

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

GOOD SAMARITAN HEALTH GROUP,
INC.

Appellant

v.

STEPHEN STANCHAK

Appellee

C. A. No. 09CA009526

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CV156448

DECISION AND JOURNAL ENTRY

Dated: September 8, 2009

CARR, Judge.

{¶1} Appellant, Good Samaritan Health Group, Inc. (“Good Samaritan”), appeals the judgment of the Lorain County Court of Common Pleas. This Court reverses.

I.

{¶2} Good Samaritan is a nursing facility. On February 26, 2005, Stephen Stanchak was admitted as a resident to the facility. His son, appellee, Scott Stanchak (“Scott”), signed an admission agreement with Good Samaritan in regard to his father’s admission to the facility. Scott signed as the “responsible party,” i.e., the “person who has legal access to and guarantees payment from the Resident’s own income, assets or resources, including Social Security, pension or retirement funds, annuities, insurance, etc., for charges incurred by the Resident for services performed by the Facility or on the Resident’s behalf by any other person or company for which the Resident is or would be responsible for payment to or through Facility billing.” The agreement provided that the responsible party “would be liable for services rendered to the

Resident by the Facility, to the extent of the Resident's income, assets or resources to which the Responsible Party has legal access." Scott signed the agreement pursuant to a power of attorney.

{¶3} On April 24, 2008, Good Samaritan filed a complaint, alleging claims for breach of contract and unjust enrichment against both Scott and his father, and alleging a claim for liability of attorney-in-fact pursuant to R.C. 1337.092 against Scott. On June 12, 2008, Good Samaritan moved for default judgment against Scott and his father. The trial court scheduled a default hearing on June 29, 2008. On July 28, 2008, the trial court issued a journal entry in which it granted default judgment against both defendants, jointly and severally, and in favor of Good Samaritan, and awarded damages in the amount of \$60,910.04, plus interest.

{¶4} On July 30, 2008, Stephen Stanchak moved to file an answer to the complaint instant for the reason that counsel had not been retained until after the time to answer had elapsed. On August 1, 2008, the trial court vacated the July 28, 2008 default judgment and granted leave to file an answer. On August 8, 2008, Scott filed an answer, entering general denials to the allegations and failing to assert any affirmative defenses. Stephen Stanchak never filed his own answer notwithstanding his motion to do so.

{¶5} On September 4, 2008, Good Samaritan filed a motion for summary judgment as against Scott, and a motion for default judgment as against Stephen Stanchak. On September 18, 2008, the trial court ordered that Scott must respond to the motion for summary judgment by October 3, 2008; that Good Samaritan would have seven days to reply; and that the court would rule thereafter. The trial court further scheduled a default hearing for October 23, 2008. On October 10, 2008, Good Samaritan filed another motion for default judgment as against Stephen Stanchak, appending the memorandum in support which was not appended to its earlier motion. The trial court subsequently granted default judgment against Stephen Stanchak and in favor of

Good Samaritan in the amount of \$60,910.04, plus interest. The same day, the trial court granted summary judgment against Scott and in favor of Good Samaritan in the amount of \$60,910.04, plus interest. On October 28, 2008, Good Samaritan filed a notice of debtor's exam, noticing the deposition of Scott.

{¶6} On October 31, 2008, Scott filed a motion "to vacate" summary judgment pursuant to Civ.R. 60(B)(1). Good Samaritan opposed the motion. On December 10, 2008, the trial court granted Scott's motion for relief from judgment and scheduled a later pretrial conference. Good Samaritan filed a timely appeal, raising one assignment of error for review.

II.

ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE SCOTT STANCHAK'S MOTION FOR RELIEF FROM JUDGMENT WHERE NO EXCUSABLE NEGLIGENCE WAS SHOWN, AND NO MERITORIOUS DEFENSES WERE ASSERTED."

{¶7} Good Samaritan argues that the trial court erred by granting Scott's motion for relief from judgment pursuant to Civ.R. 60(B)(1) because Scott failed to show excusable neglect or assert a meritorious defense. This Court agrees.

{¶8} The decision to grant or deny a motion for relief from judgment pursuant to Civ.R. 60(B) lies in the sound discretion of the trial court and will not be disturbed absent an abuse of the discretion. *Strack v. Pelton* (1994), 70 Ohio St.3d 172, 174. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the

abuse of discretion standard, this Court may not substitute its judgment for that of the trial court.

Id.

{¶9} Civ.R. 60(B) states, in relevant part,

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.”

{¶10} To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate that

“(1) the party has a 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.” *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus.

“The requirements of Civ.R. 60(B) are stated in the conjunctive; if one of the requirements are not met, relief from judgment cannot be granted.” *Wolotsky v. Portage Path Community Mental Health Ctr.* (Apr. 12, 1995), 9th Dist. No. 16827, citing *Strack*, 70 Ohio St.3d at 174.

{¶11} Scott failed to demonstrate that he was entitled to relief under the grounds alleged in Civ.R. 60(B)(1). He asserted in his motion for relief from judgment that he was operating under the misconception that a third-party, non-party to the action, would pay his father’s bills, so that he did not have to respond to the motion for summary judgment. First, if another party was obligated to pay his father’s bills in his place, he could have presented evidence of

indemnification in a response to the motion for summary judgment or alleged such a meritorious defense in his motion for relief from judgment. He did neither.

{¶12} Second, Scott's belief that someone else would pay the charges incurred in relation to his father's residency, thereby making Good Samaritan whole and negating the basis for any claim for relief, does not constitute excusable neglect entitling him to relief from judgment. The Ohio Supreme Court has held that a party's inaction rising to the level of a "complete disregard for the judicial system" cannot constitute excusable neglect. *Kay v. Marc Glassman, Inc.* (1996), 76 Ohio St.3d 18, 20.

{¶13} In this case, "All Parties" were served with the trial court's September 18, 2008 journal entry directing Scott to respond to Good Samaritan's motion for summary judgment by October 3, 2008. Scott does not deny that he had notice of the motion and the response date. In his appellee's brief, Scott asserts that a magistrate from the court led him to believe that a response to the motion for summary judgment was not necessary. However, the only guidance by the court in the record is the trial court's order establishing Scott's response date to the motion for summary judgment. Ignoring the trial court's known deadline in the belief that a non-party to the action would pay the monies owed to Good Samaritan and negate the claims in the pending lawsuit does not constitute excusable neglect. Rather, such inaction by Scott evidenced a complete disregard for the legal system. The trial court's order granting Scott's motion for relief from judgment was unreasonable. Accordingly, the trial court abused its discretion by granting the motion. Good Samaritan's assignment of error is sustained.

III.

{¶14} Good Samaritan's sole assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas is reversed, and the cause remanded for further proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

DONNA J. CARR
FOR THE COURT

MOORE, P. J.
CONCURS

DICKINSON, J.
CONCURS, SAYING:

{¶15} I concur in the majority’s reversal. While I acknowledge that the Ohio Supreme Court has written that an abuse of discretion standard applies to the review of a ruling on a motion for relief from judgment, in practice the Court has applied a de novo standard: “In order for a party to prevail on a motion for relief from judgment under Civ.R. 60(B), the movant must demonstrate the following These requirements are independent and in the conjunctive; thus the test is not fulfilled if any one of the requirements is not met.” *Strack v. Pelton*, 70 Ohio St. 3d 172, 174 (1994). In this case, Mr. Stanchak failed to demonstrate that his failure to respond to Good Samaritan’s motion for summary judgment was a result of excusable neglect. Accordingly, as a matter of law, he was not entitled to relief from judgment, and the trial court made a mistake of law by granting him that relief.

APPEARANCES:

BRIAN GREEN, and KAREN BURKE, Attorneys at Law, for Appellant.

DONALD M. ZALESKI, Attorney at Law, for Appellee.