IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-861

Filed: 15 March 2016

Wake County, No. 13 CVS 11815

MATTHEW CLARK FLETCHER, Plaintiff,

v.

BOARD OF LAW EXAMINERS OF THE STATE OF NORTH CAROLINA, et. al., Defendants.

Appeal by plaintiff from orders entered 21 May 2015 by Judge G. Bryan Collins, Jr., in Wake County Superior Court. Heard in the Court of Appeals 12 January 2016.

Attorney General Roy Cooper, by Senior Deputy Attorney General Robert C. Montgomery and Special Deputy Attorney General Nancy A. Vecchia, for North Carolina Board of Law Examiners, et al., defendant-appellees.

Matthew Clark Fletcher, pro se plaintiff-appellant.

BRYANT, Judge.

Where the decision that an applicant has the requisite character and fitness to be licensed to practice law must be made in the first instance by the North Carolina Board of Law Examiners, and where plaintiff did not avail himself of the effective and exclusive administrative remedies provided for in the Rules Governing

Admission to the Practice of Law, the trial court did not err in dismissing plaintiff's action pursuant to Rules 12(b)(1) and 12(b)(6) of the N.C. Rules of Civil Procedure.

Further, where claims against individual members of the North Carolina Board of Law Examiners in their representative capacities were "merely another way of bringing suit" against the Board of Law Examiners of the State of North Carolina ("defendant Board"), there was no need for the responsive pleadings to specify that they were being filed by individual defendants, and the trial court did not err by finding that defendants filed responsive pleadings in this case. Accordingly, because defendant Board filed responsive pleadings, individual defendants were never in default, and the trial court did not abuse its discretion by setting aside entry of default against defendants.

Between March and June 2012, plaintiff Matthew Clark Fletcher sent his application and supporting materials for the July 2012 Bar Examination to defendant Board. On 1 June 2012, plaintiff received a letter requesting his presence at the Bar Committee Interview, an interview required of all applicants pursuant to the Rules Governing Admission to the Practice of Law, Rule .0604. Plaintiff attended this interview on 8 June 2012, and the next day, plaintiff received an email from the Chief Investigations Analyst for the North Carolina Board of Law Examiners requesting additional materials to conclude the application process. Plaintiff mailed the

requested materials. Plaintiff stood for the written examination, which took place on 24 and 25 July 2012.

By letter dated 24 August 2012, defendant Board informed plaintiff that he had passed the North Carolina Bar Examination but that "review of [his] application and supporting documentation ha[d] disclosed issues relating to [his] character and fitness to practice law which will need to be addressed." The letter further stated that issues of "[n]on-disclosures, delinquent debts, criminal charges [and] substance abuse" would be addressed in a "hearing [to] be conducted by a panel of the Board."

Defendant Board notified plaintiff that a hearing would be conducted on 27 November 2012 by a panel of defendant Board. Plaintiff was informed that he would "have the burden of satisfying the Panel that [he] possess[es] the qualifications of character and general fitness requisite for an attorney and counselor-at-law and [is] of good moral character and entitled to high regard and confidence of the public." The notice further specified that plaintiff would be questioned about the following: his failure to disclose a criminal charge on his bar application; a discrepancy between a law school application and his bar application; a collection account; various criminal charges, including public urination, public drunkenness, and trespassing; and any current condition that would affect his "ability to practice law in a competent and professional manner."

Plaintiff appeared before a panel of defendant Board as required and was later informed that his application would be held in abeyance pending submission of an evaluation from the North Carolina Lawyers Assistance Program. Plaintiff was evaluated by the Lawyers Assistance Program, which required him to sign a two-year contract that would involve testing for controlled substances. Plaintiff asked that defendant Board move forward with a decision to allow him to practice law without first complying with the required contract. Plaintiff's request was denied.

Plaintiff filed for a hearing in the Office of Administrative Hearings ("OAH"). Then, on 6 August 2013, plaintiff received notice from the OAH that the contested case had been dismissed at the request of defendant Board for lack of subject matter jurisdiction.

Meanwhile, plaintiff filed a complaint in Wake County Superior Court seeking a declaratory judgment that he possessed the requisite character and fitness when he passed the written bar examination and that defendant Board should be estopped from denying the issuance of his law license. Defendant Board filed a motion to dismiss based on the fact that plaintiff had not yet requested or undergone a hearing *de novo* before defendant Board, and therefore, any action requested from superior court would be premature and the lawsuit not ripe for adjudication. Plaintiff filed a response to the motion to dismiss.

By order dated 23 September 2013, the panel of defendant Board that conducted plaintiff's hearing denied his application, which had been held in abeyance. The panel, noting that plaintiff had "failed to enter into a contract with the North Carolina Lawyers Assistance Program as required," concluded that plaintiff had "failed to prove to the satisfaction of the Panel that he possesses the qualifications of character and fitness requisite for an attorney and counselor-at-law and is possessed of good moral character and is entitled to the high regard and confidence of the public." The order noted that plaintiff could request a *de novo* hearing before the full Board by giving written notice within ten days of receipt of the order, and plaintiff did so. Defendant Board acknowledged receipt of plaintiff's request for a *de novo* hearing.

With regard to the complaint filed in Wake County Superior Court, defendant Board filed an amended motion to dismiss, to which plaintiff filed a response. Plaintiff then filed an amended complaint, and on 2 September 2014, defendant Board filed a response to the amended complaint in which it again moved to dismiss the action. On 11 September 2014, plaintiff filed a response to defendant Board's renewed motion to dismiss.

On 11 September 2014, in addition to responding to defendant Board's renewed motion to dismiss, plaintiff filed a motion for entry of default as to the individual

defendants who were sued in their representative capacities. Defendant Board filed a response in opposition to the motion for entry of default on 22 September 2014.

On 21 November 2014, an assistant clerk of superior court entered default against all members of the Board of Law Examiners, including the named individual defendants as well as the Executive Director and Assistant Executive Director of the Board of Law Examiners. Plaintiff subsequently filed a motion for default judgment as to the individual defendants (defendant "representatives").

Defendants (defendant Board and defendant representatives) filed a motion for relief from entry of default and a response in opposition to plaintiff's motion for entry of default. Plaintiff filed a response to defendants' motion for relief from entry of default.

Following a hearing held on 18 May 2015 in Wake County Superior Court, the Honorable G. Bryan Collins, Jr., Judge presiding, entered orders on 21 May 2015 granting defendants' motion to set aside entry of default and motion to dismiss. Plaintiff gave notice of appeal.

On appeal, plaintiff argues that the trial court erred in (I) granting defendants' motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure for lack of subject matter jurisdiction and failure to state a claim,

respectively; (II) its Findings of Facts Nos. 3, 6, 7, 9, 11, 12, and 15; and (III) granting defendants' motion to set aside entry of default. We address each issue.

I

Defendants' Rule 12(b)(1) Motion

Plaintiff argues that the trial court erred by allowing defendants' motion to dismiss pursuant to 12(b)(1) of the Rules of Civil Procedure. Specifically, plaintiff contends that the superior court had jurisdiction under the Declaratory Judgment Act and that the only venue for his claims is the superior court as defendant Board could not consider his claims in a hearing. The claims which he asserts could not be determined by defendant Board at a hearing are that (1) a contract was formed between him and defendant Board and (2) defendant Board has not followed its own rules. We disagree.

The trial courts of North Carolina have jurisdiction over declaratory actions. N.C. Gen. Stat. § 7A-245(a)(3) (2015) ("The superior court division is the proper division . . . for the trial of civil actions where the principal relief prayed is . . . [d]eclaratory relief . . . ."); *see* N.C. Gen. Stat. § 1-253 (2015) (stating courts of record are permitted to enter declaratory judgments of rights, status, and other legal relations). An action under the Uniform Declaratory Judgment Act may be used to determine the construction of rules and regulations and to make "judicial determination[s] as to the power of public regulatory agencies[,] . . . [which] enables

the private individual to avoid uncertainty as to his rights and duties." *Charlotte-Mecklenburg Hosp. Auth. v. N.C. Indus. Comm'n*, 336 N.C. 200, 212, 443 S.E.2d 716, 723–24 (1994) (citations omitted), *superseded by statute as stated in Mehaffey v. Burger King*, 367 N.C. 120, 125, 749 S.E.2d 252, 255–56 (2013).

However, "even in a declaratory judgment action, when an *effective administrative remedy* exists, that remedy is exclusive." *Wake Cares, Inc. v. Wake Cnty. Bd. of Educ.*, 190 N.C. App. 1, 13, 660 S.E.2d 217, 224–25 (2008) (emphasis added) (citations omitted) (internal quotation marks omitted). The General Assembly made provisions for the Board of Law Examiners in N.C. Gen. Stat. § 84-24. In that statute, the Board is charged with the duties of "examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor . . . ." N.C.G.S. § 84-24 (2015), amended by 2015 N.C. Sess. Laws 2015-264, § 47 (eff. Oct. 1, 2015). Pursuant to its statutory powers and duties, the Board has promulgated the Rules Governing Admission to the Practice of Law:

> The Board of Law Examiners, subject to the approval of the Council [of the North Carolina State Bar], shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession[.]

Id.; see N.C. R. ADMIS Rules .0100–.1405 (2015) (outlining the Rules Governing Admission to the Practice of Law in North Carolina.

The review applicable to hearings of the Board of Law Examiners is governed solely by the Rules Governing Admission to the Practice of Law under North Carolina General Statutes § 84-24 and applicable case law. The Rules allow for judicial review of character and fitness hearings; however, an applicant must exhaust his administrative remedies, including requesting a *de novo* hearing before the full Board. *See, e.g.*, *In re Burke*, 368 N.C. 226, 227, 233, 775 S.E.2d 815, 817, 821 (2015) (reviewing superior court's order affirming Board's decision concluding applicant "failed to carry her burden of proving she possesses the requisite general fitness and good moral character" after a *de novo* hearing before the full Board); *In re Legg*, 325 N.C. 658, 666–68, 386 S.E.2d 178–79 (1989) (affirming the Superior Court's decision affirming the Board's order, which found the applicant did not "possess[] the qualifications of character and general fitness requisite for an attorney," following applicant's request for a *de novo* hearing).

Plaintiff's administrative remedy in this case—to request a hearing *de novo* before the full Board pursuant to Rule .1203(2)—is his exclusive one. *See* N.C. R. ADMIS Rule .1203(2) (2015) ("In the event of an adverse determination by the Panel, the applicant may request a hearing de novo before the Board by giving written notice to the Executive Director at the offices of the Board within ten (10) days following receipt of the hearing Panel's determination."). In order to have any possibility of being licensed to practice law in North Carolina, plaintiff was required to follow the

rules for admission. These rules required plaintiff to *appear* for a *de novo* hearing before the full Board and to seek judicial review of any adverse decision. *See* N.C. R. ADMIS Rule .1401 (2015) ("An applicant may appeal from any adverse ruling or determination by the Board as to the applicant's eligibility for admission to practice law.").

On the record before us, there is no evidence that plaintiff appeared for a *de novo* hearing before defendant board—a hearing which he requested—and until such time as plaintiff has availed himself of the effective administrative remedies provided for in the Rules Governing Admission to the Practice of Law, the superior court has no subject matter jurisdiction in this case. Accordingly, the trial court did not err by dismissing plaintiff's complaint under Rule 12(b)(1).

Defendants' Rule 12(b)(6) Motion

Plaintiff also argues that the trial court erred in granting defendants' motion to dismiss pursuant to 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim because the claims brought by plaintiff are valid and distinct. Specifically, plaintiff contends that dismissal of his claims is improper because the resolution of his claims affects future actions and remedies and addresses the improper actions of defendants. We disagree.

Our Supreme Court has addressed review of an order dismissing a claim under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure:

> We determine whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory. . . . Dismissal is warranted if an examination of the complaint reveals that no law supports the claim, or that sufficient facts to make a good claim are absent, or that facts are disclosed which necessarily defeat the claim.

State Emps. Ass'n v. N.C. Dep't of State Treas., 364 N.C. 205, 210, 695 S.E.2d 91, 95 (2010) (internal citations and quotation marks omitted).

N.C. Gen. Stat. § 84-24 establishes defendant Board and provides authorization for defendant Board to examine applicants and make rules and regulations for applicants' admission to the Bar. N.C.G.S. § 84-24. Compliance with the Rules Governing Admission to the Practice of Law as promulgated by defendant Board is the exclusive means for a person to be admitted to practice law. *See Bowens v. Bd. of Law Exam'rs of State of N.C.*, 57 N.C. App. 78, 80, 291 S.E.2d 170, 171 (1982) (holding trial court properly granted Rule 12(b)(6) motion where plaintiffs sought a declaratory judgment declaring rules for admission to practice void and an injunction preventing defendant Board from enforcing the rules and regulations); *see also* 27 NCAC 1C.0102 (2016) ("All applicants for admission to the Bar shall first obtain a certificate or license from the Board of Law Examiners *in accordance with the rules and regulations of that board*." (emphasis added)).

Rule .0501 of the Rules Governing Admission to the Practice of Law provides as a prerequisite to being licensed as an attorney that an applicant must "possess the

qualifications of character and general fitness requisite for an attorney and counselor-at-law, and be of good moral character and entitled to the high regard and confidence of the public . . . ." N.C. R. ADMIS Rule .0501(1), *amended by* 2015 N.C. Court Order 0024 (C.O. 0024) (eff. Sept. 24, 2015). Rule .1203(2) further provides that "[i]n the event of an adverse determination by the Panel, the applicant may request a hearing de novo before the Board by giving written notice . . . within ten (10) days following receipt of the Panel's determination." N.C. R. ADMIS Rule .1203(2) (emphasis added), *amended by* 2015 N.C. Court Order 0024 (C.O. 0024) (eff. Sept. 24, 2015). And finally, Section .1401 of the Rules provides for judicial review of any adverse determination by defendant Board. N.C. R. ADMIS Rule .1401, *amended by* 2015 N.C. Court Order 0024 (C.O. 0024) (eff. Sept. 24, 2015).

Liberally construing plaintiff's complaint in this case, he seeks the following: (1) a declaratory judgment that he possessed the requisite character and fitness required to practice law at the time he stood for and passed the written examination; and (2) a declaratory judgment that a valid contract existed between him and defendant Board. He subsequently filed an amended complaint reiterating and augmenting these claims.

Plaintiff cannot succeed on his claim for a declaration that he has the requisite character and fitness to be licensed to practice law because that decision must be made in the first instance by defendant Board. *See* N.C.G.S. § 84-24 ("The Board of

Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law . . . ."). Likewise, his claim that some contract he has with defendant Board should be enforced cannot succeed, as the procedure for obtaining a law license, as set out in the rules, is the exclusive procedure by which he could be admitted to practice law. *See id.* Plaintiff cannot avoid this procedure by asserting a breach of contract claim.

A panel of defendant Board has already entered an order in this case denying plaintiff's application for admission to practice law on 23 September 2013 because he had "failed to prove to the satisfaction of the Panel that he possesses the qualifications of character and fitness requisite for an attorney and counselor-at-law . . . ."

Plaintiff cannot succeed on his claims in superior court as plaintiff has failed to state a claim upon which relief could be granted. *See Bowens*, 57 N.C. App. at 81, 291 S.E.2d at 171. Accordingly, the trial court's order dismissing plaintiff's complaint under Rule 12(b)(6) was not erroneous.

II

Plaintiff's next argument is that the trial court erred in its Findings of Facts Nos. 3, 6, 7, 9, 11, 12, and 15, which recite dates on which defendants filed various

motions and pleadings. Defendant challenges the trial court's Order Granting Defendants' Motion to Set Aside Entry of Default by asserting that the findings are not supported by the record or the laws of the State of North Carolina. Specifically, plaintiff argues that only defendant Board filed a motion to dismiss and other pleadings and that defendant Board is an entity distinct from its individual members—defendant representatives—who were sued in their representative capacities. We disagree.

Findings of Facts Nos. 3, 6, 7, 9, 11, 12, and 15 are as follows:

> 3. On September 17, 2013, defendants filed a Motion to Dismiss the Plaintiff's Complaint and Petition for Declaratory Judgment pursuant to N.C. R. Civ. Procedure Rule 12.
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> 6. On October 22, 2013, defendants filed a Response in Opposition to Plaintiff's Motion to Amend Process.
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> 7. On March 27, 2014, defendants filed a Motion to Stay Discovery in this action.
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> 9. On August 29, 2014, defendants filed a motion to dismiss plaintiff's First Amended Complaint and Petition for Declaratory Judgment on N.C. R. Civ. Procedure Rule 12 grounds.
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> 11. On September 11, 2014[,] plaintiff sought and received an entry of default from the Clerk of Wake County Superior Court. At the time of the entry of default the defendants had filed two pending motions to dismiss in this matter.[1]

[1] Plaintiff contests Finding of Fact No. 11 for two reasons. First, plaintiff argues that he was not granted an entry of default on 11 September 2014, but rather the entry of default was entered on 21 November 2014. However, Finding of Fact No. 11 does not state that entry of default was "entered"

> 12. On September 19, 2014, defendants filed a Response in Opposition to Plaintiff's Motion for Entry of Default arguing that a default would be inappropriate as the defendants had filed two Motions to Dismiss pursuant to N.C. R. Civ. Rules [sic] 12(b)(1) and 12(b)(6) and those motions were still pending. On that same day defendants certified that a copy of said document was placed in the United States mail, postage prepaid addressed to the plaintiff.
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> 15. Defendants were not in default at any time during the pendency of this lawsuit.

In reviewing declaratory judgment actions where the trial court decides questions of fact, "we review the challenged findings of fact and determine whether they are supported by competent evidence. If we determine that the challenged findings are supported by competent evidence, they are conclusive on appeal. We review the trial court's conclusions of law *de novo*." *Calhoun v. WHA Med. Clinic, PLLC*, 178 N.C. App. 585, 596–97, 632 S.E.2d 563, 571 (2006) (internal citations omitted).

Plaintiff argues that the trial court erred when it found as facts (see above) that defendants had filed a motion to dismiss and other pleadings. He contends that

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on 11 September 2014, it states that "plaintiff *sought and received* an entry of default" on 11 September 2014. (emphasis added). The entry of default was entered and filed on 21 November 2014.

Second, plaintiff argues that Finding of Fact No. 11 is in error because, based on plaintiff's reading of the finding, defendant Board had filed three different motions to dismiss, not two, only one of which was pending at that time. However, Finding of Fact No. 11 goes on to say that, "[a]t the time of *entry* of default [*21 November 2014*] . . . defendants had filed two pending motions to dismiss in this matter." (emphasis added).

only defendant Board filed those pleadings and that defendant Board is an entity distinct from its individual members, defendant representatives. Plaintiff contends that because only two of the defendant representatives in this case signed the Order, which concluded Plaintiff lacked the requisite character and fitness to be issued a license to practice law, the trial court erred because it failed to treat defendant Board and defendant representatives as separate and distinct parties.

"[T]he Board of Law Examiners [is] an administrative agency of the State, with the duty of examining applicants and providing rules and regulations for admission to the Bar." *Bowens*, 57 N.C. App. at 81, 291 S.E.2d at 172 (citation omitted); *see* N.C. Gen. Stat. § 84-15 (2015) (creating the N.C. State Bar as an agency of the State). "[T]he Board of Law Examiners . . . shall consist of 11 members of the Bar . . . ." N.C.G.S. § 84-24.

"A suit against a defendant in his individual capacity means that the plaintiff seeks recovery from the defendant directly; a suit against a defendant in his official capacity means that the plaintiff seeks recovery from the entity of which the public servant defendant is an agent." *Meyer v. Walls*, 347 N.C. 97, 110, 489 S.E.2d 880, 887 (1997) (citation omitted). Suing a defendant in his or her "representative capacity" is the same as suing a defendant in his or her "official capacity." *See, e.g.*, *Hawkins v. State*, 117 N.C. App. 615, 624, 453 S.E.2d 233, 238 (1995) (treating state officers sued in their representative capacities as being sued in their official

capacities). "[O]fficial-capacity suits 'generally represent only another way of pleading an action against an entity of which an officer is an agent.' " *Moore v. City of Creedmoor*, 345 N.C. 356, 367, 481 S.E.2d 14, 21 (1997) (quoting *Kentucky v. Graham*, 473 U.S. 159, 165, 87 L. Ed. 2d 114, 121 (1985)); *see also Karcher v. May*, 484 U.S. 72, 78, 98 L. Ed. 2d 327, 335 (1987) (stating that "the real party in interest in an official-capacity suit is the entity represented and not the individual officeholder").

Here, plaintiff filed his declaratory judgment action against defendant Board, including the eleven individual board members and the Executive and Assistant Executive Director of the Board, each in his or her "representative capacity." Therefore, the individual defendant representatives were sued in their official capacities as members of defendant Board. *See Hawkins*, 117 N.C. App. at 624, 453 S.E.2d at 238; *see also Meyer*, 347 N.C. at 111, 489 S.E.2d at 888 (determining that plaintiff was seeking damages from all defendants, including individuals and their employer, after an examination of the complaint revealed that the caption and allegations named defendants in their official and individual capacities).

Because claims against members of defendant Board in their representative capacities were "merely another way of bringing suit" against defendant Board, there was no need for the pleadings to explicitly specify that they were being filed by the

individual defendants as well. Accordingly, defendant's challenge to the trial court's findings is overruled.

III

Plaintiff's final argument is that the trial court erred in granting Defendants' Motion to Set Aside Entry of Default because defendants have failed to provide "good cause" to set aside the entry of default. Specifically, plaintiff contends the individual defendant representatives were required to show they were entitled to relief pursuant to Rule 60 of the North Carolina Rules of Civil Procedure in order to have entry of default set aside. We disagree.

Rule 55(a) of the Rules of Civil Procedure provides for entry of default:

> When a party against whom a judgment for affirmative relief is sought has failed to plead or is otherwise subject to default judgment as provided by these rules or by statute and that fact is made to appear by affidavit, motion of attorney for the plaintiff, or otherwise, the clerk shall enter his default.

N.C. Gen. Stat. § 1A-1, Rule 55(a) (2015). Pursuant to Rule 55(d), a court may set aside entry of default "[f]or good cause shown." N.C. Gen. Stat. § 1A-1, Rule 55(d) (2015). "This Court follows the principle that '[i]nasmuch as the law generally disfavors default judgments, any doubt should be resolved in favor of setting aside an entry of default so the case may be decided on its merits.' " *Byrd v. Mortenson*, 60 N.C. App. 85, 88, 298 S.E.2d 170, 172 (1982) (alteration in original) (quoting *Peebles v. Moore*, 48 N.C. App. 497, 504–05, 269 S.E.2d 694, 698 (1980)). The trial court's

ruling setting aside entry of default will not be disturbed absent an abuse of discretion. *Luke v. Omega Consulting Grp., LC*, 194 N.C. App. 745, 748, 670 S.E.2d 604, 607 (2009) (citation omitted).

The "good cause" standard of Rule 55(d) is "less stringent than the showing of 'mistake, inadvertence, or excusable neglect' necessary to set aside a default judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b) . . . ." *Brown v. Lifford*, 136 N.C. App. 379, 381–82, 524 S.E.2d 587, 588–89 (2000) (citation omitted); *see also Whaley v. Rhodes*, 10 N.C. App. 109, 110–12, 177 S.E.2d 735, 736–37 (1970) (distinguishing "entry of default" from "default judgment"). Indeed,

> [w]hat constitutes "good cause" depends on the circumstances in a particular case, and within the limits of discretion, an inadvertence which is not strictly excusable may constitute good cause, particularly "where the plaintiff can suffer no harm from the short delay involved in the default and grave injustice may be done to the defendant."

Peebles, 48 N.C. App. at 504, 269 S.E.2d at 698 (quoting *Whaley*, 10 N.C. App. at 112, 172 S.E.2d at 737).

Here, the trial court did not abuse its discretion in this case by setting aside entry of default. Indeed, the trial court correctly concluded that the individual defendant representatives never defaulted.

On 21 November 2014, an assistant clerk of court entered default against defendant representatives in this case because it "appear[ed] to the Clerk that no answer or other pleading ha[d] been filed by the aforementioned [d]efendants at any

time, and that the time for pleading ha[d] expired." Subsequently, on 21 May 2015, the trial court set aside entry of default, concluding that "[d]efendants were not in default at any time during the pendency of this lawsuit."

As shown herein, defendant representatives, as members of defendant Board, were sued in their representative capacities and, therefore, are one and the same with defendant Board. *See Moore*, 345 N.C. at 367, 481 S.E.2d at 21 ("[O]fficial-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent." (citation omitted) (internal quotation marks omitted)). Because defendant Board filed responsive pleadings in this case, it follows that all defendants filed responsive pleadings and were never in default. Accordingly, the trial court did not abuse its discretion by setting aside entry of default, and plaintiff's argument on this point is overruled.

For the foregoing reasons, the judgment of the trial court is

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e)