

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ROBERT AMBERS, *Plaintiff/Appellee*,

v.

ZELDA AMBERS, *Defendant/Appellant*.

No. 1 CA-CV 20-0496
FILED 5-11-2021

Appeal from the Superior Court in Maricopa County
No. CV 2019-011045
The Honorable David W. Garbarino, Judge *Pro Tempore*

VACATED

APPEARANCES

Zelda Ambers, Seattle, WA
Defendant/Appellant

Robert Ambers, Goodyear
Plaintiff/Appellee

MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge D. Steven Williams and Judge James B. Morse Jr. joined.

C A M P B E L L, Judge:

¶1 Zelda Ambers (“Wife”) appeals from the superior court’s denial of her motion to amend or set aside the default judgment entered in favor of Robert Ambers (“Husband”). Because the court lacked personal jurisdiction over Wife, we vacate the default judgment as void.

BACKGROUND¹

¶2 Early in their marriage, the parties procured a life insurance policy that designated Wife as the “policy owner,” Husband as the “spouse rider,” and each spouse as the other’s primary beneficiary. Years later, in contemplation of their impending divorce, Wife changed the beneficiary designations, selecting the parties’ daughter as her primary beneficiary and the parties’ son as Husband’s primary beneficiary. Because the parties agreed to these changes, the life insurance policy was not included in their divorce decree.

¶3 After their divorce was finalized, however, Wife changed the beneficiary designations again, appointing herself as the primary beneficiary of the spouse rider. In response, Husband filed a pro se complaint against Wife, asking the superior court to order her to reappoint the parties’ son as the spouse rider beneficiary. After Wife failed to answer the complaint within the prescribed period, Husband applied for entry of default. *See* Ariz. R. Civ. P. 4.2(m) (requiring a person served outside Arizona to serve a responsive pleading within 30 days after the completion of service).

¶4 With Husband’s motion pending, Wife filed a pro se “Answer/Objection,” contending the superior court had no personal jurisdiction over her. Specifically, Wife asserted that: (1) she never lived in

¹ “We view the facts in the light most favorable to upholding the [superior] court’s ruling on a motion to set aside a default judgment.” *Ezell v. Quon*, 224 Ariz. 532, 534, ¶ 2 (App. 2010).

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Arizona, (2) the parties were not divorced in Arizona, (3) the insurance was not obtained in Arizona, and (4) the insurance company underwriting the policy at issue is not headquartered in Arizona. Less than a week later, Husband moved for entry of default judgment without addressing Wife's jurisdictional challenge.

¶5 Initially, the superior court denied Husband's request for entry of default judgment, noting Wife had filed an "Answer/Objection" and the matter was therefore "contested." But Husband moved to strike Wife's responsive pleading as untimely, and after Wife failed to respond or appear at a telephonic conference on the motion to strike, the court struck her Answer/Objection."

¶6 With Wife's response stricken, Husband renewed his motion for entry of default judgment. Wife, in turn, filed another responsive pleading, but rather than reasserting her initial jurisdictional challenge, she objected only to various factual assertions set forth in Husband's complaint.

¶7 Wife failed to appear at the default hearing and the superior court entered a default judgment. As part of its ruling, the court noted that the insurance policy was procured in California, Wife "has never lived in Arizona," and the parties' divorce was litigated in California. Nonetheless, because the court struck her "Answer/Objection" and Wife failed to contest personal jurisdiction in her second responsive pleading, the court found "the default became effective" and the allegations in the complaint were therefore "deemed admitted." Accordingly, the court ordered Wife to change the spouse rider beneficiary to the parties' son.

¶8 Shortly thereafter, Wife moved to amend or set aside the default judgment, contending the superior court had no personal jurisdiction over her. She also claimed that she attempted to participate telephonically in the hearing on Husband's motion to strike but failed to account for a difference in time zones when she called in, missing the hearing, and asserted that she did not "understand" she was permitted to attend the hearing on Husband's motion for default judgment.

¶9 Without a hearing, the superior court summarily denied Wife's motion. Wife timely appealed.

DISCUSSION

¶10 Wife challenges the superior court's denial of her motion to amend or set aside the default judgment. She contends the superior court lacked personal jurisdiction over her and claims her failure to attend the

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hearings on Husband's motions was "the result of mistake or excusable neglect." *See* Ariz. R. Civ. P. 60(b)(1), (4) (authorizing a court to "relieve a party . . . from a final judgment" in the event of "mistake, inadvertence, surprise, or excusable neglect" or if "the judgment is void").

¶11 "Generally, we uphold a [superior] court's denial of a motion for relief [from a judgment] absent a clear abuse of discretion." *Ezell*, 224 Ariz. at 536, ¶ 15. "We review de novo, however, the denial of a . . . motion to vacate a void judgment." *Id.* "When a judgment is void due to lack of jurisdiction, the court has no discretion, but must vacate the judgment." *Id.* (internal quotation omitted).

¶12 Pursuant to Arizona Rule of Civil Procedure ("Rule") 55(a)(4), (5), "[a] default is effective 10 days after [an] application for entry of default is filed" unless "the party claimed to be in default pleads or otherwise defends" during that 10-day window. In this case, Husband filed his application and affidavit for default on October 4, 2019 and Wife filed her "Answer/Objection," challenging the superior court's exercise of personal jurisdiction over her, on October 23, 2019. Because Wife filed her "Answer/Objection" outside the prescribed 10-day period, the default became effective, and Wife's responsive pleading should have been construed as a motion to set aside the default judgment rather than an untimely answer. Under this reframing, the narrow, dispositive question is whether the superior court properly exercised personal jurisdiction over Wife.

¶13 "We review the superior court's exercise of personal jurisdiction de novo." *Ariz. Tile, L.L.C. v. Berger*, 223 Ariz. 491, 493, ¶ 8 (App. 2010) (emphasis omitted). Although a movant challenging a judgment on the grounds that it is void bears the burden of demonstrating she is entitled to relief, she "need not show that [her] failure to file a timely answer was excusable," that she "acted promptly," or that she "had a meritorious defense." *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, 74, ¶ 19 (App. 2004).

¶14 Under Rule 4.2(a), Arizona courts may exercise personal jurisdiction to the maximum extent allowed by the United States Constitution. While a state may exercise jurisdiction over its own citizens without constraint, "the Due Process Clause of the Fourteenth Amendment limits the exercise of personal jurisdiction by state courts over non-resident defendants." *Planning Group of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 266, ¶ 14 (2011) (citing *Pennoyer v. Neff*, 95 U.S. 714, 723-24 (1877)). Accordingly, "[a] state court may exercise personal jurisdiction over a non-resident defendant only if that defendant has

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sufficient contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Hoag v. French*, 238 Ariz. 118, 122, ¶ 18 (App. 2015) (internal quotations omitted).

¶15 Arizona courts may exercise either general or specific personal jurisdiction over non-resident defendants. *Id.* at ¶ 19. If a non-resident defendant’s contacts with the state are substantial, continuous and pervasive, Arizona may exercise general jurisdiction – “jurisdiction over a cause of action regardless of the relationship of its subject matter to the forum.” *Planning Group*, 226 Ariz. at 265, ¶ 13; *see also Hoag*, 238 Ariz. at 122, ¶ 19.

¶16 If a non-resident defendant’s contacts with Arizona are less than continuous and pervasive, but nonetheless “sufficient” with respect to a certain claim, the State may exercise specific jurisdiction with respect to that claim. *Id.* Under this sufficient or “minimum contacts” test, a “defendant need not ever have been physically present in the forum state.” *Id.* at 266, ¶ 14. “Rather, the question is whether the defendant’s contacts with the forum, physical or otherwise, make it reasonable, in the context of our federal system of government, to require the [defendant] to defend the particular suit which is brought there.” *Id.* (alteration in original) (internal quotation omitted).

¶17 Applying a “holistic approach,” we consider all the contacts between a non-resident defendant and Arizona to determine whether the non-resident defendant engaged in purposeful conduct for which she “could reasonably expect to be haled” into Arizona’s courts. *Id.* at 268, ¶ 25. “A finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State.” *Rollin v. William V. Frankel & Co.*, 196 Ariz. 350, 353–54, ¶ 13 (App. 2000) (internal quotation) (emphasis omitted). Under this standard, “casual or accidental contacts by a defendant with the forum state . . . cannot sustain the exercise of specific jurisdiction.” *Planning Group*, 226 Ariz. at 266, ¶ 16. “Nor can the requisite contacts be established through the unilateral activities of the plaintiff; they must instead arise from the defendant’s purposeful conduct.” *Id.* (internal quotation omitted).

¶18 In this case, Wife contends that she has had no contact, much less sufficient minimum contacts, to confer personal jurisdiction over her in Arizona. Husband does not dispute this contention and admits that he erroneously asserted in his complaint that Wife lives in the State of Arizona when in fact she is a resident of Washington State. Husband did not assert any fact which would substantiate Arizona exercising jurisdiction over

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Wife. Because the uncontested record reveals no evidence that Wife has purposefully availed herself of the privilege of conducting activities within the State, we conclude that her contacts, as a matter of law, are insufficient to justify subjecting her to personal jurisdiction in Arizona. *See Hoag*, 238 Ariz. at 123, ¶ 21.

¶19 Having so found, we need not address the other issues raised on appeal.

CONCLUSION

¶20 For the foregoing reasons, we vacate the default judgment as void for lack of personal jurisdiction.



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