

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

In re the Matter of:

\$11,660.00 U.S. CURRENCY

STATE OF ARIZONA, *Plaintiff/Appellee*,

v.

RONALD FRYE, *Defendant/Appellant*.

No. 1 CA-CV 20-0004

FILED 4-6-2021

Appeal from the Superior Court in Maricopa County

No. CV2019-010147

The Honorable Teresa A. Sanders, Judge

VACATED AND REMANDED

COUNSEL

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STATE v. FRYE
Opinion of the Court

OPINION

Judge Kent E. Cattani delivered the opinion of the Court, in which Presiding Judge Randall M. Howe and Judge Cynthia J. Bailey joined.

C A T T A N I, Judge:

¶1 Ronald Frye appeals the superior court's order denying his request for relief from a default judgment in a civil forfeiture case. Because the court incorrectly concluded that Arizona Rule of Civil Procedure 60 does not apply to civil forfeiture proceedings, we vacate the court's ruling and remand for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL BACKGROUND

¶2 In June 2019, the State initiated proceedings to forfeit \$11,660 in cash seized from Frye, alleging that the funds were used or intended to be used to facilitate an illegal drug transaction. Frye timely filed a verified claim asserting his interest in the property and countering that he had earned the money performing home improvement and property management services, not selling drugs. The State then filed and served its verified complaint seeking forfeiture.

¶3 Frye filed an answer to the complaint five days before the deadline but did not sign the answer personally under penalty of perjury as required by A.R.S. § 13-4311(G). After the deadline to file an answer passed, the State applied for an order of forfeiture, arguing that Frye's failure to verify his answer meant that no "proper" answer was filed, thus requiring the State to proceed to forfeiture without a contested hearing. *See* A.R.S. §§ 13-4311(G), -4314.

¶4 In response, Frye asserted that his failure to verify the answer resulted from excusable neglect, and he requested an opportunity to cure. Frye argued that he was entitled to either an extension of time to file a verified answer or leave to amend his previously filed answer. Frye attributed the failure to include his personal verification to error by support staff at his attorney's office. His attorney acknowledged that he did not check the signature blocks or verification on answers prepared by his assistant. The State responded that the civil forfeiture statutes' strict timeline requirements deprive the superior court of authority to grant leave

STATE v. FRYE
Opinion of the Court

to amend after the time to answer has expired. The superior court agreed, stating that Frye’s only remedy was to seek post-judgment relief.

¶5 The court then entered judgment forfeiting the money, and Frye moved for relief from judgment under Rule 60(b)(1), (6). Frye again alleged that his failure to verify his answer was due to error by his attorney’s support staff and thus excusable, and that the State would not be prejudiced if he were permitted to file an amended answer. The superior court denied relief without addressing the merits of the grounds asserted, concluding instead that Rule 60 does not apply to default civil forfeiture judgments.

¶6 Frye timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(2).

DISCUSSION

I. Scope of the Appeal.

¶7 Preliminarily, Frye challenges both the underlying forfeiture judgment – specifically, the superior court’s determination that it could not grant leave to amend – and the post-judgment Rule 60 ruling. But his notice of appeal only sought review of the “Order dated November 11, 2019 and electronically filed on November 13, 2019,” which was the Rule 60 ruling. Under ARCAP 8(c)(3), a notice of appeal must “[d]esignate the judgment or portion of the judgment from which the party is appealing.” *See also Baker v. Emmerson*, 153 Ariz. 4, 8 (App. 1986) (“Although an appellate court construes the notice of appeal liberally in order to avoid denying review of issues that the parties clearly intend to appeal, it may not disregard the plain requirements of Rule 8(c) and read into the notice something that is not there.”). Moreover, the forfeiture judgment here – rendered after the superior court determined that no proper answer was filed – is essentially a default judgment. *See State v. Jackson*, 210 Ariz. 466, 469, ¶ 13 (App. 2005). Subject to limited exceptions not applicable here, default judgments are not independently appealable. *See Kline v. Kline*, 221 Ariz. 564, 568, ¶ 11 (App. 2009). Accordingly, our review is limited to Frye’s challenge to the Rule 60 ruling.

II. Rule 60 Ruling.

¶8 Frye argues that (1) the superior court erred by ruling that Rule 60 does not apply to default civil forfeiture proceedings, and (2) the court should have found excusable neglect or other grounds for relief under

STATE v. FRYE
Opinion of the Court

Rule 60.¹ We review the superior court’s denial of a motion for relief from a default judgment for an abuse of discretion. *Hirsch v. Nat’l Van Lines, Inc.*, 136 Ariz. 304, 308 (1983). We consider de novo, however, matters of statutory interpretation and rule application. *Pima County v. Pima Cnty. Law Enf’t Merit Sys. Council*, 211 Ariz. 224, 227, ¶ 13 (2005); *State v. Hansen*, 215 Ariz. 287, 289, ¶ 6 (2007).

A. Applicability to Civil Forfeiture Proceedings.

¶9 The civil forfeiture statutes provide the substantive framework for civil forfeiture proceedings. See generally A.R.S. §§ 13-4301 to -4315. After the State commences a forfeiture proceeding by filing a notice of pending forfeiture and serving the interest holder, see A.R.S. §§ 13-4307, -4308, the interest holder must file his or her claim within 30 days. A.R.S. § 13-4311(D). That claim must contain, among other things, the interest holder’s signature under penalty of perjury, the nature and extent of his or her interest, and the circumstances of the interest holder’s acquisition of the interest in the property. A.R.S. § 13-4311(E).

¶10 If there is a claimant, the State then files a complaint. See A.R.S. § 13-4311(G). To maintain an interest in the action, the claimant must file an answer signed under penalty of perjury within 20 days. A.R.S. § 13-4311(G). If the claimant fails to timely file a “proper answer,” the State “shall proceed” to forfeiture. A.R.S. § 13-4311(G). In doing so, the State must provide 10 days’ notice to anyone with an outstanding claim. A.R.S. § 13-4311(G). If the State provides notice to a claimant and makes a showing of probable cause for forfeiture, the court “shall order the property forfeited to the state.” A.R.S. § 13-4314(A).

¶11 Although the forfeiture statutes provide an overall substantive framework (as well as some discrete procedural requirements), the statutes expressly rely on the procedures set forth in the Arizona Rules of Civil Procedure to govern civil forfeiture proceedings “unless a different

¹ Frye also offers a cursory argument that the court was obligated under Rule 60(a) to *sua sponte* “correct” counsel’s mistake because the filing of the unverified answer was a “clerical error.” But that rule requires the court to correct its *own non-substantive* mistakes or oversights, not a mistake by counsel of a substantive nature. See Ariz. R. Civ. P. 60(a) (requiring correction of “a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record”); see also *Ace Auto. Prods., Inc. v. Van Duyn*e, 156 Ariz. 140, 142–43 (App. 1987) (describing “clerical” errors as errors in how a judgment is recorded).

STATE v. FRYE
Opinion of the Court

procedure is provided by law.” A.R.S. § 13-4311(B). Here, the superior court reasoned that, because the civil forfeiture statutes provide a different procedure for rendering a forfeiture judgment by default, Rule 60 does not apply to a default civil forfeiture judgment.

¶12 We agree that the procedures resulting in a “default” under the civil forfeiture statutes do not precisely track default proceedings under Rule 55 of the Arizona Rules of Civil Procedure. While Rule 55 *allows* a litigant to proceed by default if the opposing party does not answer or otherwise defend, *see* Ariz. R. Civ. P. 55(a)(1), the forfeiture statutes *require* the State to do so. A.R.S. § 13-4311(G). Additionally, Rule 55 requires an application for, and administrative entry of, default before the court enters a default judgment (either with or without a hearing). In contrast, the forfeiture statutes do not include intermediary steps before the court enters a summary disposition. *Compare* Ariz. R. Civ. P. 55(a), (b), *with* A.R.S. § 13-4314. And although Rule 55 expressly provides a 10-day grace period to file an answer and avoid default, *see* Ariz. R. Civ. P. 55(a)(5), the forfeiture statutes do not do so. *But see* A.R.S. § 13-4311(G) (requiring the State to provide “any person who has timely filed a claim that has not been stricken by the court” 10-days’ notice of its application for an order of forfeiture).

¶13 But while the forfeiture statutes diverge from the civil rules with regard to the procedures leading to entry of a default judgment, the superior court’s ultimate ruling conflates these pre-judgment procedures with those that apply to relief from judgment after a judgment is entered. And the forfeiture statutes are conspicuously silent on post-judgment relief. *See generally* A.R.S. §§ 13-4301 to -4315. That is precisely the type of procedural vacuum in which the civil rules apply. *See* A.R.S. § 13-4311(B). Accordingly, a claimant may seek relief from a default civil forfeiture judgment by way of Rule 60.

¶14 The State counters that applying Rule 60 in this context conflicts with this court’s ruling in *Jackson*, in which we upheld the denial of a Rule 60 motion filed after the entry of a forfeiture judgment obtained after default. 210 Ariz. at 469, ¶ 14. But in *Jackson*, we affirmed the denial of relief from judgment *not* on the basis that Rule 60 does not apply, but rather because the claimant there had failed to establish grounds for Rule 60 relief. *Id.* at 469, 471–72, ¶¶ 14, 23, 28 (rejecting the excuse the claimant offered for not answering the complaint – his belief that the civil forfeiture statutes did not require him to file an answer after having timely filed a claim – and thus determining the claimant had not established excusable neglect). The *Jackson* court did not foreclose Rule 60 relief in all default civil forfeiture cases and instead implicitly endorsed using the rule to seek post-

STATE v. FRYE
Opinion of the Court

judgment relief in this context. *See id.* at 469, ¶ 14. Thus, *Jackson* is not inconsistent with our conclusion.

B. Grounds for Relief from Judgment.

¶15 Because the superior court concluded that Rule 60 does not apply, the court did not determine whether Frye’s failure to verify his answer was the product of excusable neglect. To obtain relief under Rule 60(b)(1), the moving party must establish mistake or excusable neglect as well as a meritorious defense. *See Johnson v. Elson*, 192 Ariz. 486, 489–90, ¶ 15 (App. 1998). An error by a party seeking relief under Rule 60(b)(1) will be excused if it is “the act of a reasonably prudent person.” *City of Phoenix v. Geyler*, 144 Ariz. 323, 331–32 (1985) (citation omitted). When evaluating the reasonableness of the moving party’s acts, the court is “guided by equitable principles.” *Coconino Pulp & Paper Co. v. Marvin*, 83 Ariz. 117, 120 (1957).

¶16 Frye argues that his counsel’s reliance on an administrative assistant to affix a verification to an answer was excusable neglect. The Arizona Supreme Court has held that calendaring mistakes that stem from reliance on support staff may be excusable. *See, e.g., Geyler*, 144 Ariz. at 331–32 (misinterpretation of mailroom “received” stamp as filing date excusable); *Daou v. Harris*, 139 Ariz. 353, 360 (1984) (assistant’s errors are “often unavoidable and many times excusable”); *Coconino Pulp*, 83 Ariz. at 120–21 (reversing superior court’s decision that an error based on a lawyer’s reliance on their assistant for scheduling and case management was not excusable). The mistake here, though, was not a scheduling matter or a time computation. Frye’s counsel relied on his assistant to ensure compliance with the statutory requirement that an answer be verified by the claimant. Although a failure to verify the answer and affix that verification could plausibly result from excusable neglect, we leave that factual determination to the superior court. *See Daou*, 139 Ariz. at 359.

¶17 The State argues that Rule 60 relief would not be warranted even if Frye’s failure to verify his answer resulted from excusable neglect, asserting that a claimant’s answer cannot be amended to add verification after the deadline to answer has passed. *Cf. In re \$70,269.91 in U.S. Currency*, 172 Ariz. 15, 20–21 (App. 1991) (concluding that amendment of a claim to correct technical inadequacies may be permitted as long as the claim substantially complies with statutory requirements and “satisfies basic substantive concerns”); *State ex rel. Goddard v. Ochoa*, 224 Ariz. 214, 218–19, ¶¶ 11–12 (App. 2010) (holding that the superior court lacks authority to allow amendment of a claim to correct technical deficiencies if the claim

STATE v. FRYE
Opinion of the Court

was not timely filed). But Frye’s admittedly defective answer was timely filed and, in conjunction with his timely – and verified – claim, arguably satisfied the “substantive concerns” referenced in *In re \$70,269.91*. 172 Ariz. at 20; *see also id.* at 21 (reasoning that amendment should be allowed “when ‘the goals underlying the time restriction and the verification requirement are not thwarted’”) (citation omitted). Accordingly, we cannot say as a matter of law that Rule 60 relief would not be available on remand. *Cf. id.* at 20–21.

¶18 The State also asserts that Frye failed to adequately proffer a meritorious defense. *See Gonzales v. Nguyen*, 243 Ariz. 531, 534, ¶¶ 12–13 (2018). Here, Frye’s verified claim asserted that the property sought for seizure was cash he earned from a legitimate business venture, and on appeal, he asserts that the State lacked probable cause to seize the money. This is enough to satisfy his “minimal” burden. *Id.* at ¶ 12 (citation omitted). Accordingly, we remand for a resolution of whether Frye has established excusable neglect for his failure to file a verified answer.

CONCLUSION

¶19 We vacate the superior court’s denial of Rule 60 relief and remand for further proceedings consistent with this opinion.



AMY M. WOOD • Clerk of the Court
FILED: AA