

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RANDALL L. EDWARDS, BETTY SUE EDWARDS,

Plaintiffs,

v.

MICHAEL J. REYNOLDS, et al.,

Defendants

No. C-07-4710 MMC

ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION; VACATING DECEMBER 1, 2009 ORDER; SETTING ASIDE JUDGMENT; SETTING BRIEFING SCHEDULE ON MOTION FOR SUMMARY JUDGMENT; DENYING AS PREMATURE DEFENDANTS' MOTION FOR AWARD OF ATTORNEY'S FEES; VACATING FEBRUARY 13, 2009 HEARING

Before the Court is plaintiffs' Motion for Reconsideration, filed December 15, 2008. Defendants have filed opposition, to which plaintiffs have replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court deems the matter suitable for decision on the papers submitted, VACATES the hearing scheduled for February 13, 2009, and rules as follows:

1. Plaintiffs, who are proceeding pro se, have sufficiently demonstrated that plaintiffs' failure to file opposition to defendants' motion for summary judgment was the result of excusable neglect. Plaintiffs filed the instant motion only two weeks after entry of judgment and have explained they did not file timely opposition to defendants' motion for summary judgment because of health problems and the need to address two separate foreclosure actions. Further, there is no indication that defendants will be prejudiced by this relatively brief delay in the filing of plaintiffs' opposition. Under such circumstances, the

1 Court finds it appropriate to afford plaintiffs the relief sought, and plaintiffs' motion for
2 reconsideration is hereby GRANTED. See Laurino v. Syringa General Hospital, 279 F.3d
3 750, 753-54 (9th Cir. 2002) (holding plaintiff entitled to reconsideration of order dismissing
4 case, where "period of delay [was] not unreasonable," plaintiff's "errors resulted from
5 negligence and carelessness, not deviousness or willfulness," and there was no evidence
6 of "prejudice" to defendant). Accordingly, the Court's December 1, 2008 order granting
7 defendants' motion for summary judgment is hereby VACATED, and the judgment entered
8 on December 1, 2008 is hereby SET ASIDE.

9 2. The Court hereby sets the following briefing schedule on defendants' motion for
10 summary judgment:

11 a. No later than February 27, 2009, plaintiffs shall file their opposition to
12 defendants' motion for summary judgment. If, however, plaintiffs intend to rely solely on
13 the showing made in their motion for reconsideration, plaintiffs need not file any additional
14 papers in opposition to defendants' motion for summary judgment, and, in such instance,
15 the Court will consider plaintiffs' motion for reconsideration to be plaintiffs' opposition to
16 defendants' motion for summary judgment.

17 b. No later than March 13, 2009, defendants shall file a reply to plaintiffs'
18 opposition.

19 c. A hearing on defendants' motion for summary judgment will be conducted
20 on April 3, 2009, at 9:00 a.m. All parties, either in person or through counsel, are
21 ORDERED to attend the April 3, 2009 hearing, unless the parties are advised by the Court
22 that the hearing has been vacated.

23 3. Because the December 1, 2008 judgment has been set aside, defendants'
24 Motion for Award of Attorney's Fees, filed December 11, 2008, is hereby DENIED without
25 prejudice.

26 **IT IS SO ORDERED.**

27 Dated: February 5, 2009

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MAXINE M. CHESNEY
United States District Judge