

[Cite as *Collins Financial Servs., Inc. v. Howell*, 2009-Ohio-6184.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COLLINS FINANCIAL SERVICES, INC.

Plaintiff-Appellant

-vs-

STEPHANIE HOWELL

Defendant-Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. W. Scott Gwin, J.

Hon. Julie A. Edwards, J.

Case No. 2009CA0073

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 2008CV2204D

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 19, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

FREDERICK STRATMANN

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Farmer P.J.

{¶1} On October 18, 2001, appellee, Stephanie Howell, entered into an agreement with CIT Online Bank for the advancement of \$1,547.57. Appellee agreed to pay an interest rate of 26.99% per annum and make 48 monthly payments of \$53.05. Appellee subsequently defaulted on the loan.

{¶2} The account was sold to appellant, Collins Financial Services, Inc. On December 8, 2008, appellant filed a complaint against appellee for money due and owing. Because appellee failed to answer, appellant filed a motion for default judgment on February 10, 2009. By judgment entry filed February 12, 2009, the trial court granted the motion.

{¶3} On March 4, 2009, appellee filed a motion for relief from judgment pursuant to Civ.R. 60(B). By order and judgment entry filed May 22, 2009, the trial court granted the motion.

{¶4} This matter is now before his court for consideration. Assignment of error is as follows:

I

{¶5} "THE TRIAL COURT ABUSED ITS DISCRETION BY HOLDING THAT APPELLEE'S FAILURE TO APPEAR OR ANSWER APPELLANT'S COMPLAINT WAS 'EXCUSABLE NEGLIGENCE' THAT ENTITLED APPELLEE TO RELIEF FROM JUDGMENT PURSUANT TO RULE 60(B) OF THE OHIO RULES OF CIVIL PROCEDURE."

I

{¶6} Appellant claims the trial court erred and abused its discretion in granting appellee's motion for relief from judgment pursuant to Civ.R. 60(B). We disagree.

{¶7} A motion for relief from judgment under Civ.R. 60(B) lies in the trial court's sound discretion. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75. In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. In *GTE Automatic Electric Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus, the Supreme Court of Ohio held the following:

{¶8} "To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken."

{¶9} In its order and judgment entry filed May 22, 2009, the trial court granted appellee's motion from relief from justice "on the grounds of excusable neglect and in the interest of justice."

{¶10} In her affidavit filed March 4, 2009, appellee averred the following:

{¶11} "3. I received a Scheduling Order in this case before I received the Complaint. I was not sure what I was supposed to do. I phoned the clerk of courts, but

they could not provide advice to me on how to respond. I phoned Collins Financial's attorney, but he did not return my call.

{¶12} "4. When I received the Complaint in this case from the Clerk by mail, I do not recall seeing a summons with it. I read the Complaint, but did not see any instructions for how I was supposed to respond.

{¶13} "5. I have no legal training."

{¶14} Appellant argues this does not constitute "excusable neglect" because appellee waited until March to seek counsel and/or request relief, and has failed to prove unusual or special circumstances. Appellee's claim of "lack of legal training" is not enough.

{¶15} Although we concur that the claim of lack of legal training or ability to secure counsel does not constitute excusable neglect, we find there are other facts that support the trial court's decision.

{¶16} First, there is the issue as to whether or not a summons was attached to the regular mail service of the complaint. Secondly, the trial court sent out a scheduling order for an initial scheduling conference before default judgment was granted. Clearly an unsophisticated person might assume she would get her "day in court" at the scheduling conference.

{¶17} We further find that the lapse of less than thirty days from the filing of the motion for default judgment to the motion for relief from judgment constituted a timely motion. In addition, appellee advanced a meritorious defense (statute of limitations and failure to attach necessary paperwork).

{¶18} Upon review, we find the trial court did not abuse its discretion in granting appellee relief from judgment.

{¶19} The sole assignment of error is denied.

{¶20} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Edwards, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ Julie A. Edwards

JUDGES

SGF/db 1028

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

COLLINS FINANCIAL SERVICES, INC.	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
STEPHANIE HOWELL	:	
	:	
Defendant-Appellee	:	CASE NO. 2009CA0073

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer_____

s/ W. Scott Gwin_____

s/ Julie A. Edwards_____

JUDGES