

Rel: November 22, 2019

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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Woodruff Brokerage Company, Inc.

v.

Patricia Beatty

**Appeal from Chambers Circuit Court
(CV-18-900043)**

WISE, Justice.

Woodruff Brokerage Company, Inc., the remaining defendant below, appeals from the trial court's denial of its motion to set aside the default judgment entered in favor of Patricia Beatty, the plaintiff below. We reverse and remand.

Procedural History

On April 23, 2018, Beatty sued "Woodruff Brokerage Company d/b/a The River and formerly d/b/a Crest Club Apartments," Ricky Dabbs, "Century 21," and fictitiously named defendants.¹ In her complaint, Beatty alleged that she had lived in Crest Club Apartments; that Woodruff Brokerage owned and operated Crest Club Apartments; that, on or about May 1, 2016, she had symptoms of fatigue, nausea, and weakness from prolonged exposure to carbon monoxide from a leaking natural-gas line beneath her bedroom; and that she had been permanently injured as a result of that exposure. Beatty asserted that Woodruff Brokerage had negligently and/or wantonly failed to maintain the premises at Crest Club Apartments in a safe condition. She also asserted that, in December 2016, she began to experience additional symptoms of fatigue, nausea, and weakness; that she "was permanently injured by continuous carbon monoxide exposure when the hot water heater in her apartment burst, causing her grave injuries"; and that Woodruff Brokerage had negligently and/or wantonly maintained and/or failed to maintain the premises at

¹The trial court entered a summary judgment in favor of Dabbs and Century 21.

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Crest Club Apartments. Beatty further alleged in the complaint that Woodruff Brokerage had failed to adequately warn her of the defective condition. She also asserted a claim of negligence per se. Beatty requested that the circuit clerk serve the defendants by certified mail. The complaint included the following address for Woodruff Brokerage:

"Woodruff Brokerage Company
c/o Genevieve Green
1800 Lakewood Drive
Phenix City, AL 36867"

However, the return receipt for the certified mail was addressed to:

"Woodruff Brokerage Co.
1800 Lakewood Drive
Phenix City, AL 36867"

Ryan Miles signed the certified-mail return receipt on April 27, 2018. The agent box was not checked.

On May 30, 2018, Beatty filed a motion for a default judgment against Woodruff Brokerage. Beatty asserted that Woodruff Brokerage had been served with a copy of the complaint and summons on April 27, 2018, and that it had failed to plead, answer, appear, or otherwise defend against her action. Beatty asked the trial court to enter a default judgment against Woodruff Brokerage with leave to prove

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damages. On May 31, 2018, the trial court granted Beatty's motion and entered a default against Woodruff Brokerage. It also scheduled a hearing for Beatty to prove damages against Woodruff Brokerage.

On June 9, 2018, after a hearing, the trial court entered a default judgment against Woodruff Brokerage and awarded Beatty \$500,000 in damages. On November 13, 2018, Beatty filed writs of execution and writs of garnishment against Woodruff Brokerage.

On November 28, 2018, Woodruff Brokerage filed a motion to set aside the default judgment pursuant to Rule 60(b), Ala. R. Civ. P. In its motion, Woodruff Brokerage argued, in part, that the default judgment should be set aside because it had not been properly served with the complaint and summons and that, therefore, the default judgment was void. Woodruff Brokerage also filed a motion to stay the collection proceeding pending the hearing on the motion to set aside the default judgment and a motion to quash the writs of garnishment and writs of execution, both of which the trial court granted. Beatty filed a response to Woodruff Brokerage's motion to set aside the default judgment.

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On December 7, 2018, after conducting a hearing, the trial court entered an order denying Woodruff Brokerage's motion to set aside the default judgment.² This appeal followed.

Standard of Review

"Although a circuit court has 'great discretion' in ruling on a motion to set aside a default judgment, if a default judgment is void, it must be set aside:

""The standard of review in the case of an order setting aside, or refusing to set aside, a default judgment proceeds on the basis that the trial judge has great discretion, and his judgment will not be disturbed unless he has clearly [exceeded] such discretion.' Roberts v. Wettlin, 431 So. 2d 524, 526 (Ala. 1983). However, '[w]hen the grant or denial [of a request for relief from a judgment] turns on the validity of the judgment, discretion has no place for operation. If the judgment is void, it is to be set aside; if it is valid, it must stand.' Smith v. Clark, 468 So. 2d 138, 141 (Ala. 1985)."

Boudreaux v. Kemp, 49 So. 3d 1190, 1194 (Ala. 2010) (quoting Cameron v. Tillis, 952 So. 2d 352, 353 (Ala. 2006)); see also LVNV Funding, LLC v. Boyles, 70 So. 3d 1221, 1226-27 (Ala. Civ. App. 2009) ('In reviewing the ruling of a trial court on a motion to vacate a default judgment on the ground that the judgment was void, this court applies a de novo

²The record on appeal does not include a transcript of that hearing.

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standard of review.... Discretion plays no part in determining whether a default judgment is void.').

"Failure to [perfect] service renders a default judgment void. 'The failure to effect proper service under Rule 4, Ala. R. Civ. P., deprives the trial court of personal jurisdiction over the defendant and renders a default judgment void.'" Boudreaux, 49 So. 3d at 1194 (quoting Nichols v. Pate, 992 So. 2d 734, 736 (Ala. Civ. App. 2008))."

Ex parte LERETA, LLC, 226 So. 3d 140, 143-44 (Ala. 2016).

""""When the service of process on a defendant is contested as being improper or invalid, the burden of proof is on the plaintiff to prove that service of process was performed correctly and legally."""" Dennis v. Still Waters Residential Ass'n, 18 So. 3d 959 (Ala. Civ. App. 2009) (emphasis added) (quoting Bank of America Corp. v. Edwards, 881 So. 2d 403, 405 (Ala. 2003), quoting in turn Horizons 2000, Inc. v. Smith, 620 So. 2d 606, 607 (Ala. 1993), quoting in turn Ex parte Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880, 884 (Ala. 1983))."

LVNV Funding, LLC v. Boyles, 70 So. 3d 1221, 1227 (Ala. Civ. App. 2009).

Discussion

Woodruff Brokerage argues that the trial court erroneously denied its motion to set aside the default judgment entered against it. Specifically, it contends that the default judgment was void because, it says, Beatty did not properly serve Woodruff Brokerage as required by Rule 4(c)(6), Ala. R. Civ. P. Specifically, Woodruff Brokerage asserts that

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Rule 4(c)(6) requires that, when a corporation is served by certified mail, the certified mail must be addressed to a natural person; that the certified mail must be received by the addressee or an agent of the addressee; that the certified mail in this case was addressed solely to Woodruff Brokerage and not to a human being or natural person; and that Beatty failed to satisfy her burden of proving that Miles, who signed for the service, was an officer, partner, managing or general agent, or agent authorized by appointment or law to receive service of process on behalf of Woodruff Brokerage.

In Ex parte LERETA, this Court addressed service on a corporation by certified mail under similar circumstances:

"In this case, [the plaintiff] attempted service on [the defendant] by requesting the clerk to issue service of process by certified mail pursuant to Rule 4(i)(2)(B)(i), Ala. R. Civ. P. That provision authorizes a plaintiff to effectuate service by certified mail as follows:

"(i) In the event of service by certified mail by the clerk, the clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. In the case of an entity within the scope of one of the subdivisions of Rule 4(c), the addressee shall be a person described in the appropriate subdivision....'

"(Emphasis added.) Rule 4(c)(6) provides upon whom process must be served when seeking to serve 'Corporations and Other Entities.' Thus, when seeking to serve a corporation or other business entity by certified mail, Rule 4(c)(6) directs to whom the certified mail must be addressed. That section provides:

"(c) Upon Whom Process Served.
Service of process ... shall be made as follows:

"....

"(6) Corporations and Other Entities.
Upon a domestic or foreign corporation or upon a partnership, limited partnership, limited liability partnership, limited liability company, or unincorporated organization or association, by serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.'

"(Emphasis added.) The Committee Comments to Amendment to Rule 4 Effective August 1, 2004, make clear that Rule 4(c)(6) was intended to require that personal or certified-mail service to a business entity must be accomplished by directing service to a 'specific person' or a registered agent:

"The former provision allowing corporations and other business entities to be served by certified mail at any of their usual places of business has been eliminated. Now, personal or certified mail service must be directed to the registered or appointed agent or to a specific person, such as an "officer."

"(Emphasis added.)

"Furthermore, Rule 4(i)(2)(C) provides when service by certified mail is deemed effective:

"(C) When Effective. Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Within the meaning of this subdivision, "agent" means a person or entity specifically authorized by the addressee to receive the addressee's mail and to deliver that mail to the addressee. Such agent's authority shall be conclusively established when the addressee acknowledges actual receipt of the summons and complaint or the court determines that the evidence proves the addressee did actually receive the summons and complaint in time to avoid a default. An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within time to avoid a default. In the case of an entity included in one of the provisions of Rule 4(c), "defendant," within the meaning of this subdivision, shall be such a person described in the applicable subdivision of 4(c).'

"Again, the Committee Comments specifically state that effective service by certified mail to a business entity requires delivery to an 'addressee,' who must be a person as identified in Rule 4(c)(6), or, alternatively, to the addressee's agent specifically authorized to receive the addressee's mail. The Committee Comments state: 'If the defendant is an entity, such as a corporation within Rule 4(c)(6), the "addressee" will have to be a person defined in that rule, such as an "officer" or a "managing agent."' (Emphasis added.)

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"Based on the above, we are clear to the conclusion that service on a corporation or business entity cannot be perfected by certified mail addressed merely to the entity itself. Rule 4 plainly and specifically provides that service on a business entity by certified mail requires the mailing to be addressed to an 'officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.' To be effective, the certified mail must be delivered to that addressee or that addressee's authorized agent."

226 So. 3d at 144-45 (footnotes omitted).

In this case, Beatty requested that the circuit clerk serve the defendants by certified mail. The address Beatty provided in the complaint for Woodruff Brokerage included the name of Genevieve Green, Woodruff Brokerage's registered agent. However, the certified-mail return receipt was addressed merely to Woodruff Brokerage and was not addressed to an individual as required by Rule 4(c)(6). See Ex parte LERETA, supra. Additionally, Rule 4(i)(2)(C), Ala. R. Civ. P., provides that

"[s]ervice by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt."

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(Emphasis added.) Because there was no properly named addressee on the certified mail, Beatty cannot prove that the complaint and summons was delivered to "the named addressee" or to the "addressee's agent."

Conclusion

Based on the foregoing, Beatty's service by certified mail was ineffective, the trial court did not obtain personal jurisdiction over Woodruff Brokerage, and the default judgment against it is void. See Ex parte LERETA, supra. Therefore, the trial court erred when it denied Woodruff Brokerage's motion to set aside the default judgment. Accordingly, we reverse the trial court's order denying the motion to set aside the default judgment and remand this case for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bolin and Stewart, JJ., concur.

Parker, C.J., and Sellers, J., concur in the result.