

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

RWM Logistics Corp.,
Defendant Below, Petitioner,

vs.) **No. 21-0062** (Monongalia County 20-C-83)

Jane Doe,
Plaintiff Below, Respondent

MEMORANDUM DECISION

Petitioner RWM Logistics Corp., (“RWM”), by counsel Edmund J. Rollo, appeals the Circuit Court of Monongalia County’s December 28, 2020, order denying petitioner’s motion to set aside default judgment. Respondent Jane Doe, by counsel Jared T. Moore, filed a response in support of the circuit court’s order.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court’s order is appropriate under Rule 21 of the Rules of Appellate Procedure.

At all times relative hereto, petitioner RWM was a contracted service provider for FedEx ground and delivered FedEx packages on fifteen routes in North Central West Virginia and Southwestern Pennsylvania.¹ In April of 2019, respondent was hired to work as a delivery driver for RWM.

On February 12, 2020, respondent reported to work at her usual start time of 7:00 a.m., but due to “a number of stressful matters in her life, she suffered a mental health emergency shortly after she began her shift.” At 9:57 a.m., on the morning of February 12, 2020, respondent notified her supervisor, via text message, that she was “experiencing a very serious mental health emergency.” Respondent advised that she had been on the phone with “the suicide hot line” for forty minutes and was immediately admitting herself into a hospital for evaluation. Respondent then returned RWM’s delivery truck to the distribution terminal in Morgantown, West Virginia. While respondent did not intend to leave her employment with RWM, her supervisor indicated

¹ RWM explained that it has a yearly contract with FedEx that requires “timely delivery of over 99% of its packages.” RWM alleges that if it failed to meet this requirement that FedEx had “the right to immediately terminate its contract with RWM.”

that her action in returning the truck to the terminal constituted a walkout and terminated respondent's employment with RWM. After returning RWM's truck to the terminal, respondent "immediately traveled to Fairmont Regional Medical Center where she was admitted and remained hospitalized for three" days.

On February 24, 2020, respondent retained counsel who sent a letter to RWM's sole shareholder and president, Randy Miller. The letter detailed the events surrounding respondent's wrongful discharge and her associated legal claims. On March 12, 2020, when respondent received no response from her letter, she filed the underlying complaint against RWM alleging wrongful termination. Specifically, respondent alleged "perceived disability discrimination" under the West Virginia Human Rights Act, in addition to a violation of the Wage Payment and Collection Act (due to RWM's failure to pay respondent for her last three days of work). Respondent sought compensatory and punitive damages against RWM.

There is no dispute that respondent's complaint was properly served on RWM's agent Randy Miller on March 17, 2020. However, given the COVID-19 pandemic and this Court's May 6, 2020, Administrative Order extending civil litigation deadlines, RWM was required to respond to the complaint on or before May 29, 2020. When no appearance was made by RWM, on June 15, 2020, respondent filed a motion for default judgment and noticed the same for hearing on July 20, 2020. There is no dispute that RWM was timely served with a copy of the motion for default judgment and notice of hearing. Ultimately, the hearing was rescheduled to August 11, 2020, and again notice was provided to RWM.

During an August 11, 2020, hearing, the circuit court granted respondent's motion for default but took the issue of damages under advisement. On August 17, 2020, the circuit court entered judgment in favor of respondent in the amount of \$135,000, including punitive damages of \$90,000. On August 13, 2020, respondent's counsel filed a petition for attorney's fees and costs, as respondent prevailed on both her claims below. A hearing was noticed for September 10, 2020. Both the notice of hearing and the motion for attorney's fees and costs were served upon RWM. However, no representative for RWM appeared at the September 10, 2020, hearing and judgment was granted to respondent for attorney's fees and costs totaling \$6,472.99.

On September 16, 2020, RWM made its initial appearance in the case and moved to set aside the default judgment. In its motion, RWM argued that the default judgment should be set aside because its sole shareholder and president, Mr. Williams, was "too busy running [RWM's] business affairs" to respond to respondent's complaint. Respondent filed a motion in opposition to the motion to set aside default judgment and the matter was set for hearing on December 28, 2020. Following the December 28, 2020, hearing, the circuit court denied RWM's motion. It is from this denial that RWM now appeals.

RWM raises one assignment of error on appeal, claiming that the circuit court erred in denying its motion to set aside default judgment. We have held that "[a] motion to vacate a default judgment is addressed to the sound discretion of the court and the court's ruling on such motion will not be disturbed on appeal unless there is a showing of an abuse of discretion." Syl. Pt. 3, *Intercity Realty Co. v. Gibson*, 154 W. Va. 369, 175 S.E.2d 452 (1970), *overruled on other grounds by Cales v. Wills*, 212 W. Va. 232, 569 S.E.2d 479 (2002). Further, we have stated that

“[o]n an appeal to this Court the appellant bears the burden of showing that there was error in the proceedings below resulting in the judgment of which he complains, all presumptions being in favor of the correctness of the proceedings and judgment in and of the trial court.” Syl. Pt. 2, *Perdue v. Coiner*, 156 W. Va. 467, 194 S.E.2d 657 (1973).

Here, RWM argues that the circuit court erred in denying its motion to set aside default judgment because of the precarious nature of the sustainability of its business operations during the COVID-19 pandemic and indicates that its agent was doing “everything possible to maintain sufficient service to avoid” termination of RWM’s contract with FedEx. RWM argued that it had significantly more packages to deliver following the pandemic but had a “dearth of drivers.”

Petitioner cites this Court’s ruling in Syllabus Point three of *Parsons v. Consolidated Gas Supply Corp.*, 163 W. Va. 464, 256 S.E.2d 758 (1979), wherein it was noted that

“[i]n determining whether a default judgment should be entered in the face of a Rule 6(b) motion or vacated upon a Rule 60(b) motion, the trial court should consider: (1) the degree of prejudice suffered by the plaintiff from the delay in answering; (2) the presence of material issues of fact and meritorious defenses; (3) the significance of the interests at stake; and (4) the degree of intransigence on the part of the defaulting party.”

Here, RWM contends that respondent suffered slight to no prejudice by RWM’s delay in answering the complaint. In fact, RWM argues that with the entry of the default, respondent was not required to prove any of the elements of her claims or confront RWM’s “meritorious defense.” As to the second *Parsons* factor, RWM broadly argues that it has “significant meritorious defenses to respondent’s claims.” With respect to the third factor, RWM contends that its interests at stake are significant and “may affect” its ability to continue its business operations. RWM states that the COVID-19 pandemic, which caused RWM to suffer unexpected and unforeseen demands, constituted excusable neglect.

Conversely, respondent argues, and we agree, that the circuit court did not abuse its discretion in denying RWM’s motion to set aside default judgment. RWM had more than sufficient time and was presented with multiple opportunities to address respondent’s complaint, but it actively chose not to do so. As to the *Parsons* factors, respondent contends that RWM’s delay in responding to her complaint was a significant prejudice to her, as she is a single parent living paycheck to paycheck. As a result of losing her job, respondent lost her apartment and her car was repossessed. Ultimately, respondent was forced to relocate to Ohio to live with her mother. Accordingly, RWM’s inactions “took a serious toll on [respondent], both financially and emotionally.”

With regard to the second *Parsons* factor, respondent notes that RWM did not assert any affirmative defenses and “vaguely contends” that it has a significant and meritorious defense. Respondent argues that RWM simply makes “conclusory statements that are not supported by any evidence whatsoever.” RWM has the burden of proof in setting aside default judgment, and respondent argues that its unsupported denial of wrongdoing falls “far short of what is required to show the presence of a meritorious defense.” In fact, here, there is ample evidence to support

respondent's claims, including a log of the text messages between respondent and her supervisor at RWM.

Respondent acknowledges that the third *Parsons* factor is present in that the interests at stake herein are significant. As to the last *Parsons* factor, intransigence, respondent contends that RWM's intransigence is significant. Here, RWM had multiple opportunities to respond to respondent's complaint but intentionally failed to do so. Respondent finds support for her claims in this Court's rulings in *Hardwood Group v. Larocco*, 219 W. Va. 56, 631 S.E.2d 614 (2006) (finding significant intransigence on the part of the defendant when it missed three opportunities for an earlier response); *Lee v. Gentlemen's Club, Inc.*, 208 W. Va. 564, 542 S.E.2d 78 (2000) (finding that defendant avoiding two certified mailings prior to default judgment was considered intransigence); and *Cales* (defendant failed to present any excusable or unavoidable cause for not filing a timely answer, even when no undue prejudice would result against petitioner).

In addition to satisfying the *Parsons* factors, RWM was required to prove one of the grounds enumerated in Rule 60(b) of the West Virginia Rules of Civil Procedure. Here, RWM contends that its conduct in failing to timely answer the complaint was excusable neglect. As to excusable neglect, this Court has described it as requiring "demonstration of good faith on the part of the party seeking an enlargement of and some reasonable basis for noncompliance" within the time specified in the rules. *See Bailey v. SWCC*, 170 W. Va. 771, 777 n.8, 296 S.E.2d 901, 907 n.8 (1982), *superseded by statute on other grounds as recognized in Fucillo v. Workers' Comp. Comm'r*, 180 W. Va. 595, 378 S.E.2d 637 (1988).

RWM contends that its failure to timely answer the complaint was excusable neglect because its agent was just too busy. Respondent argues that everyone is busy. If being busy constituted excusable neglect, then no person, firm, corporation, or entity would ever answer a complaint. We agree with respondent and find no excusable neglect. As there is no excusable neglect and because the *Parsons* factors do not weigh in favor of vacating the default judgment, we find that the circuit court did not abuse its discretion in denying RWM's motion to set aside default judgment.

For the foregoing reasons, we affirm the December 28, 2020, order denying RMW's motion to set aside default judgment.

Affirmed.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton

NOT PARTICIPATING:

Justice C. Haley Bunn