to construe a pleading so as to state a cause of action or a defense. CR 8.06: *W. R. Willett Lumber Co. v. Hall*, 375 S.W.2d 335 (Ky. 1964). However, this pleading was not filed until August 25, 2005, 31 days after Mr. Pollard was served, and after the motion for default judgment had been filed. Neither was it signed by either Mr. or Mrs. Pollard, as required by CR 11.

A trial court has broad discretion concerning both the granting of a default judgment, *Harris v. Commonwealth*, 688 S.W.2d 338 (Ky. App. 1984), and the extending of time to file an answer, *Moffit v. Asher*, 302 S.W.2d 102 (Ky. 1957); *Cupp v. Cupp*, 302 S.W.2d 371 (Ky. 1957). The trial judge's decisions on such matters will not be disturbed by this court except for an abuse of that discretion. After considering all of the circumstances of this case, we cannot say that the circuit judge abused his discretion in granting the default judgment.

For the foregoing reasons, we affirm the Findings of Fact, Conclusions of Law and Default Judgment of the Henderson Circuit Court against the Appellant, Albert Pollard.

ALL CONCUR.

BRIEF FOR APPELLANT:

Albert L. Pollard, *Pro Se*  
Carmi, Illinois

No brief for appellant, Rachel  
Eva (Strickland) Pollard.

BRIEF FOR APPELLEE:

Kevin A. Francke, *Pro Se*  
Henderson, Kentucky