IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-304

Filed 17 October 2023

Mecklenburg County, No. 21 CVS 650

THOMAS P. MOORE, III, Plaintiff,

v.

JOSEPH P. PRITCHARD and IRIS K. PRITCHARD, Defendants.

Appeal by defendant from orders entered 24 January 2022 by Judge Lisa Bell and 29 August 2022 by Judge Reggie E. McKnight in Mecklenburg County Superior Court. Heard in the Court of Appeals 20 September 2023.

Hutchens Law Firm LLP, by Michael B. Stein, for Plaintiff-Appellee.

Devore, Acton & Stafford, P.A., by Joseph R. Pellington, for Defendants-Appellants.

DILLON, Judge.

This case arises from the default judgment concerning a default of a note and deed of trust on the Pritchard home.

I. Background

In 2009, Defendants Joseph and Iris Pritchard renewed a line of credit with Bank of Granite, secured by their residence in Charlotte (the "Property"). In the

transaction, the Pritchards executed a note and deed of trust.

Years later, around 2013, the Pritchards were in default on the line due to missed payments. The bank, therefore, exercised its right to call the entire line balance due and initiate foreclosure proceedings. However, while the proceedings were pending, Plaintiff Thomas Moore, a friend of the Pritchards, purchased the bank's[1] interest in the note and deed of trust. Mr. Moore and the Pritchards entered an agreement extending the term of the note to October 2016, allowing the Pritchards time to make monthly payments and refinance the debt.

However, in October 2016 when the note came due, the Pritchards defaulted by failing to pay off the note. Additionally, they defaulted by missing several monthly payments during the term, failing to keep the Property insured, and falling behind on the *ad valorem* taxes due on the Property.

In January 2021, Mr. Moore filed this action against the Pritchards, seeking to recover the balance due under the note and to foreclose on the Property.

In May 2021, the Pritchards were served the complaint. In July 2021, Mrs. Pritchard died. Neither ever filed an answer, though Mr. Pritchard was represented by counsel. Accordingly, in August 2021, the court entered default against Mr. Pritchard.

In December 2021, after a hearing on the matter, the trial court entered a

[1] Mr. Moore purchased from Bank of Granite's successor, CommunityOne Bank.

default judgment against Mr. Pritchard in the amount of $208,333.64 plus interest and court costs, including $31,250.05 in attorneys' fees. The trial court, however, deferred ruling on Mr. Moore's right to foreclose on the Property.

In March 2022, Mr. Moore filed an amended complaint, adding a claim for money owed under a separate note. Mr. Pritchard retained new counsel.

In August 2022, after a hearing on the matter, the trial court entered an order which allowed foreclosure of the Property and granted Mr. Moore's motion for entry of default and default judgment for $15,000 plus interest and costs.

II. Analysis

On appeal, Mr. Pritchard argues that the trial court erred by entering default judgments against him because the affidavits of service were defective and he otherwise never made a general appearance. Mr. Pritchard further argues that the trial court erred by denying his motion for relief from entry of default and default judgment. We address each contention in turn.

A. Service of Process

Mr. Pritchard contests whether he was properly served with process in this case. Because the affidavit includes the *date* of service with no mention of the *time* on that day in which service was made, Mr. Pritchard argues the affidavit does not comply with N.C. Gen. Stat. § 1-75.10, which requires the affidavit to show the "place, *time* and manner of service." (Emphasis added.) We disagree.

The record shows that, after the Mecklenburg County Sheriff failed to serve

the Pritchards after multiple visits to their residence, Mr. Moore attempted to serve the Pritchards by certified mail. After no success, Mr. Moore hired a private process server. The private process server successfully served the Pritchards on 15 May 2021 and signed an affidavit testifying to this personal service, which included the place, *date*, and manner of service.

Our Supreme Court has recognized that our Rules of Civil Procedure are to be constructed liberally. *Lemons v. Old Hickory Council, Boy Scouts of America, Inc.*, 322 N.C. 271, 275, 367 S.E.2d 655, 657 (1988).

Here, we note the supplemental record contains the filed amended affidavit from the private process server in which he avers that service was accomplished "at approximately 10:30 a.m. . . . ." Accordingly, assuming an affidavit of service which fails to include the time of day is insufficient, such is not the case here.

Further, the date contained in the original affidavit satisfies the "time" requirement of § 1-75.10 in this case. It is the *date* of service, irrespective of the time of day, which starts the clock on a defendant to respond. That is, no matter the time Mr. Pritchard was served on 15 May 2021, he had until the end of the day on 14 June 2021 to answer.

B. Rule 60(b) Relief

Our Rules of Civil Procedure allow for relief from a judgment or order due to "[m]istake, inadvertence, surprise, or excusable neglect" or "[a]ny other reason justifying relief from the operation of the judgment." N.C. Gen. Stat. § 1A-1, Rule

60(b)(1), (6). We review this issue under an abuse of discretion standard. *Thomas M. McInnis & Assocs., Inc. v. Hall*, 318 N.C. 421, 425, 349 S.E.2d 552, 554 (1986).

Here, Mr. Pritchard argues the trial court erred in denying his motion for relief from default judgment pursuant to Rules 60(b)(1) and (b)(6), citing his advanced age, the death of his wife, and his disagreement of the accounting on the amount he owed.

To warrant relief, "the moving party must show that the judgment rendered against him was due to his excusable neglect and that he has a meritorious defense." *Id.* at 424, 349 S.E.2d at 554. "[W]hat constitutes excusable neglect depends upon what, under all the surrounding circumstances, may be reasonably expected of a party in paying proper attention to his case." *Id.* at 425, 349 S.E.2d at 555. "Excusable neglect must have occurred at or before entry of judgment and must be the cause of the default judgment being entered." *Id.* "[T]he trial court's decision is final if there is competent evidence to support its findings and those findings support its conclusion." *In re Hall*, 89 N.C. App. 685, 687, 366 S.E.2d 882, 884 (1988).

However, there was competent evidence in the record showing that Mr. Pritchard and his counsel attended multiple court proceedings and he was clearly aware of this lawsuit before the trial court entered the default judgments.

Accordingly, we cannot say that the trial court abused its discretion by denying Mr. Pritchard's motion for Rule 60(b) relief.

AFFIRMED.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).