

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001143-MR

LAURA GREEN

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 06-CI-00114

BARBOURVILLE NURSING HOME, INC.

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: BEFORE: ABRAMSON AND TAYLOR, JUDGES; KNOPF,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Laura Green brings this appeal from an April 25, 2006, default judgment awarding Barbourville Nursing Home, Inc. (Nursing Home) the sum of \$21,287.40 for services provided by the Nursing Home for Laura Green, a resident of the Nursing Home. We affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

On February 22, 2006, the Nursing Home filed a complaint against Laura Green and Mary Hale in the Knox Circuit Court. Therein, the Nursing Home stated that Laura was a resident of the Nursing Home and that she was ineligible for Medicare or Medicaid benefits. As a result, she owed the Nursing Home some \$21,287.00 for services provided by the Nursing Home from September 12, 2005, through February 7, 2006. The Nursing Home sought judgment in that amount and sought an order compelling Mary to forward to the Nursing Home all social security benefits she received on behalf of Laura.² The record indicates that a civil summons was served upon Laura at her residence in the Nursing Home; however, a civil summons was never served upon Mary. Laura failed to answer or otherwise defend the action. Consequently, on April 17, 2006, the Nursing Home filed a motion for default judgment against Laura. Therein, the Nursing Home avered that Laura “is not an infant or incompetent person” On April 25, 2006, the circuit court entered default judgment against Laura in the sum of \$21,287.40, plus interest at the rate of eight percent per annum. This appeal follows.

We begin our analysis by noting that trial courts have broad discretion in ruling on motions for default judgment. *S.R. Blanton Dev., Inc. v. Investors Realty & Mgmt. Co.*, 819 S.W.2d 727 (Ky.App. 1991). A default judgment will not be set aside unless an abuse of discretion is clearly shown. *Id.*

Laura claims that the circuit court committed error by entering default judgment. Specifically, Laura claims that she is an incompetent person; thus, pursuant to Ky. R. Civ. P. (CR) 17.03(2), a guardian should have been appointed to represent her

² Mary Hale is the daughter of Laura Green and further was the attorney-in-fact for her mother.

before entry of judgment. *See also* CR 8.04. Laura further contends that entry of default judgment against an incompetent person violates the due process clause of the Fourteenth Amendment of the United States Constitution. As Laura was not appointed a guardian or *guardian ad litem*, she argues that entry of the default judgment was clearly improper. We note that Laura alleges in her brief that she was ninety-five years of age, bedfast, unable to move, could not speak, and was incoherent at the time she was served with the summons in the Nursing Home.

However, and unfortunately for Laura, she did not file a motion to set aside the default judgment under CR 55.02. Rather, Laura proceeded to directly appeal the entry of default judgment. As a result, there is no evidence in the record supporting Laura's allegations that she is an incompetent person. There are no affidavits in the record or any evidence proving her incompetence. Our review of the meager record on appeal is thus limited to determining whether the pleadings were sufficient to support the judgment and whether Laura was actually in default. *Jeffrey v. Jeffrey*, 153 S.W.3d 849 (Ky.App. 2004). As such, we reluctantly must affirm the circuit court's entry of default judgment. However, we duly note that Laura may hereafter file a motion to set aside the default judgment under CR 55.02 with supporting evidence establishing her incompetence at the time of commencement of this action. Our opinion should not be misconstrued as precluding her from filing such a motion in circuit court, nor do we address the merits in this opinion.

For the foregoing reasons, the default judgment of the Knox Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Linda J. West
Barbourville, Kentucky

BRIEF FOR APPELLEE:

Wesley R. Tipton
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