

Rel: January 17, 2020

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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GEICO Insurance Company

v.

Johnson Evans, Jimmy Smith, and Bernard Smith

Appeal from Dallas Circuit Court  
(CV-12-900125)

BRYAN, Justice.

GEICO Insurance Company appeals from a judgment entered by the Dallas Circuit Court ("the circuit court") in favor of Johnson Evans, Jimmy Smith, and Bernard Smith (hereinafter collectively referred to as "the plaintiffs") on the

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plaintiffs' claims for damages resulting from an automobile accident caused by Bernard Grey, GEICO's insured. For the reasons set forth herein, we dismiss the appeal.

Facts and Procedural History

On July 2, 2012, the plaintiffs filed a complaint in the circuit court against Grey, alleging that Grey had negligently caused an automobile accident that resulted in injuries to the plaintiffs. The complaint was assigned case no. CV-12-900125. The record indicates that the circuit clerk received a return of service for Grey on July 23, 2012. Grey failed to answer the complaint, and, on February 1, 2013, the plaintiffs filed an application for the entry of a default judgment, along with supporting affidavits. On February 5, 2013, the circuit court entered a default judgment against Grey. The circuit court awarded the plaintiffs damages totaling \$54,500. No appeal was taken from that final judgment.

On September 5, 2013, a new attorney for the plaintiffs filed a notice of appearance in case no. CV-12-900125. Over one year later, on October 20, 2014, that attorney filed a document in the case styled "Plaintiff's [sic] Motion to Reconsider." It is evident from a review of that motion that

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the plaintiffs' attorney intended to file the motion in another action. Although the motion references the plaintiffs and Grey and the case no. as "CV-2012-900125.01," it lists GEICO as the defendant in the style of the case and asks the circuit court to reconsider its order of October 9, 2014, "dismiss[ing] with prejudice" the plaintiffs' claims against GEICO in response to GEICO's motion for a summary judgment. However, GEICO was not a party in case no CV-12-900125; it had not filed a motion for a summary judgment in that case; and there is no order in the record in case no. CV-12-900125 dated October 9, 2014. It appears from the allegations in the plaintiffs' "motion to reconsider" that, on February 20, 2014, the plaintiffs filed a separate direct action against GEICO, Grey's insurer, seeking to collect on the default judgment entered in February 2013 in case no. CV-12-900125.<sup>1</sup> The motion further alleges that GEICO filed a motion for a summary judgment in that case, that the motion was "granted," and that the plaintiffs' claims asserted in its direct action against GEICO were "dismissed ... with prejudice." The remainder of

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<sup>1</sup>In their briefs on appeal, the parties agree that the direct action filed against GEICO in the Dallas Circuit Court was assigned case no. CV-2014-900052.00.

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the motion challenges the merits of GEICO's summary-judgment motion. The same day, the plaintiffs filed a purported response and opposition to GEICO's motion for a summary judgment, despite the fact that GEICO was not a party to case no. CV-12-900125, that GEICO had not filed a motion for a summary judgment in that action, and that -- according to the plaintiffs' filings -- a summary judgment had already been entered in GEICO's favor in a separate action.

On November 26, 2014, Grey filed a suggestion of bankruptcy, and the record indicates that case no. CV-12-900125 was then placed on the circuit court's administrative docket. On October 3, 2016, the plaintiffs filed a "Motion for Status of Case and Consideration of Reinstatement to Trial Docket." In that motion, the plaintiffs described "this cause of action" as being one against GEICO, despite the fact that case no. CV-12-900125 had been disposed in February 2013 without GEICO ever having been named a party or served notice of a cause of action against it. The plaintiffs asked the circuit court to reinstate the case to its active trial docket and to proceed to a trial on the "merits." On January 3, 2017, however, the circuit court entered an order stating that

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the case would remain on its administrative docket. The plaintiffs filed a renewed motion on December 14, 2018, to reinstate the case to the trial docket and again alleged that "this action" was a direct action against GEICO as Grey's insurer seeking to recover the damages that had been awarded to the plaintiffs by the default judgment entered against Grey.

After conducting a hearing on April 3, 2019, with only the plaintiffs present, the circuit court, on April 17, 2019, purported to enter a judgment against GEICO in favor of the plaintiffs for the amount of damages they were awarded in the default judgment entered against Grey in February 2013.<sup>2</sup> The circuit court stated, without explanation, that it was "satisfied that [GEICO] as opposing party did receive proper notice of said hearing." GEICO timely appealed. The case-action summary for case no. CV-12-900125 indicates that GEICO was added as a party in that action on June 5, 2019, approximately 49 days after a judgment was purportedly entered against it.

#### Analysis

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<sup>2</sup>Notably, the style of the case on the circuit court's order lists only Grey, not GEICO, as a defendant.

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On appeal, GEICO argues that the April 17, 2019, judgment entered against it is void because, it says, it did not receive notice of the plaintiffs' claims against it in case no. CV-12-900125 or notice of the hearing on the plaintiffs' claims.<sup>3</sup> For their part, the plaintiffs, in their brief on appeal, do not dispute that GEICO never received actual notice of any action pending against it in the present case. Instead, they argue that GEICO had "constructive notice of potential litigation" because it had actual notice of Grey's accident involving the plaintiffs -- which occurred in 2010 -- and that GEICO was aware that the plaintiffs claimed to be injured by Grey's actions. Plaintiffs' brief, at 11. We agree with GEICO that such "constructive notice of potential

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<sup>3</sup>Although we refer to the plaintiffs' attempt to bring a direct-action claim against GEICO in this case as a "claim," we must reiterate that the plaintiffs never attempted to amend their complaint in case no. CV-12-900125 to add GEICO as a party. Even if they had, however, such an amendment would have been improper after a final judgment had been entered. See Wiggins v. State Farm Fire & Cas. Co., 686 So. 2d 218 (Ala. 1996) (holding, where plaintiff, after obtaining a default judgment against defendant, attempted to add defendant's insurance company as a party in an attempt to satisfy the default judgment, that plaintiff was required to bring a separate action against the insurance company); and Pratt Capital, Inc. v. Boyett, 840 So. 2d 138 (Ala. 2002) (holding that the trial court erred in allowing the plaintiffs to amend the original complaint to add additional defendants after a final judgment had been entered in the case).

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litigation" clearly falls short of even the most basic requirements of due process. See Ex parte Weeks, 611 So. 2d 259, 261 (Ala. 1992) ("Procedural due process ..., broadly speaking, contemplates the rudimentary requirements of fair play, which include a fair and open hearing before a legally constituted court or other authority, with notice and the opportunity to present evidence and argument, representation by counsel, if desired, and information as to the claims of the opposing party, with reasonable opportunity to controvert them." (emphasis added)); and Kingvision Pay-Per-View, Ltd. v. Ayers, 886 So. 2d 45, 54 (Ala. 2003) ("We have held that the constitutional requirement of due process of law means notice, a hearing according to that notice, and a judgment entered in accordance with such notice and hearing." (quoting Cooper v. Watts, 280 Ala. 236, 240, 191 So. 2d 519, 522-23 (1966))).

Because it is undisputed that GEICO never received notice of any claim pending against it in case no. CV-12-900125, we must conclude that the April 17 judgment violated fundamental notions of due process. A judgment entered in a manner inconsistent with due process is void. Neal v. Neal, 856 So. 2d 766, 781 (Ala. 2002) ("A judgment is void only if the

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court which rendered it [1] lacked jurisdiction of the subject matter, or [2] of the parties, or [3] if it acted in a manner inconsistent with due process.'" (quoting Seventh Wonder v. Southbound Records, Inc., 364 So. 2d 1173, 1174 (Ala. 1978))). Accordingly, the April 17, 2019, judgment is void, and the circuit court is instructed to vacate that judgment. "Because a void judgment will not support an appeal," GEICO's appeal is dismissed. Fenn v. Ozark City Schools Bd. of Educ., 9 So. 3d 484, 487 (Ala. 2008).

APPEAL DISMISSED WITH INSTRUCTIONS.

Parker, C.J., and Shaw, Mendheim, and Mitchell, JJ.,  
concur.