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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2021-CP-40-06223

Appellate Case No. 2022-001512

Edward Tyrone Hills,

Appellant,

v.

Dean, University of South Carolina,

Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

- I. DOES THE CIRCUIT COURT'S ORDER DENYING APPELLANT'S MOTION FOR ENTRY OF DEFAULT INVOLVE THE MERITS OF THE FINAL JUDGMENT?
- II. DID THE CIRCUIT COURT CORRECTLY HOLD THAT APPELLANT IS NOT ENTITLED TO AN ENTRY OF DEFAULT AGAINST RESPONDENT?

STATEMENT OF THE CASE

Appellant and pro se litigant, Edward T. Hills (hereinafter "Mr. Hills"), filed his Complaint in the present matter on December 23, 2021. (R. p. 1)¹ Thereafter, Mr. Hills served the Respondent, Dean University of South Carolina (hereinafter "USC") with the Summons and Complaint on January 7, 2022. (R. p. 2).² USC filed a Notice of Motion and Motion to Dismiss in lieu of an answer on February 7, 2022, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. (R. p. B-1).³ Given that Mr. Hills is a pro se litigant, the undersigned attorneys for USC also served upon Mr. Hills a copy of the filed Notice of Motion and Motion to Dismiss by letter dated February 7, 2022. (R. pp. A and B-1).⁴ Mr. Hills has represented that he received this correspondence on February 10, 2022. (Appellant's Am. Initial Br., p. 1). Mr. Hills filed a Motion for Entry of Default on February 9, 2022. (R. p. 4).

¹ Appellant lists the Complaint in the Revised Index (R. p. 1) to the Revised Record on Appeal but did not include it in the Record. If needed, the Respondent will supplement the Record on Appeal at the direction of this Honorable Court.

² Please note that there are two pp. 1-2 of the Revised Record on Appeal.

³ Appellant has included only page 1 (R. p. B-1) and 3 (R. p. B-3) of the Motion to Dismiss. If needed, the Respondent will supplement the Record on Appeal at the direction of this Honorable Court.

⁴ Appellant has included only two pages of the Motion to Dismiss (R. pp. B-1 and B-3). The cited letter dated February 7, 2022 was attached to the Motion to Dismiss as Exhibit A. Appellant has included the envelope as p. A. If needed, the Respondent will supplement the Record on Appeal at the direction of this Honorable Court.

On September 21, 2022, The Honorable DeAndrea G. Benjamin heard Mr. Hills' Motion for Entry of Default. (R. p. C-1). Although Mr. Hills requested additional time before a hearing on USC's Motion to Dismiss, Mr. Hills represented to the circuit court that he received notice of and was prepared to proceed with a hearing on his Motion for Entry of Default on September 21, 2022. (R. pp. C-3, lines 22-23 and C-6, lines 10-12). Judge Benjamin ultimately denied Mr. Hills' Motion for Entry of Default by Order dated September 22, 2022 (hereinafter "Order Denying Default"). (R. p. 6). In her Order Denying Default, Judge Benjamin held, "this Court finds that Defendant timely filed its Motion to Dismiss in lieu of an Answer pursuant to 12(b)(6) within 30 days after service of the complaint. Therefore, Defendant has appropriately responded to Plaintiff's Complaint and Plaintiff is not entitled to an entry of default." (R. p. 6).

On October 18, 2022, The Honorable Donald B. Hocker heard USC's Motion to Dismiss pursuant to Rule 12(b)(6) SCRCF and granted USC's Motion by Order dated October 24, 2022 (hereinafter "Order Granting Motion to Dismiss"). (R. pp. D-1 through D-3).⁵ Pursuant to Judge Hocker's Order, the underlying Complaint in this matter was dismissed. (R. p. D-3).

Mr. Hills filed a Corrected Notice of Appeal with this Court on December 7, 2022, appealing Judge Benjamin's September 22, 2022 Order Denying Default. Mr. Hills has not appealed the October 24, 2022 Order Granting Motion to Dismiss.

STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Stark Truss Co., Inc. v. Superior Constr. Corp.*, 360

⁵ Appellant did not include Page 4 of 4 to the Order dated October 24, 2022. If needed, the Respondent will supplement the Record on Appeal at the direction of this Honorable Court to include Page 4 of 4, which includes the electronic signature of Circuit Court Judge Donald B. Hocker.

S.C. 503, 602 S.E.2d 99, 101 (Ct. App. 2004). “This decision will not be reversed absent an abuse of that discretion.” *Id.* “An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support.” *Id.* at 101–02.

ARGUMENT

The Circuit Court’s intermediate Order Denying Default does not involve the merits of the final judgement dismissing this matter and, therefore, is not appealable. However, should this Court review the Order Denying Default, this Court should affirm the Circuit Court’s holding and order.

I. THE CIRCUIT COURT’S ORDER DENYING ENTRY OF DEFAULT DOES NOT INVOLVE THE MERITS OF THE FINAL JUDGMENT.

On appeal, Mr. Hills solely challenges the circuit court’s Order Denying Default. The Order Denying Default is an intermediate order. Therefore, this order is only subject to appeal following entry from a final judgment and if the order affects the final judgment. *See Lancaster v. Fielder*, 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) (“[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under Section 14–3–330(1) this Court can review any intermediate order or decree necessarily affecting the judgment not before appealed from.”). The South Carolina Supreme Court “long ago held that the phrase ‘necessarily affecting the judgment’ has the equivalent meaning as the phrase ‘involving the merits.’” *Link v. Sch. Dist. of Pickens Cnty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (quoting *Blakely & Copeland v. Frazier*, 11 S.C. 122 (1878)).

The October 24, 2022 Order Granting Motion to Dismiss constitutes a final judgment in this matter. *See* S.C. Code Ann. § 14-3-330. The circuit court’s holding in the Order Granting Motion to Dismiss is that Mr. Hill’s “Complaint fails to state a claim for relief either pursuant to

42 U.S.C. § 1983 or for defamation of character.” (R. p. D-1). The circuit court further held that Mr. Hills “failed to file his Complaint within the applicable statute of limitations as to both his claim for defamation and his claim pursuant to 42 U.S.C. §1983.” (R. p. D-3). Neither the Order Denying Default nor any of appellant’s claims in his Amended Initial Brief involve the merits of either his claim for relief as set for in his Complaint or the merits of the circuit court’s holding in the Order Granting Motion to Dismiss. Therefore, the Order Denying Default is not subject to appeal. *See Lancaster*, 305 S.C. at 421, 409 S.E.2d at 377.

II. THE CIRCUIT COURT CORRECTLY RULED THAT APPELLANT HILLS IS NOT ENTITLED TO DEFAULT JUDGMENT.

Mr. Hills asserts that the circuit court erred in denying his Motion for Entry of Default because USC was “not in compliance with answering the summons in a timely manner.” Am. Initial Br. of Appellant at 1. Appellant’s assertion is incorrect. USC filed a Notice of Motion and Motion to Dismiss in lieu of an answer on February 7, 2022 and within 30 days after service of the Complaint, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. This fact has never been in dispute. The South Carolina Rules of Civil Procedure allow for the filing of a motion in lieu of an answer and extend the applicable time to file a responsive pleading if the motion is denied:

A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e)[.] ... The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

S.C. R. Civ. P. 12(a). Therefore, as the circuit court correctly held in the Order Denying Entry of Default, USC timely filed its Motion to Dismiss in lieu of an Answer pursuant to Rule 12(b)(6), SCRCPP, and Mr. Hills was not and is not entitled to an Entry of Default. (R. p. 6).

In his Amended Initial Brief, Mr. Hills further asserts that USC's filing of its Motion to Dismiss on February 7, 2022 was untimely—despite being filed within 30 days after service of process—because Mr. Hills did not receive a copy of the filed Notice of Motion and Motion to Dismiss until February 10, 2022. *See* Am. Initial Br. of Appellant at 1. However, as the circuit court explained correctly to Mr. Hills, the date USC electronically filed its Motion to Dismiss controls, not the date Mr. Hills received a copy of the filed Motion. (R. p. C-10, lines 6-12 and 17-22). As established by Rule 5(e) of the South Carolina Rules of Civil Procedure, “[t]he filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court.” Further, “[t]he electronic transmission of a document to the E-Filing System ... constitutes the filing of that document in accordance with Rule 5(e), SCRCPP.” *In re S.C. Elec. Filing Pol'ys & Guidelines*, 415 S.C. 1, 6, 780 S.E.2d 600, 602 (2015).

USC filed its Motion to Dismiss in lieu of an answer within thirty days after service of the Complaint. (R. p. B-1). This fact is not disputed. (R. p. C-10, lines 21-24). USC's electronic filing constitutes the filing of a responsive pleading required by the South Carolina Rules of Civil Procedure. *See* Rules 5(e) and 12(a) SCRCPP. Moreover, even though the Motion to Dismiss was properly served via electronic filing, it was also properly served via U.S. mail. While Mr. Hills contends he did not receive USC's Motion until February 10, 2022, the Motion was properly served by letter dated February 7, 2022. *See* Rule 5(a), SCRCPP (“Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and

complaint.” (emphasis added). Accordingly, as USC timely filed and mailed its responsive pleading, the circuit court correctly denied Mr. Hills’ Motion for Entry of Default. Therefore the circuit court’s September 22, 2022 Order Denying Entry of Default should be affirmed.

CONCLUSION

Mr. Hills’ appeal should be denied because the circuit court’s intermediate September 22, 2022 Order denying the Motion for Entry of Default does not involve the merits of the final judgment dismissing this matter. Further, as USC timely filed and mailed its responsive pleading, the circuit court correctly denied Mr. Hills’ Motion for Entry of Default. Therefore, the circuit court’s September 22, 2022 Order Denying Entry of Default was correct and should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

Pursuant to the South Carolina Appellate Court Rules, the undersigned counsel certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

BY: /s/ Rachel M. Hutchens

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