

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Ohio Receivables, LLC

Court of Appeals No. L-13-1094

Appellant

Trial Court No. CVF-11-07962

v.

Jimmie F. Hamblin

DECISION AND JUDGMENT

Appellee

Decided: March 28, 2014

* * * * *

Jackson T. Moyer and Elliott B. Garvey, for appellant.

James C. MacHarg, for appellee.

* * * * *

JENSEN, J.

{¶ 1} Appellant, Ohio Receivables, LLC, appeals from the order of the Toledo Municipal Court granting appellee Jimmie F. Hamblin’s motion to vacate default judgment. For the reasons that follow, we set aside the order of the trial court vacating

default judgment. We reverse and remand the matter to the trial court for further proceedings.

{¶ 2} On May 11, 2011, Ohio Receivables, LLC, filed a complaint against Jimmie F. Hamblin for monies owed on an account. The clerk of court served a copy of the complaint by certified mail on May 20, 2012. Certified mail service was returned, unclaimed. The clerk then served a copy of the complaint by ordinary United States Mail on June 14, 2011.

{¶ 3} On August 10, 2011, the trial court granted appellant's motion for default judgment. Judgment was journalized August 15, 2011. After appellee failed to appear at several post-judgment hearings, the trial court issued a *capias* order. On January 29, 2013, appellee entered an appearance through counsel, and a show cause hearing was scheduled.

{¶ 4} At the March 11, 2013 show cause hearing, appellee's counsel orally moved to vacate the default judgment stating, "I have not seen evidence of service of the initial Complaint." The trial court reviewed the file and noted that certified mail was unclaimed and stated "[w]ithout service, I need to vacate." The court then granted appellee's motion. Solely

{¶ 5} Appellant timely appealed, asserting the following assignment of error for review.

TRIAL COURT ABUSED ITS DISCRETION BY VACATING
THE UNDERLYING JUDGMENT BASED SOLEY [SIC] ON ORAL

REPRESENTATIONS OF DEFENDANT’S COUNSEL AND ABSENT
ANY SUPPORTING EVIDENCE.

{¶ 6} The trial court has discretion in deciding a motion for relief from judgment under Civ.R. 60(B). *Griffey v. Rajan*, 33 Ohio St.3d 75, 77, 514 N.E.2d 1122 (1987); *Laatsch v. Laatsch*, 6th Dist. Wood No. WD-05-101, 2006-Ohio-2923, ¶ 16. An abuse of discretion is more than an error of law or judgment, but rather, it is a finding that the court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 7} The trial court, in granting appellee’s motion to vacate judgment, found that appellee had not been served with a copy of the complaint. In so finding, the court failed to recognize the sufficiency of ordinary mail service under the Ohio Rules of Civil Procedure.

{¶ 8} Pursuant to Civ.R. 4.1, service can be perfected by certified mail, personally, or residentially. Where certified mail is “unclaimed,” the civil rules provide that service may be made by ordinary mail. Civ.R. 4.6(D). The record reflects that when the certified mail sent to appellee was returned “unclaimed,” ordinary mail service was requested and made. Under the rule, “[s]ervice shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery.” *Id.* Here, the record indicates that a copy of the complaint was mailed to appellee by ordinary mail. There is nothing in the record that indicates such service was returned to the postal

authorities. Further, there is nothing in the record that indicates the trial court heard any evidence to support a conclusion that appellee did not receive a copy of the complaint by ordinary mail. In other words, appellee did not overcome the rebuttable presumption of proper service. *See Rafalski v. Oakes*, 17 Ohio App.3d 65, 66, 477 N.E.2d 1212 (8th Dist.1984). Accordingly, we find the trial court acted in an unreasonable, arbitrary, or unconscionable manner in granting the motion to vacate judgment. Appellant's assignment of error is well-taken.

{¶ 9} Judgment of the Toledo Municipal Court is reversed. We remand this matter to the trial court for further proceedings consistent with this decision. The costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.