DA 19-0410

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 10

JEROME "JERRY" FRYE,

Plaintiff and Appellee,

v.

ROSEBURG FOREST PRODUCTS COMPANY,
a foreign corporation; and DOE DEFENDANTS 1-3,

Defendants and Appellants.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-18-1687
Honorable Karen S. Townsend, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Jeffrey B. Smith, Luc L. Brodhead, Garlington, Lohn & Robinson, PLLP, Missoula, Montana

For Appellee:

David C. Berkoff, Berkoff Law Firm, P.C., Missoula, Montana

Submitted on Briefs: December 18, 2019

Decided: January 21, 2020

Filed:

Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Roseburg Forest Products Company (Roseburg) appeals from the order of the Fourth Judicial District Court, Missoula County, denying its motion to set aside default judgment under M. R. Civ. P. 60(b)(1). We address the following issue on appeal:

> *Whether the District Court slightly abused its discretion in denying Roseburg's Rule 60(b)(1) motion to set aside default judgment.*

¶2 We affirm the District Court.

PROCEDURAL AND FACTUAL BACKGROUND

¶3 Jerome Frye worked for Roseburg until November 2018 when Roseburg terminated him. Roseburg is a large, multistate corporation with its headquarters in Oregon. On December 21, 2018, Frye filed a complaint against Roseburg in Missoula County, alleging violations of the Wrongful Discharge from Employment Act. Frye served Roseburg through its registered agent Minta Y. Johnson at the physical address of Roseburg's Missoula office on January 4, 2019. The summons directed Roseburg "to file [its] answer and serve a copy thereof upon Plaintiff's attorney within 21 days after the service of this summons" and advised, "in case of [Roseburg's] failure to appear or answer, judgment will be taken against [Roseburg] by default, for the relief demanded in the Complaint."

¶4 Johnson is a controller at Roseburg's Missoula facility. She is not an attorney. Johnson transmitted the summons and complaint to John Mikkelson, who is the Human Resources Manager at the Missoula office. Mikkelson also is not an attorney. Neither Johnson nor Mikkelson transmitted the documents to an attorney or the company's legal department. Rather, Mikkelson attested that upon receiving the summons the Missoula

office opened an investigation into Frye's allegations, reviewed Frye's work history with Roseburg, and interviewed relevant parties at the Missoula office. Roseburg did not file an appearance or an answer to the complaint with the District Court.

¶5 The Clerk of Court entered default against Roseburg on February 8, 2019. Frye moved for default judgment on March 7, 2019. The court set a hearing for March 21, 2019, and sent courtesy notice of the hearing to Roseburg's physical address.[1] Roseburg did not appear at the hearing. The court entered default judgment against Roseburg on March 25, 2019, in the amount of $237,659.60.

¶6 Frye mailed notice of the entry of judgment to the P.O. Box listed as Roseburg's mailing address on the Secretary of State's website. Roseburg received the notice on April 12, 2019. Counsel for Roseburg entered a notice of appearance and moved to set aside the entry of default judgment on April 19, 2019—105 days after Roseburg received the summons.

¶7 The District Court denied Roseburg's motion to set aside default judgment. In its order, the District Court applied the four-part test from *Blume v. Metropolitan Life Insurance Co.*, 242 Mont. 465, 467, 791 P.2d 784, 786 (1990). The District Court found Roseburg had established a prima facie case that it had a meritorious defense to the allegations against it and judgment against Roseburg would be injurious to the company.

[1] It appears the postal service returned the notice to the court as undeliverable after the scheduled hearing took place.

The District Court denied the motion, however, because it determined Roseburg failed to proceed with diligence and Roseburg's neglect was not excusable.

STANDARD OF REVIEW

¶8 This Court reviews a district court's denial of a motion to set aside a default judgment for a slight abuse of discretion. *Detienne v. Sandrock*, 2017 MT 181, ¶ 22, 388 Mont. 179, 400 P.3d 682 (citing *Lords v. Newman*, 212 Mont. 359, 364, 688 P.2d 290, 293-94 (1984)). This standard requires this Court to weigh "the conflicting concerns of respecting the trial court's sound discretion while recognizing the policy favoring trial on the merits." *Lords*, 212 Mont. at 364, 688 P.2d at 293.

DISCUSSION

¶9 A district court may set aside a default judgment under the provisions of M. R. Civ. P. 60(b). *See* M. R. Civ. P. 55(c). Under Rule 60(b)(1)—the provision at issue in this case—a default judgment may be set aside for "mistake, inadvertence, surprise, or excusable neglect." When reviewing the ruling from a district court on a motion to set aside default judgment under Rule 60(b)(1), we apply the conjunctive, four-part test set out in *Blume*. *See Detienne*, ¶ 29; *Essex Ins. Co. v. Jaycie, Inc.*, 2004 MT 278, ¶ 12, 323 Mont. 231, 99 P.3d 651. Under the *Blume* test, we consider: (1) whether the defaulting party proceeded with diligence; (2) whether the defaulting party's neglect was excusable; (3) whether the defaulting party had a meritorious defense to the claim; and (4) whether, if permitted to stand, the judgment would affect the defaulting party injuriously. *See Detienne*, ¶ 29; *Mont. Prof'l Sports, LLC v. Nat'l Indoor Football League, LLC*, 2008 MT

98, ¶ 35, 342 Mont. 292, 180 P.3d 1142. Our review is guided by the "policy that every litigated case should be tried on the merits and thus judgments by default are not favored." *Grizzly Sec. Armored Express, Inc. v. Armored Grp., LLC*, 2009 MT 396, ¶ 12, 353 Mont. 399, 220 P.3d 661 (internal quotations omitted).

¶10 Roseburg challenges the District Court's findings on the first and second *Blume* factors—that is, whether Roseburg proceeded with diligence and whether its neglect was excusable. We turn then to consideration of whether Roseburg's neglect was excusable.

¶11 Roseburg argues that its neglect in answering the complaint was excusable under the circumstances. It maintains that it did not seriously disregard the judicial process because, although Johnson and Mikkelson failed to appreciate the procedural requirement of filing a response, they reacted to the allegations in earnest by opening an internal investigation into Frye's employment with the company. Beyond that, Roseburg maintains that its neglect was rendered excusable, because Frye failed to make a reasonable attempt to reach out to it before obtaining default judgment. Roseburg acknowledges that the Rules of Civil Procedure did not require Frye to provide it with notice the clerk entered default, the motion for default judgment, or the order setting a hearing for default judgment, but Frye's lack of consideration and indifference in failing to provide copies of these proceedings to Roseburg are factors that should have weighed heavily in the District Court's analysis. Roseburg argues it lacked the opportunity to step in before the court entered default judgment because Frye did not provide these notices or attempt to contact it about the default proceedings.

¶12 In determining whether a litigant's neglect was excusable, "[w]e examine whether the reasons given for the neglect are such that reasonable minds might differ in their conclusions concerning excusable neglect. We resolve any doubt regarding whether the neglect was excusable in favor of trial on the merits." *Grizzly Sec. Armored Express*, ¶ 17 (internal quotations and citations omitted). But "when a party, aware of the contents of the documents served, ignores the command of the summons, there is no 'excusable neglect.' Excusable neglect requires some justification for an error beyond mere carelessness or ignorance of the law on the part of the litigant or his attorney." *Whitefish Credit Union v. Sherman*, 2012 MT 267, ¶ 20, 367 Mont. 103, 289 P.3d 174 (internal citations omitted). The court must consider the circumstances surrounding the default, including whether plaintiff's actions contributed to the Defendant's default. *See, e.g.*, *Grizzly Sec. Armored Express, Inc.*, ¶ 25 (discussing plaintiff's counsel's actions of crossing defendant's name off the certificate of service for the notice of the hearing on the entry of default and failing to return phone calls to defendant's counsel).

¶13 Roseburg's argument that Johnson's and Mikkelson's ignorance of legal procedure excuses Roseburg's neglect is misplaced. Roseburg selected Johnson as its registered agent. Johnson and Mikkelson were aware of the contents of the summons. The plain language of the summons put both Johnson and Mikkelson—and through them Roseburg—on notice an answer to the allegations was due to the court within twenty-one days of the receipt of the summons and warned that judgment would be entered against Roseburg in default if it did not answer within that timeframe. No knowledge of the

nuances of legal procedure is required "to exercise care and common sense when served with process that clearly communicates to 'appear or answer' within" twenty-one days. *Whitefish Credit Union*, ¶ 21.

¶14 Further, Roseburg's internal investigation into the allegations of the complaint while ignoring the plain language of the summons does not excuse its neglect of the legal process. Litigants have an affirmative duty to monitor litigation. *Mont. Prof'l Sports, LLC*, ¶ 44 (citing *Caplis v. Caplis*, 2004 MT 145, ¶ 24, 321 Mont. 450, 91 P.3d 1282). "[P]eripheral litigation matters" are "'not an excuse to neglect ongoing litigation.'" *Mont. Prof'l Sports, LLC*, ¶ 44 (quoting *Caplis*, ¶ 26).

¶15 Finally, unlike in *Grizzly Security Armored Express, Inc.*, where plaintiff's counsel's affirmative actions of crossing defendant's name off a certificate of service and avoiding the defendant's counsel's phone calls contributed to defendant's default, Frye's or his counsel's actions did not contribute to Roseburg's default. As Roseburg acknowledged, Frye was under no obligation to provide it with further notice after it defaulted. Roseburg received the summons through its registered agent on January 4, 2019. From that time, it was on notice of the legal proceedings. The circumstances surrounding Roseburg's default do not excuse its neglect of the legal process.

¶16 Because a party must meet all four factors of the *Blume* test, Roseburg's appeal fails, and we do not need to consider whether Roseburg acted with diligence. The District Court did not slightly abuse its discretion in denying Roseburg's motion to set aside default judgment.

CONCLUSION

¶17 The District Court order is affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ MIKE McGRATH
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ JIM RICE