**[Cite as *Winona Holdings, Inc. v. Duffey*, 2011-Ohio-3163.]**

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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| Winona Holdings, Inc., | : | |
| Plaintiff-Appellee, | : | |
| v. | : | No. 10AP-1006<br>(M.C. No. 2009 CVF 052504) |
| Eli J. Duffey, | : | (REGULAR CALENDAR) |
| Defendant-Appellant. | : | |

D E C I S I O N

Rendered on June 28, 2011

*Pope Law Offices*, *LLC*, and *Gregory S. Pope*, for appellee.

*Equal Justice Foundation*, and *Rachel K. Robinson*, for appellant.

APPEAL from the Franklin County Municipal Court.

SADLER, J.

**{¶1}** Defendant-appellant, Eli J. Duffey, appeals from the judgment of the Franklin County Municipal Court denying his motion for relief from judgment under Civ.R. 60(B). For the following reasons, we reverse the trial court's judgment and remand this matter for further proceedings.

**{¶2}** On December 9, 2009, plaintiff-appellee, Winona Holdings, Inc., filed a complaint against appellant in the Franklin County Municipal Court. The complaint alleged that, in 2006, appellant presented Budget Car Sales ("Budget") with a $2,600 check that was later dishonored for insufficient funds. Appellee, claiming to be the assignee of Budget, demanded judgment in the amount of $8,135.28 pursuant to R.C. 2307.60(A)(1) and 2307.61(A)(2). Alternatively, appellee sought $2,600 in damages under R.C. 1303.54.

**{¶3}** On February 2, 2010, appellant, acting pro se, filed a document with the court denying the allegations set forth in the complaint. In particular, appellant admitted giving the check to an employee of Budget but claimed that the employee promised not to deposit the check until after appellant's next pay day. Appellant further asserted that the debt was cancelled in 2007 when appellee filed a "Cancellation of Debt" form with the Internal Revenue Service. Appellant's response was signed and addressed to appellee's counsel, but it did not contain a certificate of service.

**{¶4}** Based on this defect, the trial court, in a pre-printed form entry issued on February 11, refused to consider the answer. By checking a box on the entry, the trial court indicated, "The document shall not be considered by the Court for the following reason(s): * * * The document does not show that it was served on the opposing party. Rule 5(D) of the Ohio Rules of Civil Procedure." Beneath this passage, the entry added, "The party who filed the document has 14 days from the filing of this Entry to cure any defect described above." The entry did not strike the document from the record.

**{¶5}** Appellant filed a corrected answer on February 22, 2010. Though accompanied by a certificate of service, the second answer was not signed by appellant. Consequently, the trial court, on February 24, noted the defect and struck the answer using an identical pre-printed entry as the one used before. The trial court granted appellant another 14 days (until March 10) to cure the defect. Unlike the previous entry, however, the trial court checked a box that indicated, "Defendant was previously granted an opportunity to cure defects in the pleading but failed to do so in a timely manner. Therefore, the document is stricken from the record."

**{¶6}** Appellee moved for default judgment on March 3, seven days before appellant's March 10 correction deadline. Appellant filed his third and final answer, complete with signature and certificate of service, on March 4. The trial court, without acknowledging the third answer or the premature nature of appellee's motion for default judgment, ordered appellant to respond to the default judgment motion on or before March 19.

**{¶7}** On March 16, the trial court signed an entry granting default judgment, awarding appellee $8,135.28 for the dishonored check. That same day, the trial court signed an order striking appellant's third answer. The trial court did not indicate that the third answer was procedurally deficient, only that appellant "was previously granted an opportunity to cure defects in the pleading but failed to do so in a timely manner." Both the entry granting default judgment and the entry striking the third answer were filed on March 17, the same day appellant filed his memorandum in opposition. No appeal was taken from the judgment.

**{¶8}** Appellant obtained an attorney and, on May 4, moved for relief from judgment pursuant to Civ.R. 60(B). He argued that (1) his motion was timely, (2) he had several meritorious defenses to the complaint, and (3) he was entitled to relief under Civ.R. 60(B)(1) and (B)(2). Regarding Civ.R. 60(B)(1), appellant maintained that his failure to file a timely answer constituted "excusable neglect" based on his compliance with each of the trial court's orders. Appellee opposed the motion on May 17.

**{¶9}** On September 22, the trial court filed a decision and entry denying appellant's motion. The trial court agreed that the motion was timely and established two meritorious defenses; however, the trial court denied both of appellant's claims for relief under Civ.R. 60(B)(1) or (B)(5). In rejecting appellant's "excusable neglect" claim, the trial court offered the following rationale: "The Court gave [appellant] an opportunity to correct the defects in his first proposed answer, but his second proposed answer contained different defects. Any neglect was [appellant's] own doing. By carefully reviewing his filings before submitting them, he could have prevented the defects."

**{¶10}** Appellant timely appealed, advancing the following assignment of error for our consideration:

> THE TRIAL COURT ABUSED ITS DISCRETION IN HOLDING THAT APPELLANT ELI J. DUFFEY WAS NOT ENTITLED TO RELIEF FROM DEFAULT JUDGMENT PURSUANT TO CIVIL RULE 60(B)(1).

**{¶11}** In his sole assignment of error, appellant argues that the trial court abused its discretion by denying his motion for relief from judgment. We agree.

**{¶12}** When reviewing a trial court's decision to grant or deny a motion for relief from judgment under Civ.R. 60(B), we must determine whether the trial court abused its

discretion. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20. " 'The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.' " *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157. An unreasonable decision is one that is unsupported by a sound reasoning process. *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161. An arbitrary attitude, on the other hand, is an attitude that is "without adequate determining principle; * * * not governed by any fixed rules or standard." *Dayton ex rel. Scandrick v. McGee* (1981), 67 Ohio St.2d 356, 359, quoting Black's Law Dictionary (5th ed.1979). "Unconscionable" may be defined as "affronting the sense of justice, decency, or reasonableness." *U.S. Bank Natl. Assn. v. Collier*, 10th Dist. No. 08AP-207, 2008-Ohio-6817, ¶19, quoting Black's Law Dictionary (8th ed.2004).

**{¶13}** Civ.R. 60(B)(1) permits a party to obtain relief from a final judgment based on "mistake, inadvertence, surprise or excusable neglect." To prevail on a motion for relief under Civ.R. 60(B), the movant must show that: (1) the movant has a meritorious defense or claim to present if relief is granted; (2) the movant is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus. The movant must satisfy all three of these requirements to obtain relief. *State ex rel. Richard v. Seidner*, 76 Ohio St.3d 149, 151, 1996-Ohio-54.

**{¶14}** To determine whether neglect is "excusable" or "inexcusable" under Civ.R. 60(B)(1), a court must consider all of the surrounding facts and circumstances. *Rose Chevrolet* at 21. Although "excusable neglect" is an elusive concept that courts often find difficult to define and to apply, *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 1996-Ohio-430, the Supreme Court of Ohio has stated that a defendant's inaction is inexcusable where it amounts to a "complete disregard for the judicial system." Id., citing *GTE Automatic Elec.* at 153. Additionally, courts have found neglect to be inexcusable where the party could have prevented the circumstances from occurring. *Porter, Wright, Morris & Arthur, LLP v. Frutta Del Mondo, Ltd.*, 10th Dist. No. 08AP-69, 2008-Ohio-3567, ¶22 (citing cases).

**{¶15}** "[T]he concept of 'excusable neglect' must be construed in keeping with the proposition that Civ.R. 60(B)(1) is a remedial rule to be liberally construed, while bearing in mind that Civ.R. 60(B) constitutes an attempt to 'strike a proper balance between the conflicting principles that litigation must be brought to an end and justice should be done.' " *Colley v. Bazell* (1980), 64 Ohio St.2d 243, 248, quoting *Doddrige v. Fitzpatrick* (1978), 53 Ohio St.2d 9, 12. The Eighth District has found "excusable neglect" by reviewing circumstances such as " 'the danger of prejudice to the [movant], the length of the delay and its potential impact on judicial proceedings, the reasons for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.' " *Cleveland Mun. School Dist. v. Farson,* 8th Dist. No. 89525, 2008-Ohio-912, ¶12, quoting *Pioneer Invest. Servs. Co. v. Brunswick Assoc. Ltd. Partnership* (1993), 507 U.S. 380, 395, 113 S.Ct. 1489, 1498.

**{¶16}** Based on the facts and circumstances of this case, we find that appellant demonstrated "excusable neglect" and, therefore, was entitled to relief under Civ.R. 60(B)(1). Although he failed to properly file his answer within 28 days after service of the complaint, see Civ.R. 12(A), it was undisputed that he attempted to file the first answer within that period of time. When the trial court disregarded the document based on a procedural defect (the lack of a certificate of service) and granted appellant 14 days to cure the defect, appellant promptly complied. True, the second answer was also defective, as it was unsigned; however, the trial court granted appellant an additional 14 days to file a third attempt. Again, appellant promptly complied, and on March 4—six days before the 14-day correction deadline—he filed the third and final answer.

**{¶17}** Nothing about these facts reveals a "complete disregard for the judicial system." See *Kay* at 20. Appellant did not willfully disregard or deliberately ignore the complaint, nor was his conduct dilatory. Moreover, the trial court was aware that appellant actively endeavored to participate in the proceedings, and the minimal delay did not prejudice appellee. Other districts have found "excusable neglect" in similar circumstances where, despite a deficiency in the pleading, the defendant diligently attempted to answer the complaint in a timely manner set forth by the trial court. See, e.g., *N. American Sec. Solutions, Inc. v. Brooks* (Jan. 26, 2001), 2d Dist. No. 18465 (finding "excusable neglect" where the defendant improperly mailed his answer to the common pleas court rather than the clerk of courts); see also *Farson* at ¶15 ("Although the district's motion for a default judgment was technically viable given that Farson's answer was not properly filed, the facts and circumstances of this case show the

district's motion for a default judgment to be opportunism of a kind that has been repeatedly disfavored by the courts.").

**{¶18}** But here, the trial court found appellant's conduct to be inexcusable simply because he "could have prevented the defects" contained in the first and second answers. While we agree that pro se litigants are held to the same rules, procedures, and standards as litigants represented by counsel, *Discover Bank v. Doran*, 10th Dist. No. 10AP-496, 2011-Ohio-205, ¶6, the issue here is not whether appellant was excused by his lack of familiarity with the Rules of Civil Procedure. Even if appellant "could have" properly filed the first or second answer, the trial court, in its February 24 entry, permitted him to file a *third* answer to cure the second one, on or before March 10. Based on these circumstances, we find that appellant's failure to answer the complaint within 28 days was excusable neglect.

**{¶19}** Appellee argues that the February 24 entry, unlike the entry disregarding the first response, did not grant any filing extension because it contained language ordering the second answer to be "stricken from the record." We find nothing in this language that negates the clearly stated 14-day extension provision. Since the trial court could have removed or crossed out the 14-day correction provision from the entry, we rely on the longstanding principle that a court speaks through its written journal entries. *Morgan v. Mikhail*, 10th Dist. No. 08AP-87, 2008-Ohio-4598, ¶47, citing *Schenley v. Kauth* (1953), 160 Ohio St. 109. Even if the language were inconsistent, "doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits." *GTE Automatic Elec.* at paragraph three of the syllabus.

**{¶20}** Accordingly, the trial court erred in finding appellant's conduct to be inexcusable under Civ.R. 60(B)(1). Appellant's diligent efforts to answer the complaint and his good faith reliance on the March 10 correction deadline were excusable under the circumstances, and he was entitled to relief from default judgment. Therefore, based on this record, we hold that the trial court abused its discretion by denying relief from judgment.

**{¶21}** For the foregoing reasons, appellant's sole assignment of error is sustained. We reverse the judgment of the Franklin County Municipal Court and remand the matter to that court for further proceedings in accordance with law and consistent with this decision.

*Judgment reversed and cause remanded*.

KLATT and CONNOR, JJ., concur.

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