IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JASON BACA, *Plaintiff/Appellee*,

v.

CORINA MEDINA, *Defendant/Appellant*.

No. 1 CA-CV 19-0203
FILED 3-5-2020

Appeal from the Superior Court in Maricopa County
No. CV2016-095028
The Honorable David J. Palmer, Judge

AFFIRMED

COUNSEL

Harper Law PLC, Gilbert
By Kevin R. Harper
Counsel for Plaintiff/Appellee

Corina Medina, Phoenix
Defendant/Appellant

MEMORANDUM DECISION

Judge D. Steven Williams delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Kenton D. Jones joined.

W I L L I A M S, Judge:

¶1 Corina Medina ("Medina") appeals from the superior court's entry of default judgment in a quiet title action brought by Jason Baca ("Baca"). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Medina and Baca were in a long-term relationship beginning in approximately 1995. In July 1998, Baca purchased a home in Phoenix via warranty deed. Baca conveyed the property to himself and Medina in February 1999, then Medina and Baca conveyed title back to Baca in October 2002. In August 2003, Baca refinanced the property's mortgage as the sole borrower and conveyed title to himself and Medina as joint tenants with right of survivorship. The relationship between Medina and Baca began to dissolve in 2012, when Baca moved out and Medina continued to reside at the property.

¶3 On June 9, 2016 Baca delivered a quit claim deed to Medina pursuant to Arizona Revised Statutes ("A.R.S.") section 12-1103(B). After Medina declined to sign the deed, Baca filed a quiet title action on August 2, 2016, alleging breach of contract and unjust enrichment. Specifically, Baca claimed he made his August 2003 joint tenancy conveyance in consideration of Medina's agreement to share property ownership costs, which she allegedly failed to fulfill. Medina filed an answer on August 29, 2016 maintaining she made adequate contributions. Baca moved to strike Medina's answer and sought summary judgment; both motions were denied. Trial was originally set for October 19, 2018. Medina filed a motion for continuance the day before trial, asserting she was dealing with illness and attempting to obtain representation. The next day, Medina was present in the courtroom before the scheduled time for trial. However, at the time of trial, only Baca and his attorney were present. Medina later cited illness as the reason for her absence. Over Baca's objection, the court granted

Medina's motion for continuance, rescheduled the trial and indicated "[n]o further continuance will be granted." On November 7, 2018, Medina failed to appear at the time set for trial. After waiting ten minutes for Medina to appear, Baca made a motion for default judgment, which the court granted.

¶4 Medina filed a motion for relief from judgment pursuant to Arizona Rule of Civil Procedure 60(b)(1), claiming she missed the November 7th trial because she suffered a "blow out" on the way to court and "went the wrong way down the hall" after exiting the court elevator. Medina provided a copy of an email she sent to court staff four minutes before the time scheduled for trial, and provided documentation that she attempted a phone call to the court on the day of trial, although it is not clear from the document what time the phone call was made. The court denied Medina's motion, finding her excuses lacked credibility. Medina timely appealed, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

I. Insufficient Service of Process

¶5 Medina argues that Baca's service of the summons and complaint was insufficient. "Proper service of process is essential for the court to have jurisdiction over the defendant." *Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 321 (App. 1980). A default judgment, therefore, would be void if service of process was insufficient. *Id.* Whether the court has personal jurisdiction over a defendant is a question of law we review *de novo*. *Bohreer v. Erie Ins. Exch.*, 216 Ariz. 208, 211, ¶ 7 (App. 2007).

¶6 Baca argues Medina waived her objection to insufficient service of process by not raising the issue until this appeal. The record shows, however, that Medina did indeed object to service in her August 29, 2016 answer, thereby preserving the argument. *See* Ariz. R. Civ. P. 12(h).

¶7 Arizona Rule of Civil Procedure 4.1(d) allows personal service by delivering the summons and complaint to the individual to be served, leaving copies at the individual's dwelling or usual place of abode with someone of suitable age and discretion residing there, or delivering copies to the individual's authorized agent. "Service of process can be impeached only by clear and convincing evidence." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 194 (App. 1992).

¶8 Here, Medina contends she was not served. The record, however, contains a certificate of service indicating a resident at Medina's

address, who refused to be identified by name, was served on August 6, 2016. Further, Medina makes inconsistent and unsupported assertions contending someone else (her sister in her answer, and her daughter's friend's mother on appeal) was served. At no point does Medina produce evidence showing she was not personally served, nor does she provide evidence that whoever allegedly was served was not a resident of suitable age and discretion. *See id*. (finding the appellant did not meet burden to prove insufficient service when she asserted the summons and complaint were left with her cook, who had a "limited understanding of the English language" and placed the summons and complaint with the incoming mail where appellant found it following a trip abroad).

¶9 Even assuming *arguendo* that service was improper, Medina waived her argument by voluntarily participating in the proceedings. A party voluntarily appears, pursuant to Arizona Rule of Civil Procedure 4(f), when the party files a responsive pleading or takes any action, other than objecting to personal jurisdiction, that recognizes the case is pending in court. *Kline v. Kline*, 221 Ariz. 564, 569, ¶ 18 (App. 2009). Appearance by a party has the same force and effect as if a summons had been issued and served. Ariz. R. Civ. P. 4(f). Further, "[i]t has long been recognized, as a principle of law, that the purpose of process is to give the party to whom it is addressed actual notice of the proceedings against him, and that he is answerable to the claim of the plaintiff. It is this notice which gives the [c]ourt jurisdiction to proceed." *Scott v. G. A. C. Fin. Corp.*, 107 Ariz. 304, 305 (1971).

¶10 Here, Medina admits to receiving actual notice on August 25 or 26, 2016, having filed an answer on August 29, 2016, and actively participated in the proceeding until and even after the default judgment—never raising the service of process issue again after her answer. Medina therefore had actual notice, made a qualifying appearance, and manifested her intent to be subject to the court's jurisdiction, waiving any objection to insufficient service.

¶11 Under either analysis, Medina fails to establish grounds to vacate the judgment for insufficient service of process.

II. Rule 60(b) Motion to Vacate

¶12 Medina also argues the superior court erred in denying her Rule 60(b) motion to vacate the default judgment because the court incorrectly asserted in its November 7, 2018 minute entry that Medina failed to contact the court's staff to inform them she would be late to trial.

¶13 Trial courts have broad discretion in setting aside a default judgment, and we will not disturb the trial court's decision absent abuse of that discretion. *Daou v. Harris*, 139 Ariz. 353, 359 (1984). Rule 60(b) allows the court to set aside a default judgment in the case of a defendant's mistake, inadvertence, surprise, or excusable neglect. To determine excusable neglect, the court considers the conduct of a reasonably prudent person under the same circumstances. *Coconino Pulp & Paper Co. v. Marvin*, 83 Ariz. 117, 120 (1957). When the trial court's decision is based upon a credibility determination, "we will not second-guess or substitute our judgment for that of the trial court." *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 185, 188 (App. 1992).

¶14 Although the record supports Medina's position that she attempted to contact court staff only minutes before the start of trial on November 7th, we cannot say the superior court abused its discretion in denying Medina's motion to vacate the default judgment. The court previously granted Medina's last-minute motion to continue the trial setting, over Baca's objection. At the same time, the court instructed that "[n]o further continuance will be granted." Thus, when Medina failed to appear at trial for the second time, and where the court made a credibility assessment in deciding not to vacate the default judgment, we will not second-guess the court's decision. *See id.* The superior court, therefore, did not err in denying Medina's motion.

III. Judicial Misconduct

¶15 Finally, Medina argues that because the superior court denied Baca's motion to strike Medina's answer and Baca's motion for summary judgment, it was therefore unjust to grant Baca's motion for default judgment. Medina also asserts the superior court judge handling her case violated various provisions of the judicial code of ethics.

¶16 None of Medina's assertions provide a basis for overturning the superior court's decision, and Medina provides no authority supporting her arguments. *See Ness v. W. Sec. Life Ins. Co.*, 174 Ariz. 497, 503 (App. 1992) ("Arguments unsupported by any authority will not be considered on appeal.").

CONCLUSION

¶17 For the foregoing reasons, we affirm. As the prevailing party on appeal, Baca is entitled to costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

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