Affirmed and Memorandum Opinion filed June 1, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00508-CV

ARNOLD "BLU" SHIELDS, Appellant

V.

SCOTT CONKLING AND MELISSA CONKLING, Appellees

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 15-CV-0112

M E M O R A N D U M O P I N I O N

Appellant Arnold Shields appeals from the trial court's post-answer default judgment. Shields asserts that the suit against him violated a litigation stay imposed by a separate bankruptcy proceeding and that the trial court abused its discretion in failing to rule on pending motions. Having reviewed the record in light of the issues raised by Shields, we find no error in the trial court's judgment, and we affirm.

Background

Appellees Scott and Melissa Conkling hired Blu Shields Construction, LLC ("BSC") to construct a new home. Arnold Shields is the owner of BSC. The Conklings paid a $35,000 construction deposit to Galveston Service Company, which the Conklings allege is an assumed name for BSC and/or Shields. But, according to the Conklings, the only work performed at the new home site was the installation of an electrical pole for the job site and occasional mowing of the property.

Several months later, the bank financing the Conklings' construction project advised the Conklings that Shields was in bankruptcy and the bank would not fund the Conklings' project due to Shields's bankruptcy. Scott Conkling requested the return of the $35,000 deposit. When BSC failed to return the deposit, the Conklings sued BSC and Shields for conversion, fraud, money had and received, violations of the Texas Deceptive Trade Practices Act, breach of contract, misappropriation of trust funds, and breach of fiduciary duty; the Conklings premised their allegations against Shields individually on an alter-ego theory.

BSC and Shields were initially represented by counsel and filed answers to the Conklings' petition. BSC's answer was filed subject to a plea to the jurisdiction, and Shields's answer was filed subject to a motion to dismiss. Both the plea to the jurisdiction and the motion to dismiss were based on the argument that the Conklings' suit violated an automatic litigation stay imposed by virtue of Shields's bankruptcy proceeding. There is no order in the record granting or denying the plea to the jurisdiction or the motion to dismiss.

The trial court held a pretrial conference on March 21, 2016, and set the case for trial on March 28, 2016. BSC and Shields failed to appear on either date.

On March 28, 2016, the trial court granted a motion to withdraw filed by defendants' counsel, and the court gave the defendants thirty days to obtain new counsel. The court set a status conference for April 28, 2016, and sent notice to the defendants. The trial court's judgment states that BSC and Shields failed to appear at the status conference. There is no indication in the record of any appearance by subsequently retained counsel for BSC or Shields.

On April 28, 2016, the Conklings moved to strike BSC's pleadings for failure to obtain representation,[1] moved for no-answer default judgment against BSC, and moved for post-answer default judgment against Shields due to Shields's failure to appear for trial.

The trial court held a hearing on the Conklings' motion for default judgment on May 26, 2016. Shields did not appear. The trial court struck BSC's pleadings, rendered default judgment against BSC and Shields, and awarded the Conklings actual and exemplary damages, plus prejudgment interest, postjudgment interest, attorney's fees, and court costs.

Both BSC and Shields appealed the trial court's judgment. BSC was dismissed from this appeal by order dated October 25, 2016, for failure to obtain representation. Shields is the sole appellant.

Analysis

Shields is proceeding pro se in this appeal. Though it is difficult to discern the exact issues raised in his brief, which is entirely lacking an argument section or any citation to authority, we believe he presents the following issues for review:

[1] A limited liability company cannot represent itself in a lawsuit, but must be represented by a licensed attorney. *See Sherman v. Boston*, 486 S.W.3d 88, 95-96 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) ("Allowing a non-attorney to present a company's claim would permit the unlicensed practice of law. As a result, courts hold that a non-attorney representative cannot appear for a limited liability company or present a case on its behalf.").

first, he argues that the trial court erred in granting the default judgment; second, he argues that the trial court abused its discretion in failing to rule on pending motions before rendering judgment; and third, he argues that the trial court ignored an agreed motion for continuance. We address each issue in turn.

A. Post-answer default judgment

A post-answer default judgment occurs when a defendant who has answered fails to appear for trial. *See Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 925 (Tex. 2009) (per curiam). The record shows that Shields received notice of the trial setting on March 28, 2016, but failed to appear. The record also shows that Shields failed to appear at the April 28, 2016, status conference. Therefore, the Court had grounds to render a post-answer default judgment. *See id.*; *accord also Koslow's v. Mackie*, 796 S.W.2d 700, 703-04 (Tex. 1990) (rendering default judgment is not unjust sanction for failure to prepare status report and failure to appear at subsequent disposition hearing, as ordered).

In a post-answer default, a trial court may not render judgment on the pleadings, and the plaintiff is required to offer evidence and prove all aspects of its claim or claims. *Lerma*, 288 S.W.3d at 930.[2] Here, the Conklings submitted an affidavit from Scott Conkling to prove the $35,000 in actual damages. Even construed liberally, Shields's brief does not challenge the legal or factual sufficiency of the evidence supporting the default judgment. *See, e.g.*, *Reagins v. Walker*, No. 14-15-00764-CV, 2017 WL 924498, at *3 (Tex. App.—Houston [14th Dist.] Mar. 7, 2017, no pet. h.) ("We review the sufficiency of the evidence supporting a post-answer default judgment under the same standards of review governing the [legal and factual] sufficiency of the evidence at a contested trial.");

[2] In contrast, a defendant in a no-answer default case admits all facts properly pled except for the amount of unliquidated damages. *See Lerma*, 288 S.W.3d at 930.

see also Massey v. Massey, No. 01-02-00196-CV, 2003 WL 21665612, at *2 (Tex. App.—Houston [1st Dist.] July 17, 2003, pet. denied) (mem. op.) (noting that courts read pro se briefs broadly but may not apply a lesser legal standard).

Rather than challenging the sufficiency of the evidence, Shields's sole contention seems to be that the trial court erred in granting the default judgment on a "voided" lawsuit. We construe this assertion as an argument that the present lawsuit should not have proceeded because Shields was in bankruptcy.[3] The record indicates that the bankruptcy court dismissed Shields's Chapter 13 bankruptcy on February 6, 2015, on motion of the trustee. The Conklings added Shields as a defendant on November 23, 2015. The record does not indicate any violation of a bankruptcy stay.

We overrule Shields's first issue.

B. Failure to rule on pending motions

BSC filed a plea to the jurisdiction and Shields filed a motion to dismiss in the trial court, both raising the argument that the Conklings' suit was void because it violated the automatic stay under the Bankruptcy Code.[4] The motions were submitted without an oral hearing, but the trial court did not rule on either motion before rendering judgment. Shields argues that the court's actions constitute a failure to rule and an abuse of discretion.

In our discussion above, we conclude that the trial court did not err in granting default judgment against Shields. The motions were "effectively denied" when the trial court rendered judgment. *See, e.g.*, *Nabelek v. Dist. Att'y of Harris*

[3] *See* 11 U.S.C. § 362 (filing a bankruptcy petition operates as a stay to commencement of judicial proceeding against debtor).

[4] BSC filed the plea to the jurisdiction before Shields was joined as a defendant; in his motion to dismiss, Shields incorporated by reference BSC's plea to the jurisdiction. We assume arguendo that Shields can raise appellate issues pertaining to a co-defendant's motion.

Cnty., 290 S.W.3d 222, 233 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) ("Nabelek's motions were effectively denied when the trial court dismissed Nabelek's suit.").

We overrule Shields's second issue.

C. Motion for continuance

Shields argues that the trial court "ignore[d] the agreed motion for continuance." Ordinarily, we review a trial court's ruling on a motion for continuance for abuse of discretion. *See Hudson v. Senior Living Props., LLC*, No. 14-13-01145-CV, 2015 WL 3751634, at *1 (Tex. App.—Houston [14th Dist.] June 16, 2015, no pet.) (mem. op.). The record does not support Shields's assertion, nor does Shields point us to any authority explaining how the trial court abused its discretion or why the court's decision would be reversible error.

On March 18, 2016, BSC and Shields filed an "Agreed Motion for Continuance of Trial," which did not specify a date for a future trial setting. On March 24, 2016, BSC and Shields filed an "Agreed Emergency Motion for Continuance," specifying November 28, 2016, as a future trial setting. On March 27, 2016, BSC and Shields filed an "Emergency Motion for Continuance of Trial," in which the defendants asserted that the court coordinator previously had contacted their attorney to inform him that the court would not continue the trial setting and that the trial setting would remain March 28, 2016. Shields, however, failed to appear for trial.

There is no merit to Shields's argument that the trial court ignored the motion for continuance. On March 28, the trial court allowed Shields's counsel to withdraw and gave him thirty days to obtain new counsel. The court then held a status conference on April 28 and Shields did not appear. The court did not

actually try the case until May 26. We conclude that Shields has failed to show that the trial court abused its discretion in giving him essentially a sixty-day continuance instead of the seven months that he asked for or that, even if it was an abuse of discretion, the trial court's inaction is reversible error. *See, e.g.*, *In re Baby Boy R.*, 191 S.W.3d 916, 922-23 (Tex. App.—Dallas 2006, pet. denied) ("Gidney has not shown how the failure to grant the continuance probably caused the rendition of an improper judgment.") (citing Tex. R. App. P. 44.1(a)(1)); *Castro v. Moore*, No. 05-97-02137-CV, 2000 WL 116060, at *2 (Tex. App.—Dallas Feb. 1, 2000, no pet.) (not designated for publication) ("A trial court, however, is not required to grant a motion for continuance merely because the parties agree to a [*sic*] continue a case.").

We overrule Shields's third issue.

Conclusion

Having overruled Shields's issues, we affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Justices Christopher, Busby, and Jewell.