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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 11-475

ROBBIE L. GURIEN
APPELLANT

V.

ACCESS CREDIT MANAGEMENT, INC.
APPELLEE

Opinion Delivered November 16, 2011

APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, CHICKASAWBA DISTRICT [NO. CV-10-205]

HONORABLE BRENT DAVIS, JUDGE

REVERSED AND REMANDED

DOUG MARTIN, Judge

Appellant Robbie Gurien appeals from the order of the Mississippi County Circuit Court dismissing her appeal from the Mississippi County District Court's refusal to set aside a default judgment against Gurien.

Appellee Access Credit Management, Inc. ("Access"), obtained a default judgment against Gurien in Mississippi County District Court on December 16, 2008, finding that Gurien was indebted to Access in the amount of $4557.79, plus interest and attorney's fees. On January 27, 2010, Gurien filed a motion to set aside the default judgment pursuant to Arkansas Rule of Civil Procedure 55, asserting that she did not owe the debt to Access, that the default judgment was obtained by fraud, and that she had a meritorious defense to the action. Access responded to Gurien's motion to set aside on February 5, 2010, claiming that her motion was untimely and "well outside the bounds of the 90 days time limitation for

reconsideration of the judgment" and that Gurien had failed to support her pleading with an affidavit. In her reply to Access's response, Gurien asserted that there was no ninety-day limitation for seeking to set aside a default judgment, nor was there a requirement that she file an affidavit in support of her motion. According to the district court's docket sheet, Gurien's motion to set aside the default judgment was denied on May 25, 2010.

On June 3, 2010, Gurien filed a notice of appeal from the district court's denial of her motion to set aside default judgment. Access filed a motion to dismiss Gurien's appeal on July 12, 2010, arguing that Gurien's June 3, 2010 appeal was untimely pursuant to Arkansas District Court Rule 9 because it was taken more than thirty days after entry of the default judgment.

After a hearing on October 18, 2010, the circuit court entered an order on February 8, 2011, granting Access's motion to dismiss. In its order, the circuit court made the following findings:

> 2. ARCP 55 does not state a time frame in which to bring a motion to set aside a Judgment by Default; however, it is necessary that a party so moving act in a timely manner.
>
> 3. In this case, an allegation of fraud is merely a denial of the allegations of [Access's] complaint and should have been addressed in an answer.
>
> 4. Judgment by Default was entered in this matter on December 16, 2008. [Gurien's] motion to Set Aside the Default Judgment was filed January 27, 2010. [Gurien] has failed to bring this action to set aside in a timely manner.
>
> 5. [Access's] Motion to Dismiss [Gurien's] Appeal is hereby granted.

Gurien filed a timely notice of appeal on February 15, 2011, and now argues on appeal that the circuit court erred in determining that her appeal from district court was untimely. We agree and conclude that the circuit court's decision was clearly erroneous.

Arkansas Rule of Civil Procedure 55(c), which governs the setting aside of default judgments, provides as follows:

> The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) the judgment is void; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a meritorious defense to the action; however, if the judgment is void, no other defense to the action need be shown.

Our supreme court has explicitly held that "[n]o time limit for moving to set aside a default judgment is prescribed in the rule." *Marcinkowski v. Affirmative Risk Mgmt. Corp.*, 322 Ark. 580, 583, 910 S.W.2d 678, 681 (1995).

In *Marcinkowski*, the Pulaski County District Court granted a default judgment against Marcinkowski on October 12, 1993. Marcinkowski moved to set that default judgment aside on November 12, 1993, and the district court denied his motion in an order entered on February 22, 1994. Marcinkowski filed a notice of appeal to Pulaski County Circuit Court on March 4, 1994. ARM (Affirmative Risk Management), the party in whose favor the default judgment was entered, moved to dismiss Marcinkowski's appeal on the grounds that it had not been filed within thirty days of the October 12, 1993 default judgment. The circuit court granted ARM's motion to dismiss, and Marcinkowski appealed to the supreme

court, arguing that the circuit court erred in dismissing his appeal as untimely. *Marcinkowski*, 322 Ark. at 581–82, 910 S.W.2d at 680.

On appeal, the supreme court reversed the circuit court. In doing so, the court first noted that the matter was not governed by (then) Inferior Court Rule 9(a), which requires that a judgment of a municipal court be appealed within thirty days from the date of entry of the judgment, because Marcinkowski's appeal was not an appeal from the entry of the default judgment itself. *Id*. at 583, 910 S.W.2d at 680. The appeal was, instead, an appeal *from the order refusing to set aside the default judgment*, to which none of the Inferior Court Rules applied. Accordingly, pursuant to Inferior Court Rule 10,[1] the Rules of Civil Procedure—and in particular, Arkansas Rule of Civil Procedure 55(c)—applied and governed the situation. *Id*., 910 S.W.2d at 680–81.

The court went on, as noted above, to unequivocally state that no time limit for moving to set aside a default judgment is prescribed in Rule 55(c). *Id*., 910 S.W.2d at 681. After pointing out that the appeal from the refusal to set aside the default judgment was "obviously" timely, *id*., 910 S.W.2d at 680, the court held that the circuit court "must entertain a timely appeal from denial by the Municipal Court of a motion to set aside a default judgment." *Id*. at 584, 910 S.W.2d at 681.

Similarly, in *Piper v. Potlatch Fed. Credit Union*, 2009 Ark. App. 701, ___ S.W.3d ___, this court held that District Court Rule 9(a) does not apply where an appeal is not taken

[1]"Where applicable and unless otherwise specifically modified herein, the Arkansas Rules of Civil Procedure . . . shall apply to and govern matters of procedure . . . in the courts of this State."

from the default judgment itself, but from the order denying the motion to set aside the default judgment. *Piper*, 2009 Ark. App. 701, at 8, ___ S.W.3d at ___. There, a default judgment was entered in district court against appellant Piper in 2002; in 2008, Piper filed what this court subsequently characterized as a motion to set aside the default judgment on the grounds that the judgment was void. The district court denied the motion, and Piper attempted to appeal to circuit court. The circuit court dismissed Piper's appeal, finding that it was untimely under District Court Rule 9(a), which requires all appeals in civil cases from district courts to circuit court be filed in the circuit court within thirty days from the date of the judgment. *Id*. at 8, ___ S.W.3d at ___. Citing *Marcinkowski*, the *Piper* court held that, because Piper appealed from the order denying his motion to set aside the default judgment, and not from the default judgment itself, Piper's appeal was timely, and the circuit court erred in dismissing the appeal on the grounds that it was untimely. *Id*. at 8–9, ___ S.W.3d at ___.

In the present case, the circuit court erred in precisely the same way. Although the lower court acknowledged that Rule 55 does not establish a time frame in which an appeal must be taken from an order denying a motion to set aside a default judgment, the court nonetheless found that it was "necessary that a party so moving act in a timely manner." This finding by the circuit court is incorrect as a matter of law; no such requirement exists.

Gurien's appeal to circuit court was from the order of the district court denying her motion to set aside the default judgment. An appeal from district court to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the

appeal within thirty days from the date of a docket entry awarding judgment, regardless of whether a formal judgment is entered. Ark. Dist. Ct. R. 9(a). An appeal may be taken by filing a certified copy of the district court's docket sheet, which shows the awarding of judgment and all prior entries, with the clerk of the circuit court having jurisdiction over the matter. Ark. Dist. Ct. R. 9(b). Here, the docket entry denying Gurien's motion to set aside the default judgment was entered on May 25, 2010, and Gurien filed a certified copy of the docket sheet in Mississippi County Circuit Court on June 3, 2010, well within thirty days of the date of the denial of her motion to set aside.

As noted above, the supreme court held in *Marcinkowski*, *supra*, that a circuit court "*must* entertain a timely appeal from denial by the [district] court of a motion to set aside a default judgment." *Marcinkowski*, 322 Ark. at 584, 910 S.W.2d at 681 (emphasis added). The court continued as follows:

> The circuit court is to conduct a de novo proceeding to determine, in accordance with Ark. R. Civ. P. 55(c), whether relief from the operation of the judgment is justified. If no such relief is justified, the matter is ended. If relief is granted, the case will then be treated as any other de novo review of a municipal court judgment.

Id. The trial court's dismissal of Gurien's appeal was clearly erroneous, and accordingly, we reverse and remand for further proceedings.[2]

Reversed and remanded.

HART and GLOVER, JJ., agree.

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[2]Because we reverse on this issue, we do not address Gurien's second point on appeal concerning the circuit court's statement that Gurien's allegation of fraud in her motion to set aside the default judgment was "merely a denial of the allegations of [Access's] complaint and should have been addressed in an answer."