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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Judge

Appellate Case No. 2023-0001119

Jasmine Gibson,.....Respondent,

v.

Rosa DeVeaux and Virginia Patterson.....Appellants.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES

- I. **Did the trial court commit reversible error in declining to grant relief from judgment where, despite several notices, Appellants did not attend the court proceedings and made no showing of a meritorious defense?**

STATEMENT OF THE CASE

This is an appeal from an order denying the motion of the Appellants (“DeVeaux and Patterson”) for relief from judgments obtained against them in proceedings they did not attend. (R. pp. ___; notice of appeal; order denying motion for relief from judgment; motion for relief from judgment.) DeVeaux and Patterson contended that they were given no notice of the proceedings. (R. pp. ___; motion for relief from judgment.) In her order denying their motion, the Honorable Alison R. Lee noted the several times in which notices of the proceedings were given to DeVeaux and Patterson. (R. pp. ___; order denying motion for relief from judgment.)

This action was brought by the Respondent (“Gibson”) against DeVeaux and Patterson, who are, respectively, her aunt and grandmother. (R. pp. ___; summons and complaint; affidavit of Gibson.) Gibson’s suit sought a declaratory judgment that she has the right to occupy the real property involved in this case under a lease agreement she entered into with DeVeaux and Patterson, under which Gibson is permitted to occupy the property for the length of her life or until she violates the agreement. (R. pp. ___; summons and complaint; affidavit of Gibson; lease exhibit.) The suit also sought damages from DeVeaux and Patterson for abuse of process, as a result of their attempts to evict Gibson in magistrate’s court. (R. pp. ___; summons and complaint.)

DeVeaux and Patterson answered the complaint. (R. pp. ___; answer.) The next day, Gibson made a motion for partial summary judgment, seeking summary judgment on the question of whether she has a valid lease of the subject property, supporting her motion with the affidavit filed with her complaint. (R. pp. ___; first motion for partial summary judgment; affidavit of Gibson.) That motion came up for a hearing on June 20, 2022, at which time the court orally denied it without prejudice as premature and stated that the motion could be re-brought after the

passage of 90 days, to allow DeVaux and Patterson to conduct discovery. (R. pp. ___; second motion for partial summary judgment.)

The 90 days passed, as did several more months. On January 31, 2023, the court emailed the counsel of record in the case, including the attorney for DeVaux and Patterson, notice that this case was on a non-jury trial roster for the week of February 27, 2023, and specifying the time, date, and place of the roster meeting on February 27. (R. pp. ___; trial roster meeting notice; affidavit of Radeker.)

On February 15, 2023, Gibson filed a motion seeking partial summary judgment as to the validity and extent of her lease interest in the property and as to DeVaux and Patterson's liability to her for abuse of process. (R. pp. ___; second motion for partial summary judgment.) Gibson supported that motion with the affidavit she filed with the complaint, along with DeVaux and Patterson's discovery responses and their failure to respond timely to requests to admit under Rule 36, SCRCF. (R. pp. ___; second motion for partial summary judgment & its exhibits.)

On the first page of her motion, Gibson placed this notice: "Please take notice that this motion may be heard at the non-jury trial roster meeting on February 27, 2023, at any time during that trial week that the court selects, or at such other time as the court selects." (R. pp. ___; second motion for partial summary judgment p. 1.)

DeVaux and Patterson filed nothing in response to the motion.

Gibson and her counsel attended the roster meeting on February 27, but no one attended on behalf of DeVaux and Patterson. (R. pp. ___; affidavit of Radeker.) Judge Lee set the hearing on the summary judgment motion and any trial that remained after the motion for March 1, 2023, at 9:30 a.m. (R. pp. ___; affidavit of Radeker.) Immediately following the roster meeting, Gibson's lawyer sent the lawyer for DeVaux and Patterson an email that stated "Cantzon, I am

just leaving the roster meeting. Our summary judgment motion is now set to be heard 9:30 on Wednesday.” (R. pp. ___; affidavit of Radeker, exh.) Later in the day on February 27, 2023, notice of the 9:30 a.m. motion hearing on March 1, 2023, was emailed by the court to all counsel of record, including to DeVaux and Patterson’s lawyer. (R. pp. ___; March 1 hearing notice; affidavit of Radeker.)

On February 28, the day before the hearing, Gibson’s attorney emailed Judge Lee proposed orders and copied DeVaux and Patterson’s counsel on that email message, which stated “Attached for Your Honor’s review are the proposed orders we will be asking the court to enter after the proceedings tomorrow in this case.” (R. pp. ___; affidavit of Radeker, exh.)

On March 1, Gibson and her lawyer were present at court, but no one was present for DeVaux and Patterson. (R. pp. ___; transcript of pre-hearing remarks; affidavit of Radeker.) Gibson’s attorney told the court he had not heard from opposing counsel, and the court delayed the hearing for a few minutes so that Gibson’s counsel could call the attorney for DeVaux and Patterson. (R. pp. ___; transcript of pre-hearing remarks; affidavit of Radeker.) Gibson’s lawyer reached an automated phone tree message and left a voicemail message for DeVaux and Patterson’s lawyer, since no one answered. (R. pp. ___; affidavit of Radeker.) He followed that with an email message stating “I’m up here at the courthouse, and we’re about to start the proceedings here at the courthouse. I just called your office and didn’t get anyone. I left a voicemail. My cell is 803-920-3115. Please call me and let me know you’re okay.” (R. pp. ___; affidavit of Radeker, exh.)

The hearing went forward. Judge Lee heard Gibson’s summary judgment motion and held a short bench trial for Gibson to present evidence of her damages. (R. pp. ___; hearing transcript.) The court issued an order granting Gibson’s summary judgment motion, ruling that she has a lease

of the subject property for the duration of her life as long as she is in compliance with the lease and ruling that DeVaux and Patterson were liable to Gibson for abuse of process. (R. pp. ____; summary judgment order.) The court issued an order on the result of the damages trial that was held, ruling that Gibson is entitled to \$26,000 in damages and rendering judgment for that amount. (R. pp. ____; damages order.)

Ten days after the orders were filed, DeVaux and Patterson filed a motion styled as a motion to set aside a default judgment. (R. pp. ____; motion for relief from judgment.) It asserted that notice of the proceedings was not provided, and it was filed with an affidavit of DeVaux and Patterson's lawyer in which he stated that he had no notice of the proceedings and would have attended if he had known. (R. pp. ____; motion for relief from judgment; affidavit of Foster.)

Gibson's counsel gave and filed an affidavit setting forth the notices that had been given to counsel for DeVaux and Patterson. (R. pp. ____; affidavit of Radeker, exhs.) Following that, Judge Lee asked counsel to tell her what notices had been provided. (R. pp. ____; email from Judge Lee asking for what notice had been given). Gibson's attorney emailed her the affidavit he had filed. (R. pp. ____; email to Judge Lee w/ affidavit.) Judge Lee did not hold a hearing but issued an order denying DeVaux and Patterson's motion. (R. pp. ____; order denying motion for relief from judgment.)

This appeal followed.

STANDARD OF REVIEW

The decision to grant or deny a motion for relief from a judgment is reviewed under an abuse of discretion standard. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004).

ARGUMENT

I. DeVeaux and Patterson were given multiple notices of the proceedings. They just did not show up.

DeVeaux and Patterson were given sufficient notice of the proceedings. They just did not attend them.

In their brief, DeVeaux and Patterson contend (for the first time) that the notice they had that the summary judgment motion would be heard on the week of February 27 was not good enough, since the exact date and time of the hearing during that trial week had not yet been determined. They cite Dedes v. Strickland, 307 S.C. 152, 414 S.E.2d 132 (1992), noting the reversal of the grant of summary judgment in that case where notice of the motion hearing was not sent at least 10 days before the hearing. Id. at 155.

Here, notice was sent more than 10 days before the hearing. Knowing that the motion would come up for hearing at the same time as the trial, Gibson's motion provided notice on its front page about when it would be heard: "Please take notice that this motion may be heard at the non-jury trial roster meeting on February 27, 2023, at any time during that trial week that the court selects, or at such other time as the court selects." (R. pp. ___; second motion for partial summary judgment p. 1.) DeVeaux and Patterson were on notice that the motion would be heard during the February 27 trial week and as soon as the roster meeting on that day. (R. pp. ___; second motion for partial summary judgment p. 1.) This notice told DeVeaux and Patterson that they needed to prepare for a hearing on (and file any material opposing) Gibson's summary judgment motion to be held that week, on February 27 at the earliest. (R. pp. ___; second motion for partial summary judgment p. 1.) Once the exact time the hearing would be held during that week was determined, the court and Gibson's counsel provided counsel for DeVeaux and Patterson with notice of that exact time. (R. pp. ___; court's notice of March 1 hearing; affidavit of Radeker, exh.)

This is not Dedes. There, no notice of the hearing was provided until five days before the hearing was set. Dedes, 307 S.C. at 155. Here, the required notice was given to DeVaux and Patterson 12 days before the hearing was noticed and 14 days before it actually took place. (R. pp. ____; court's notice of March 1 hearing; affidavit of Radeker, exh.) If this is inadequate notice, one might argue that virtually all trial roster notices in this state are deficient, since they give notice of a roster meeting and a week during which trial may happen, not an exact date and time when trial of a certain case will begin. (R. pp. ____; trial roster meeting notice for this case.)

DeVaux and Patterson were notified of when their case could be called for trial and notified that Gibson's summary judgment motion might be heard at the February 27 roster meeting or at a time during that week, which the court would set at the roster meeting. (R. pp. ____; affidavit of Radeker, exh; trial roster meeting notice for this case.) They received the notice they were entitled to. Rules 6 & 56, SCRCF. They were given timely notice of what would happen when, and, having been given that notice, they did not appear.

The trial court did not commit reversible error in denying the motion for relief from the judgment.

II. DeVaux and Patterson make no showing of a meritorious defense.

A movant seeking relief from a judgment under Rule 60(b), SCRCF, bears the burden of showing a meritorious defense exists. Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127 (Ct. App. 1991). DeVaux and Patterson made no such showing and did not attempt to make one. (R. pp. ____; motion for relief from judgment.) If the facts are not as Gibson demonstrated to the court, how are they different? If facts exist that show Gibson is not entitled to the judgments she received, what are they? DeVaux and Patterson provide us with no factual material to support their

position. The only affidavit they submitted is that of their lawyer, who only says he did not get notice and that he would have attended if he had. (R. pp. ___; affidavit of Foster.)

In their brief, DeVeaux and Patterson write that “[t]hey have a valid and substantive defense, which is they did not sign a lease agreement with Jasmine and are not contractually bound to allow her to remain in their home, rent free.” (Initial Brief of Appellant p. 7.) First, as Judge Lee’s summary judgment order explains, Gibson’s position has never been that she has the right to stay at the property rent free; rather, her rent under the agreement was that she would do and pay for certain things (which she did and paid for), not to make monthly payments, as is more typical for rent arrangements. (R. pp. ___; complaint; affidavit of Gibson.) Second, if there are facts to support this position of DeVeaux and Patterson, those facts were never presented to the trial court.

DeVeaux and Patterson have made no showing of a meritorious defense. They provide no factual material from which one might conclude the outcome would or even might be different if the court were to grant them relief from the judgment.

The trial court did not commit reversible error in denying the motion for relief from the judgment.

CONCLUSION

DeVeaux and Patterson simply failed to attend court for the proceedings that resulted in the judgments against them. They got adequate notice of those proceedings; moreover, they fail to show that the wrong result was reached by the trial judge. They have not shown that Judge Lee abused her discretion in denying their motion for relief from the judgment.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the foregoing initial brief on the date given below by emailing it to counsel of record at the address(es) noted below.

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Respectfully submitted,

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