

RENDERED: JULY 10, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000439-MR

JERRY JAMGOTCHIAN

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE KIMBERLY BUNNELL, JUDGE  
ACTION NO. 13-CI-3442

PARK EQUINE HOSPITAL, PLLC  
and P.B.I. BANK, INC.

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, KRAMER, AND TAYLOR, JUDGES.

COMBS, JUDGE: On December 10, 2013, Park Equine Hospital, PLLC, obtained a default judgment in its collection action against Jerry Jamgotchian, a non-resident defendant. The hospital sought to collect \$7,824.70 allegedly owed by Jamgotchian for fees associated with veterinary treatment and board provided in

Fayette County to twenty of Jamgotchian's horses. Jamgotchian filed a motion to set aside the default judgment pursuant to Kentucky Rules of Civil Procedure (CR) 55.02 and 60.02. At a hearing, Jamgotchian contended that his failure to answer the hospital's complaint was the result of excusable neglect or that he had otherwise shown good cause to have the judgment set aside. The court was not persuaded and entered its order on January 15, 2014. The court also denied Jamgotchian's subsequent motion to alter, amend, or vacate the judgment. After our review, we affirm.

The facts surrounding the entry of the default judgment by the Fayette Circuit Court are largely undisputed. Park Equine Hospital filed its complaint against Jamgotchian, a nonresident of the Commonwealth, and PBI Bank, Inc., (an additional lienholder) on August 16, 2013. Summonses were duly issued against the defendants.

Pursuant to the provisions of Kentucky's long-arm statute, Kentucky Revised Statute[s] (KRS) 454.210, the Commonwealth's Secretary of State was deemed to be Jamgotchian's agent for service of process. Consequently, the Fayette Circuit Court clerk executed the summons against Jamgotchian by sending, by certified mail, two copies of the summons and complaint to the Secretary of State.

On August 19, 2013, the Secretary of State mailed a copy of the summons and complaint to Jamgotchian at the address given in the complaint – Jamgotchian's personal post office box in Manhattan Beach, California. The letter

was posted by certified mail, return receipt requested, and bore the return address of the Secretary of State. The certified mail was made available to Jamgotchian by the Manhattan Beach post office on the morning of August 22, 2013. However, the certified mail was never claimed by Jamgotchian, and it was ultimately returned to the office of the Secretary of State.

On November 6, 2013, the Secretary of State made a return to the Fayette Circuit Court showing that it had taken all of the steps required of it as Jamgotchian's designated agent for service of process. The unopened envelope addressed to Jamgotchian and containing the summons and complaint was attached to the return. Pursuant to the provisions of KRS 454.210, the summons was deemed to have been served upon this return of the Secretary of State, and the time for answering the complaint by Jamgotchian began to run from this date. KRS 454.210 (3)(b). PBI Bank filed a timely answer to the hospital's complaint on September 10, 2013, and served it upon Jamgotchian. Jamgotchian, however, never responded to the complaint.

Twenty-one days later, the hospital filed a motion for default judgment pursuant to CR 55.01. On December 10, 2013, the Fayette Circuit Court granted default judgment against Jamgotchian. In response, Jamgotchian filed a motion to set aside the judgment. In an accompanying affidavit, Jamgotchian explained that he had not received the summons and complaint mailed to his Manhattan Beach post office box and that he had not realized that he had been served with process until after the court's judgment had been entered. Jamgotchian

claimed that he had a valid reason for failing to respond to the complaint; that he had a meritorious defense; and that no prejudice would result if the default judgment were set aside. The circuit court rejected Jamgotchian's contentions and denied relief from its judgment.

Subsequently, Jamgotchian filed a motion to alter, amend, or vacate the circuit court's order. In this motion, Jamgotchian suggested that thieves had taken the post office's notice regarding his certified mail and that the default judgment should be set aside on this basis. The circuit court rejected this new contention and denied the additional motion. This appeal followed.

CR 55.02 provides that "[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02." The provisions of CR 60.02 authorize the trial court to relieve a party from its judgment upon several grounds, including a showing of excusable neglect. The trial court enjoys considerable discretion in considering a motion to set aside a default judgment. *First Horizon Home Loan Corp v. Barbanel*, 290 S.W.3d 686 (Ky.App. 2009). In order to conclude that a trial court has abused its discretion, a reviewing court must determine that its decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90 (Ky. 2007).

Jamgotchian argues that the circuit court abused its discretion by denying his motion to set aside the default judgment because his failure to answer the hospital's complaint was the result of excusable neglect. He contends that he did not answer the complaint because he did not have actual notice that he had

been served with process until after the entry of the default judgment. In this carefully worded assertion, Jamgotchian does not deny that he had actual notice of the commencement of the proceeding against him. On the contrary, the record indicates that he was keenly aware of the litigation. It appears that Jamgotchian believed that not claiming the registered mail would thwart service of process and would circumvent the court's exercise of its *in personam* jurisdiction.

Jamgotchian claims that he was unaware that he could be duly served through a designated agent for service of process – the Secretary of State. Consequently, he believes that the trial court erred by failing to conclude that the default judgment should be set aside based on his alleged lack of knowledge of this constructive service of process.

It is clear that actual notice of a legal action is not a prerequisite for personal jurisdiction where service is properly completed through the Secretary of State pursuant to KRS 454.210. *See Davis v. Wilson*, 619 S.W.2d 709 (Ky.App. 1980) (service is effective if the certified mail containing the summons and complaint goes unclaimed); *see also Deskins v. Estep*, 314 S.W.3d 300 (Ky.App. 2010) (service was completed even despite the fact that “[the defendant] refused to accept the certified mail containing the summons and complaint”).

Jamgotchian contends that he did not understand that a Kentucky court could acquire jurisdiction over him through service of process upon his agent. He asserts that his lack of understanding constitutes excusable neglect, which, in turn, should warrant setting aside the default judgment. However,

Jamgotchian was *actually* aware of the complaint filed against him by the hospital, and the circumstances strongly suggest that he believed that he could evade the court's jurisdiction by not claiming his certified mail. Under the circumstances of this case, Jamgotchian's misinterpretation of the law regarding service of process cannot be equated with excusable neglect. *See Haven Point Enterprises, Inc. v. United Kentucky Bank, Inc.*, 690 S.W.2d 393 (Ky. 1985)(Defendant's misinterpretation of the law of service and argument that "due process requires the kind of service which is most likely to result in actual notice," did not amount to excusable neglect). Therefore, Fayette Circuit Court acted well within its discretion in refusing to vacate the default judgment entered against him.

Jamgotchian's misperception of his exposure and obligation pursuant to Kentucky law was not caused by the hospital, by Kentucky's Secretary of State, or by the post office. It was not caused by any miscommunication or malfeasance of the parties. Instead, it was a result of his alleged ignorance. Consequently, Jamgotchian was unable to show good cause why the default judgment should be set aside. Therefore, the circuit court's decision not to set aside the default judgment was not arbitrary, unreasonable, unfair, or unsupported by sound legal principles. The trial court did not abuse its discretion.

Finally, we address Jamgotchian's claim that the default judgment should have been set aside since mail might have been stolen from his post office box. In his affidavit submitted to the trial court in January 2014, Jamgotchian explained that the United States Post Office had notified him in November or

December 2013 that its Manhattan Beach branch had been burglarized. The attached crime alert notice advised that the suspected break-ins had occurred “[o]ver the past several days. . . .” The postal service first made the certified mail available to Jamgotchian on August 22, 2013. Nothing beyond mere speculation supports Jamgotchian’s contention that he was deprived of actual notice of the hospital’s complaint as a result of the suspected burglaries that occurred months later in November or December 2013. The trial court did not abuse its discretion by denying the motion to set aside the default judgment on this basis.

We affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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