

[Cite as *Susany v. DiBlasio*, 2017-Ohio-729.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

MARILYN SUSANY)	CASE NO. 15 MA 0066
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
BEN DiBLASIO)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Struthers
Municipal Court of Mahoning County,
Ohio
Case No. 14 CVF 355

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. Mark Lavelle
1045 Tiffany South
Youngstown, Ohio 44514
No Brief Filed

For Defendant-Appellant: Atty. Lynn Sfara Bruno
Atty. Charles A.J. Strader
412 Boardman-Canfield Road
Youngstown, Ohio 44512

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: February 24, 2017

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WAITE, J.

{¶1} Appellant Ben DiBlasio appeals an April 8, 2015 decision of the Struthers Municipal Court denying his motion to vacate a default judgment. Asserting Civ.R. 60(B)(1) grounds, Appellant argues that his failure to respond to the complaint is excusable because of his unfamiliarity with the legal system. Additionally, he argues that he was not served with the motion for default judgment, which he claims is grounds for excusable neglect. For the reasons that follow, Appellant’s argument is without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellant and Appellee Marilyn Susany entered into a non-written lease involving rental property located at 711 Eighth Street in Struthers, Ohio. The record does not provide details of the parties’ agreement; however, based on the damages award, it appears that the rent was \$400 per month. According to Appellant, he voluntarily vacated the property on July 1, 2014. On August 25, 2014, Appellee filed a complaint alleging that Appellant failed to pay rent in February, July, and August of 2014. The complaint also alleged that Appellant damaged the property and removed several items from the property without permission.

{¶3} Appellant admits that he was served with the summons and complaint on August 29, 2014. Although the summons and complaint were initially sent to Appellant at the rental property address, the docket sheet reflects that a new address at 204 Creed Street was provided and Appellant was served at that address. The summons stated, in relevant part, “[f]ailure to appear and present a defense to this complaint will result in a judgment by default being rendered against you for the relief

demanded in the complaint.” (8/26/14 Summons.) The language of the complaint also informed Appellant that he had 28 days to respond.

{¶14} Appellant claims that, when he received service, he called Appellee’s attorney who allegedly advised him that he had three options: (1) he could hire an attorney, (2) he could answer the complaint, or (3) he could do nothing. Appellant claims that he then called the Mahoning County Bar Association and that someone there told him he did not have to take any action. He also claims that he consulted with an attorney online, who provided similar advice. Appellant chose not to respond to the complaint. Consequently, on October 30, 2014, Appellee filed a motion for default judgment. Although Appellant states that he was not served with this motion, the certificate of service states that a copy of the motion was sent by regular mail to him at 204 Creed Street, Struthers, Ohio. Appellant admits that he received the summons and complaint at this address. Appellant again failed to respond. Consequently, on November 7, 2014, the trial court granted Appellee’s motion for default judgment.

{¶15} On January 7, 2015, Appellant was served at his 204 Creed Street address with a notice of a debtor’s exam hearing. Shortly thereafter, Appellant obtained counsel. On January 30, 2015, his counsel filed a motion to vacate the default judgment based on Civ.R. 60(B)(1) grounds. On April 8, 2015, the court held a hearing and denied Appellant’s motion that same day. On May 13, 2015, the trial court granted Appellant’s motion for a stay pending appeal. We note that Appellee did not file a brief in this matter.

Assignment of Error

That pursuant to Civil Rule 60(B), the trial court erred in overruling the Defendant/Appellant's, Ben DiBlasio, Motion to Vacate the Default Judgment of November 7, 2014.

{¶6} Pursuant to Civ.R. 55(B), a court is empowered to set aside a default judgment in accordance with Civ.R. 60(B). *Provenzano v. Yarnish*, 7th Dist. No. 14 BE 0042, 2016-Ohio-7181, ¶ 26.

To prevail on a motion brought under Civ. R. 60(B), the movant 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., 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

{¶7} Appellant contends that the trial court erroneously denied his motion to vacate default judgment. As a meritorious defense, Appellant argues that Appellee failed to attach a copy of the lease to the complaint. As to excusable neglect, Appellee argues that this Court must take all relevant circumstances into consideration, including his unfamiliarity with civil litigation, the "legal advice" he received regarding his obligations, and his limited financial resources.

{¶18} As Appellant filed his motion to vacate judgment two months after the default judgment was granted, the motion was timely. Appellant asserts that Appellee failed to attach a copy of the lease to the complaint or explain within the complaint why the document was not attached. He claims that this provides him with a meritorious defense to Appellee's claim. While it is questionable that Appellant has, in fact, asserted a valid defense, a defendant need only allege the basis for a defense he believes to be meritorious. He need not prove that he will prevail on that defense. *Hamilton v. Spirtos*, 7th Dist. No. 01-CA-58, 2002-Ohio-1562, ¶ 26, citing *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). Even if we were to find that Appellant has met this element, he must still demonstrate that he is entitled to relief under one of the five grounds listed in Civ.R. 60(B)(1) through (5).

{¶19} Appellant argues that his failure to respond constitutes excusable neglect. Acknowledging that the concept of excusable neglect is elusive, courts have defined it in the negative: "neglect is not excusable if it represents complete disregard for the judicial system." *WFMJ Television, Inc. v. AT&T Fed. Systems-CSC*, 7th Dist. No. 01 CA 69, 2002-Ohio-3013, ¶ 17. When excusable neglect is asserted, a reviewing court must take all surrounding facts and circumstances into consideration. *Id.* A trial court's ruling on a Civ.R. 60(B) motion is reviewed for an abuse of discretion. *Norman v. Hanover Motor Cars, Inc.*, 7th Dist. No. 11 CO 13, 2012-Ohio-2697, ¶ 16. "[W]hen determining whether a court's decision is unreasonable, we must look at whether there is a sound reasoning process that would support the decision." *Id.* at ¶ 31.

{¶10} Appellant bases his motion on his unfamiliarity with the legal system. Appellant claims that he did not understand his obligations after receiving the complaint. He asserts that he contacted Appellee's attorney, the local bar association and that he contacted an attorney online and that all of these provided him with the "advice" that he could ignore the summons and complaint.

{¶11} We recognize that none of these entities actually represented Appellant in any legal capacity. Importantly, the record shows that Appellant has presented absolutely no evidence, other than his mere assertion, to support his claims regarding this "legal advice." The trial court heard his assertions and apparently found them to lack credibility. Even so, an attorney's neglect is imputed to his or her client for purposes of Civ.R. 60(B)(1). *G.T.E., supra*, paragraph four of the syllabus, citing *Link v. Wabash R. R. Co.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). Thus, Appellant's purported "legal advice" does not excuse his neglect, here.

{¶12} Appellant next argues that he is unfamiliar with civil litigation and did not understand that judgment could be entered against him if he failed to answer the complaint. However, Appellant admits he received the summons, which stated: "[f]ailure to appear and present a defense to this complaint will result in a judgment by default being rendered against you for the relief demanded in the complaint." (8/26/14 Summons.) Language in the complaint further explained that Appellant had twenty-eight days to respond to Appellee and three additional days to file his response with the court. Regardless, inexperience with the legal system, alone, does not form the basis for excusable neglect. *John Soliday Fin. Group, L.L.C. v.*

Moncreace, 7th Dist. No. 09 JE 11, 2011-Ohio-1471, ¶ 18, citing *Colley v. Bazell*, 64 Ohio St.2d 243, 249, 416 N.E.2d 605 (1980).

{¶13} Finally, Appellant claims that he was not served with Appellee's motion for default judgment. The certificate of service states that a copy of the motion was sent to Appellant by regular mail at 204 Creed Street, Struthers, Ohio. This is the same address where Appellant received the complaint and motion for a debtor's exam, by his own admission.

{¶14} Based on this record, Appellant cannot demonstrate excusable neglect. Accordingly, his arguments are without merit and his sole assignment of error is overruled.

Conclusion

{¶15} Appellant contends that the trial court erroneously denied his Civ.R. 60(B)(1) motion despite his inexperience with the legal system. However, Appellant's arguments do not rise to the level of excusable neglect under Ohio law. Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P.J., concurs.