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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOYCE SHURTLEFF and JOSEPH) No. 1 CA-CV 09-0053
MILLER,)
) DEPARTMENT E
Plaintiffs/Appellants,)
) **MEMORANDUM DECISION**
v.)
) Not for Publication -
STATE FARM FIRE AND CASUALTY) (Rule 28, Arizona Rules of
COMPANY,) Civil Appellate Procedure)
)
Defendant/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2007-019765

The Honorable Richard L. Nothwehr, Commissioner

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

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G E M M I L L, Judge

¶1 Appellants Joyce Shurtleff and Joseph Miller ("Plaintiffs") obtained a default judgment against State Farm Fire and Casualty Company. The trial court awarded compensatory damages for breach of contract and bad faith, as well as punitive damages for bad faith. State Farm filed a motion to set aside the portion of the default judgment awarding punitive damages. The trial court granted the motion and ordered that State Farm could file an answer to the punitive damage allegations of the complaint. Plaintiffs then filed a motion to set aside the portion of the default judgment awarding compensatory damages for bad faith. The court denied this motion. Plaintiffs now appeal these decisions.

¶2 For the reasons that follow, we reverse the trial court's decision to grant the motion to set aside the punitive damage portion of the default judgment and its decision to permit State Farm to file an answer, but we affirm the court's denial of Plaintiffs' motion to set aside the compensatory damages portion of the default judgment.

FACTS AND PROCEDURAL BACKGROUND¹

¶3 State Farm insured Plaintiffs under a renter's policy. In August 2005, Plaintiffs were in the process of moving when the Budget rental truck containing nearly all their personal

¹ The facts are derived from Plaintiffs' complaint and from their testimony at the default judgment hearing.

belongings was stolen from a hotel parking lot in Mesa. After the theft, Plaintiffs lived in their Dodge pickup truck for about a month and a half. Eventually they saved enough money to move to Prescott. During this time, Plaintiffs nearly lost their pickup truck to repossession, and Shurtleff experienced depression.

¶14 In January 2006, Plaintiffs sent State Farm an itemized list of the property stolen from the rental truck. They calculated the value of their stolen property to be over \$86,000. State Farm made a \$500 payment to them in January, a \$10,000 payment in February, and a \$25,232 payment in March, for a total of \$35,732. The personal property coverage limit on the insurance policy was \$58,834.

¶15 In October 2007, Plaintiffs filed a two count complaint against State Farm alleging breach of contract and breach of the duty of good faith and fair dealing (in other words, the tort of bad faith). After service of process, State Farm failed to answer or otherwise respond. In February 2008, a default judgment damages hearing was held and the trial court entered default judgment in favor of Plaintiffs, awarding them \$23,102 in damages for breach of contract (the balance of their policy limit), \$20,000 in compensatory damages on the bad faith claim, and \$80,000 in punitive damages for bad faith.

¶16 In March 2008, State Farm filed a motion based on Rule 60(c)(6), Arizona Rules of Civil Procedure, to set aside the punitive damages portion of the judgment. It asserted that there was no evidence presented at the default judgment hearing that would support a finding that State Farm had acted with the requisite "evil mind" and that awarding punitive damages was therefore contrary to law, unjust, and inequitable. After a hearing, the trial court granted State Farm's motion and set aside the award of punitive damages, explaining its decision as follows:

[T]here [was] insufficient evidence presented at the default hearing to sustain an award of punitive damages. The court concludes that it is in the best interests of justice to set aside the judgment.

The court also authorized State Farm to file an answer to the complaint focused solely on the issue of punitive damages.

¶17 In July 2008, Plaintiffs filed a motion to set aside the compensatory damages portion of the default judgment. They asserted that, "[i]f the parties are going to go to a jury on the amount of punitive damages for bad faith, the issue of the amount of compensatory damages for bad faith should also be decided by that same jury." After briefing and argument, the trial court denied the motion. Plaintiffs timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(C) (2003).

ANALYSIS

¶8 On appeal, Plaintiffs challenge the trial court's rulings on the two motions for relief under Rule 60(c)(6) of the Arizona Rules of Civil Procedure. Under Rule 60(c), a party may be relieved from a final judgment for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(d); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

The rule allows for relief from judgments that, because of extraordinary circumstances, are unjust and cannot be remedied by law. *Panzino v. City of Phoenix*, 196 Ariz. 442, 445, ¶ 5, 999 P.2d 198, 201 (2000).

¶9 To obtain relief under Rule 60(c)(6), a party must show that: (1) the reason for setting aside the judgment is not one of the reasons set forth in the preceding five clauses; and that (2) the "other reason" advanced justifies relief. *Id.* at ¶ 6. The subsection applies only when the court's interest in the finality of judgments is outweighed by "extraordinary

circumstances of hardship or injustice." *Minjares v. State*, 223 Ariz. 54, 61, ¶ 28, 219 P.3d 264, 271 (App. 2009) (quoting *Webb v. Erickson*, 134 Ariz. 182, 187, 655 P.2d 6, 11 (1982)) (emphasis added). There are no specific circumstances that must exist to qualify as sufficiently extraordinary, unique, or compelling to justify relief under Rule 60(c)(6), *Park v. Strick*, 137 Ariz. 100, 105, 669 P.2d 78, 83 (1983), and this determination must be made on a case-by-case basis, *Gorman v. City of Phoenix*, 152 Ariz. 179, 182, 731 P.2d 74, 77 (1987).

¶10 Whether to set aside a default judgment is within the sound discretion of the trial court and we will not disturb the court's ruling absent a clear abuse of discretion. *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 308, 666 P.2d 49, 53 (1983); *Daystar Investments, L.L.C. v. Maricopa County Treasurer*, 207 Ariz. 569, 572, ¶ 13, 88 P.3d 1181, 1184 (App. 2004); *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404, 406 (App. 1992). However, where the facts are not disputed, and there are few or no conflicting procedural, factual or equitable considerations, "the resolution of the question is one of law or logic. In such cases, we must, if appropriate, substitute our judgment for that of the trial court, and if the trial court vacated entry of default without legal grounds, that constitutes an abuse of discretion." *Daystar Investments, L.L.C.*, 207 Ariz. at 572, ¶ 13, 88 P.3d at

1184 (citations omitted). Similarly, an abuse of discretion may occur when a trial court commits an error of law in the process of exercising its discretion. *Kohler v. Kohler*, 211 Ariz. 106, 107, ¶ 2, 118 P.3d 621, 622 (App. 2005).

**The Trial Court Erred in Granting
State Farm's Motion for Rule 60(c)(6) Relief**

¶11 Plaintiffs first contend the trial court erred in granting State Farm's motion to set aside the punitive damages portion of the default judgment. They assert there was no legal or equitable reason to set aside the award and State Farm did not show the "extraordinary circumstances of hardship or injustice" necessary for Rule 60(c)(6) relief. We agree.

¶12 In January 2008, Plaintiffs filed an application for entry of default. Although the record does not reveal that a formal default was in fact entered by the clerk, see Ariz. R. Civ. P. 55(a) (stating clerk shall enter default upon written application), the parties and the trial court proceeded as though default had in fact been entered. Notwithstanding this apparent technical omission, a fair reading of the record reveals that State Farm was in default status and remains in default.

¶13 State Farm's default constitutes a judicial admission that it is liable for punitive damages. See *Hawke v. Bell*, 136 Ariz. 18, 21, 663 P.2d 1009, 1012 (App. 1983) (entry of default

constitutes judicial admission of liability); *Camacho v. Gardner*, 6 Ariz. App. 590, 593, 435 P.2d 719, 722 (1967) (stating default is judicial admission of plaintiff's right to recover), *vacated on other grounds* 104 Ariz. 555, 456 P.2d 925 (1969); *see also Waller v. Rymer*, 668 S.E.2d 470, 472-73 (Ga. Ct. App. 2008) (defendants' liability for punitive damages was established by entry of default); *Duvall v. Maxey*, 249 S.W.3d 216, 222-23 (Mo. Ct. App. 2008) (same). Therefore, the only issue for determination at the default hearing was the *amount of damages* to be awarded to Plaintiffs for their claims. Plaintiffs testified regarding their losses and the conduct of the insurance agent. After taking the matter under advisement, the court issued a judgment awarding Plaintiffs \$80,000 in punitive damages, an amount substantially less than suggested by Plaintiffs' counsel.

¶14 Both at the trial court and on appeal, State Farm has argued it is not liable for an award of punitive damages because Plaintiffs have failed to prove by clear and convincing evidence that it acted with an evil mind. *See Linthicum v. Nationwide Life Ins. Co.*, 150 Ariz. 326, 332, 723 P.2d 675, 681 (1986) ("punitive damages should be awardable only upon clear and convincing evidence of the defendant's evil mind"). The trial court evidently agreed with State Farm that there was not sufficient evidence that Plaintiffs were entitled to punitive

damages, and it set aside the default judgment while leaving the default in place. See generally *Hawke*, 136 Ariz. at 21, 663 P.2d at 1012 (court may set aside default judgment but leave entry of default in place).

¶15 In reaching this decision, the trial court committed a legal error. State Farm's liability for punitive damages was established by its default status -- the court therefore improperly found Plaintiffs may not be entitled to punitive damages. Based on State Farm's motion and argument at the hearing and the court's explanation, it appears that the court determined that its punitive damages award had been based on a mistaken understanding of substantive law regarding punitive damages. But a showing that a default judgment rests upon an "erroneous application of substantive law" does not merit relief under Rule 60(c)(6). *Int'l Ass'n of Machinists & Aerospace Workers v. Petty*, 22 Ariz. App. 539, 541, 529 P.2d 251, 253 (1974); see also *Craig v. Superior Court*, 141 Ariz. 387, 388, 687 P.2d 395, 396 (App. 1984) (Rule 60(c) not intended for reviewing or correcting legal errors). We conclude that any erroneous application of substantive law in this case does not rise to the level of "extraordinary" circumstances warranting relief under Rule 60(c)(6). See *Minjares*, 223 Ariz. at 61, ¶ 28, 219 P.3d at 271.

¶16 We note that a trial court properly sets aside a punitive damages award in a default judgment when it finds the amount of punitive damages was excessive or unconstitutional. See *Hilgeman v. American Mortg. Sec., Inc.*, 196 Ariz. 215, 223, ¶ 29, 994 P.2d 1030, 1038 (App. 2000); *Camacho*, 6 Ariz. App. at 596, 435 P.2d at 725 (order setting aside default judgment was warranted when there was "scanty" proof of damages). But State Farm has not argued below or on appeal that the amount of the award was not reasonable or that the amount was unconstitutional. Nor did the trial court, in granting the Rule 60(c)(6) motion, find that the amount was excessive or unconstitutional.

¶17 Although a trial court has broad discretion in deciding whether to grant relief under Rule 60(c)(6), it abuses that discretion when its decision is based on an erroneous application of the law. See *Kohler*, 211 Ariz. at 107, ¶ 2, 118 P.3d at 622. Accordingly, we reverse the trial court's ruling setting aside the portion of the default judgment awarding punitive damages and permitting State Farm to file an answer.

**The Trial Court Did Not Err in Denying
Plaintiffs' Motion for Rule 60(c)(6) Relief**

¶18 Plaintiffs next argue the court erred by denying their motion to set aside the compensatory damages portion of the default judgment. They contend that the same trier of fact

deciding the amount of punitive damages should also decide the amount of compensatory damages and that the compensatory damages are inextricably intertwined with the punitive damages. Because we have found that the court erred in setting aside the default judgment on punitive damages, Plaintiffs' arguments in this regard are moot and we need not address them further.

¶19 Plaintiffs also argue the court erred in refusing to set aside the compensatory damages portion of the default judgment because the award was too low. But given the court's broad discretion in ruling on a motion to set aside a default judgment, we find no error.

¶20 Finally, to the extent Plaintiffs argue they had the right to have a jury determine the amount of compensatory damages, they waived this right by proceeding to a bench trial without objecting to the absence of a jury. See *Johnson v. Mofford*, 193 Ariz. 540, 547, ¶ 36, 975 P.2d 130, 137 (App. 1998); *Evans v. Lundgren*, 11 Ariz. App. 441, 444, 465 P.2d 380, 382. See also *Marshall Lasser, PC v. George*, 651 N.W.2d 158, 160-61 (Mich. Ct. App. 2002) (stating plaintiff waived right to jury trial by proceeding without objection to bench trial).

¶21 For these reasons, the trial court did not err in denying Plaintiffs motion to set aside the compensatory damages portion of the default judgment.

CONCLUSION

¶22 We reverse the trial court's granting of State Farm's motion to set aside the punitive damages portion of the default judgment and its decision to permit State Farm to file an answer. We affirm the court's denial of Plaintiff's motion to set aside the compensatory damages portion of the judgment. We remand for further proceedings consistent with this decision.

¶23 Plaintiffs' have requested an award of attorneys' fees pursuant to A.R.S. § 12-341.01 (2003). Assuming without deciding that § 12-341.01 is applicable, we decline in the exercise of our discretion to award fees in this appeal. Plaintiffs are entitled to an award of taxable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
SHELDON H. WEISBERG, Presiding Judge

_____/s/_____
PHILIP HALL, Judge