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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Martha M. Rivers

Magistrate Case No.: 2024-CV-26-1040781
Circuit Case No.: 2024-CP-26-05611
Appellate Case No.: 2024-002158

D.R. Horton, Inc.....Appellant,

v.

Edward and April Mannone.....Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

A. **The circuit court abused its discretion by affirming the magistrate court's entry of default judgment against D.R. Horton.**

B. **The circuit court erred by applying the pleading standard of the Rules of Civil Procedure to justify refusing to consider D.R. Horton's arguments for relief from default judgment.**

STATEMENT OF THE CASE

On May 1, 2024, Edward and April Mannone (hereinafter, "Plaintiffs" or "Respondents") filed a Complaint against D.R. Horton, Inc., incorrectly identified as D.R. Horton Builder, in the Surfside Beach Magistrate Court in Horry County, South Carolina (hereinafter, the "Lawsuit"). The Lawsuit alleged that D.R. Horton, Inc. (hereinafter, "D.R. Horton" or "Appellant") failed to fulfill the warranty on the flooring for a home located at 3103 Gillham Loop, Myrtle Beach, South Carolina 29588 (hereinafter, the "Subject Property"), which Appellant sold to Respondents in June of 2022. (*See* R. pp. 6–11.)

Subsequently, on May 9, 2024, Plaintiffs provided the Summons and Complaint to two superintendents at Appellant's Myrtle Beach Division Office. However, D.R. Horton is a foreign corporation that develops homes all around the United States. As such, D.R. Horton's South Carolina Registered Agent is CT Corporation System, located in Columbia. CT Corporation System is a registered agent for businesses, like Appellant, who receives legal documents and forwards them for further processing. Plaintiffs did not serve CT Corporation System.

On June 25, 2024, Cammy Kennedy, a representative and counsel for D.R. Horton, filed Appellant's Answer to the Complaint and Authorization of Non-Lawyer Representative, which was sent First-Class U.S. Mail to the Surfside Beach Magistrate Court. The above-referenced pleadings were also sent First-Class U.S. Mail to Respondents at the Subject Property address. (*See* R. pp. 15–18.)

At a hearing set on July 17, 2024, the Magistrate Court found that due to Appellant's Answer not being filed within thirty (30) days of service, Appellant was in default. The court then entered judgement (the "Order") in favor of Respondents for Seven Thousand Five Hundred Eighty and 00/100 Dollars ($7,580.00). (R. p. 2 (Magistrate Court Order, July 17, 2024).) The

Order states that the action was tried and a judgement for Plaintiffs was rendered, but the Order does not mention that Appellant was held in default or address what evidence was presented at the hearing. (*See id.*)

On August 14, 2024, Appellant filed a Notice of Appeal arguing that the facts did not support the Order because there was no evidence presented at the July 17, 2024 hearing that linked the claims against Appellant to Respondents' alleged damages. (R. p. 20 ¶ 7, lines 3–7 (D.R. Horton Notice of Appeal at 2, Aug. 14, 2024).) Additionally, Appellant argued that because the magistrate court incorrectly found Appellant in default, Appellant was not allowed to offer testimony or evidence opposing Respondents' allegations. (*Id.*) In the alternative, Appellant argued that there was good cause to set aside default in accordance with Rule 11(e) of the South Carolina Rules of Magistrates Court, because Appellant was not properly served and had a meritorious defense to Respondents' claims. (R. p. 20 ¶ 7, line 8–p. 21.)

On November 20, 2024, the Honorable Martha M. Rivers heard the appeal. (*See* R. pp. 52–62 (Appeal Cir. Ct. Tr., Nov. 20, 2024).) Judge Rivers acknowledged that Respondents did not properly serve Appellant, (R. p. 58, lines 16–25 (Tr. 7:16-25)), but the court upheld the Order on the ground that Appellant's answer, which was filed late, failed to raise the issue of improper service (R. p. 59, line 23–p. 60, line 20 (Tr. 8:23-9:20)). The circuit court entered a Form 4 order, confirming its conclusion that Appellant waived any argument about lack of service by not raising it in the proposed answer. (R. pp. 3–5 (Form 4 Order, Nov. 22, 2024).) D.R. Horton filed a notice of appeal of the circuit court's order on December 20, 2024. (R. pp. 32–39 (D.R. Horton Notice of Appeal, Dec. 20, 2024).)

STANDARD OF REVIEW

Section 18-7-170 of the South Carolina Code articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgement.

> Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

S.C. Ann. Code § 18-7-170, *see also Hadfield v. Gilchrist*, 343 S.C. 88, 92–93, 538 S.E.2d 268, 271 (Ct. App. 2000) (noting that "Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment").

While the circuit court maintains a broad scope of review, review by this Court is more limited.

> The Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law . . . .

Hadfield, 343 S.C. at 93, 538 S.E.2d at 271 (ellipsis in original) (citations omitted). Therefore, "[u]nless [this Court] find[s] an error of law, [it] will affirm the [circuit] judge's holding if there are any facts supporting [the] decision." *Id.* at 94, 538 S.E.2d at 271. However, this Court will reverse where "it clearly appears that the Circuit Court applied an erroneous standard of review and failed to accord the contested facts the scrutiny which Section 18-7-170 contemplates." *Burns v. Wannamaker*, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct. App. 1984).

ARGUMENTS

A. ENTRY OF DEFAULT JUDGMENT WAS AN ABUSE OF DISCRETION.

"The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'" *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (quoting Rule 55(c), SCRCP). This essentially "requires a party seeking relief . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id.* If a party provides a "satisfactory explanation," the court should then "consider: (1) the *timing* of the motion for relief; (2) whether the defendant has a *meritorious defense*; and (3) the *degree of prejudice* to the plaintiff if relief is granted." *Id.* at 607–08, 681 S.E.2d at 888 (emphasis added). Whether to grant or deny the motion "is addressed to the sound discretion of the trial court." *Id.* at 608, 681 S.E.2d at 888. Moreover, "[t]he trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." *Id.*

Under Rule 60(b), "[a] party may seek relief from a default judgment for *mistake, inadvertence, newly discovered evidence, fraud or other misconduct*, where the judgment is void, or where the judgment has been satisfied." *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 511, 602 S.E.2d 99, 103 (Ct. App. 2004) (emphasis added). This standard is "more rigorous" than the standard for granting relief from default under Rule 55(c). *Sundown Operating Co.*, 383 S.C. at 607, 681 S.E.2d at 888. Therefore, "an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment." *Id.* As with Rule 55 and default, in deciding whether to grant relief from a default judgment under Rule 60, courts should consider "[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties." *N.H. Ins. Co. v. Bey*

Corp., 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993) (second alteration in original) (citation omitted).

Moreover, under the Rules of Magistrates Court, a magistrate court can grant relief from default *or* default judgment for "good cause shown." Rule 11(e), SCRMC. Among the grounds for good cause are "mistake, inadvertence, surprise, or excusable neglect"; "newly discovered evidence"; and "fraud, misrepresentation, or other misconduct." Rule 12(b)(1)–(3), SCRMC. These mirror the grounds for reversal of a default judgment found in the Rules of Civil Procedure. *See* Rule 60(b)(1)–(3), SCRCP.

D.R. Horton had good cause for relief from default, and the magistrate court abused its discretion by refusing to entertain Appellant's arguments. Moreover, the circuit court erred by making the same mistake and affirming the magistrate court.

As discussed above, in deciding whether to grant relief from default judgment, courts should consider the promptness of the response, the reason for the default, whether there is a meritorious defense, and whether opposing parties will be prejudiced. *See, e.g.*, *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (Ct. App. 2001) (discussing the standard in the context of an appeal from an administrative law judge). In this case, these factors weigh in Appellant's favor.

Plaintiffs did not properly serve their complaint on D.R. Horton. As a result, D.R. Horton's counsel did not become aware of the action soon enough to file a timely answer. However, assuming a service date of May 9, Appellant's answer was due June 10, 2024.[1] After becoming aware of the Lawsuit, D.R. Horton promptly filed an answer on June 25, at most fifteen days after

[1] Thirty days after May 9, 2024, was June 8, a Saturday. Therefore, the answer deadline extended to the next Monday. *See* Rule 3, SCRMC.

Appellant's answer was due. (*See* R. pp. 17–18 (Answer).) In the answer, D.R. Horton identified a substantive defense to liability—the Subject Property was outside the warranty period. (R. p. 17 ¶ D.) At the same time, D.R. Horton authorized two non-attorney employees to represent the company before the magistrate court. (R. pp. 15–16 (Authorization for Non-Lawyer Representative, June 25, 2024).) At the magistrate court hearing, however, the court simply found D.R. Horton in default and prevented the employees from questioning Plaintiffs or testifying about anything other than damages. (*See* R. p. 2 (Default J. Order, July 17, 2024).) The circuit court exacerbated this error on appeal.

South Carolina courts "have consistently held [that] relief from default is solely within the sound discretion of the trial judge." *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). However, that discretion is not absolute, and this Court will not defer to the trial court if that court "applie[s] an erroneous standard of review and fail[s] to accord the contested facts the scrutiny" required by law. *Burns*, 281 S.C. at 357, 315 S.E.2d at 182. In this case, the magistrate court failed to consider any basis for relief from default, and the circuit court considered only improper service as a standalone defense. (*See* R. pp. 3–5 (Order, Nov. 22, 2024).) There is no evidence that either the magistrate court or the circuit court considered the basis for D.R. Horton's late response or the nature of D.R. Horton's substantive defense, nor did either court identify any prejudice to Plaintiffs. The failure to take these factors into account conflicts with "South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities." *Mictronics*, 345 S.C. at 511, 548 S.E.2d at 226.

In *Columbia Pools, Inc. v. Galvin*, for example, the defendant's attorney filed his answer one day late because he was told the wrong date of service for the complaint. *Columbia Pools, Inc. v. Galvin* , 288 S.C. 59, 60, 339 S.E.2d 524, 524–25 (Ct. App. 1986). The plaintiff received

a default judgment, which the trial court refused to vacate. *Id.* at 60–61, 39 S.E.2d at 525. The trial court based its decision on its finding that the defendant did not establish excusable neglect for his default. *Id.* at 61, 39 S.E.2d at 525. This Court reversed, noting that under the applicable statute, excusable neglect was only one basis for vacating default.[2] *Id.* The trial court erred because it failed to consider all the statutory grounds for relief, including mistake. *Id.* This Court concluded by noting that it "favor[s] trial of issues on merit over securing judgment by slight technicalities." *Id.*

Similarly, in *Mictronics*, a party seeking a tax exemption failed to appear for a hearing before an administrative law judge ("ALJ") because it believed the hearing to be on a different date. 345 S.C. at 508, 548 S.E.2d at 224. The ALJ treated this as a default and dismissed the party's action with prejudice. *Id.* The party immediately informed the ALJ of its mistake, but the ALJ refused to reverse its decision or reinstate the party's request. *Id.* at 508–09, 548 S.E.2d at 224. The circuit court reversed and remanded for findings of fact and conclusions of law. *Id.* at 509, 548 S.E.2d at 224. The ALJ stood by its original decision and "concluded that [the party] received adequate notice of the hearing and that its failure to attend could not be excused based on mistake, inadvertence, surprise, or excusable neglect." *Id.* at 509, 548 S.E.2d at 225. The circuit court reversed the ALJ again, holding that "the ALJ abused [its] discretion in applying the excusable neglect standard of Rule 60(b), SCRCP instead of the good cause standard referenced in Rule 55(c), SCRCP." *Id.*

This Court disagreed with the circuit court's ruling that the ALJ should have applied

[2] *Columbia Pools* addressed old S.C. Code Ann. § 15-27-130, which was repealed and replaced by Rule 60 of the Rules of Civil Procedure. *Mictronics*, 345 S.C. at 511 n.1, 548 S.E.2d at 226 n.1.

Rule 55 and held that Rule 60 applied because the ALJ's decision was a final order and the appealing party was not the defendant below. *Id.* at 510, 548 S.E.2d at 225. However, the Court affirmed the circuit court on the merits because the party had established grounds for relief even under the tougher standards of Rule 60. *Id.* at 510–12, 548 S.E.2d at 225–26.

The Court analyzed the promptness of the party's response, the reason for its default, whether it had a meritorious defense, and whether the opposing party would be prejudiced. *Id.* at 511–12, 548 S.E.2d at 226. The Court held that the ALJ abused its discretion in not vacating the default because the party made a "good faith mistake," took "swift action to try to remedy the situation," and "had a meritorious defense" based on its "prehearing statement outlining its tax exemption." *Id.* Furthermore, the opposing party, the Department of Revenue, would not be prejudiced because it did not have a "substantial stake" in any "windfall" and "the resolution of the case on its merits ha[d] not been substantially delayed by the parties' actions." *Id.* at 512, 548 S.E.2d at 226.

The facts of this case are consistent with *Columbia Pools* and *Mictronics*. Appellant did not receive proper service of the complaint, which caused Appellant's answer to be late. *Cf. Roche v. Young Bros.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995) (noting that default judgment can be set aside if a defendant shows that an unauthorized person accepted service via certified mail). Appellant promptly filed an answer, *at most* two weeks after the deadline for its response. (*See* R. pp. 17–18 (Answer)); *cf. Columbia Pools*, 288 S.C. at 60, 339 S.E.2d at 524–25 (describing an answer that was filed one day late). Appellant has a meritorious warranty defense. (*See* R. pp. 17–18 (Answer).) *Compare Mictronics*, 345 S.C. at 511, 548 S.E.2d at 226 (stating that a party seeking a tax exemption raised a meritorious defense when its prehearing statement outlined the basis for receiving the exemption), *with Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 214–15, 321

S.E.2d 179, 181 (Ct. App. 1984) (finding no abuse of discretion in denying a motion to file a late answer where the answer contained only a general denial of liability). And Respondents will not be unfairly prejudiced, as D.R. Horton did not unreasonably delay the proceedings and seeks merely to have the case resolved on its merits, not dismissed. *See Mictronics*, 345 S.C. at 512, 548 S.E.2d at 226 (concluding that there was no prejudice where the action "ha[d] not been substantially delayed by the parties' actions"). In short, in this case there was "a good faith mistake of fact, and[] no attempt to thwart the judicial system"; therefore, "there is basis for relief." *Columbia Pools*, 288 S.C. at 61, 339 S.E.2d at 525.

B. NO WAIVER OF IMPROPER SERVICE

The circuit court also erred by concluding that Appellant waived its ability to argue about improper service. At the hearing before the circuit court, Judge Rivers acknowledged that Respondents did not properly serve D.R. Horton. (R. p. 59, lines 9–10 (Tr. 8: 9–10).) However, the court concluded that Appellant waived the ability to argue about improper service because Appellant's answer did not raise the issue. (R. p. 58, lines 16–25 (Tr. 7:16–25).) The court confirmed this in its Form 4 Order, stating, "The filing of the answer and appearance in court without objection waived any objection to service." (R. p. 4 (Order at 2, Nov. 22, 2024).) The court misapprehended the purpose of Appellant's service argument; in so doing, the court committed an error of law and should be reversed.

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Richardson v. P.V., Inc.*, 383 S.C. 610, 616, 682 S.E.2d 263, 266 (2009). An abuse of discretion occurs "when the judge issuing the order was *controlled by some error of law* or when the order, based upon factual, as distinguished from legal

conclusions, is ***without evidentiary support***." *Ricks*, 293 S.C. at 375, 360 S.E.2d at 536–37 (emphases added). Therefore, the issue on appeal "is not whether . . . good cause existed to set aside the default, but rather, whether the [trial court's] determination is *supportable by the evidence* and *not controlled by an error of law*." *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (emphasis added).

Under the Rules of Civil Procedure, a party waives the affirmative defense of improper service if it does raise it in an initial pleading or motion. Rule 12(b)(5), (h)(1), SCRCP. However, Appellant does not seek to have this action dismissed for improper service under those rules; Appellant merely raises improper service as a basis for relief from default judgment. The court cited no authority in support of its holding that D.R. Horton waived its ability to raise the issue of improper service in *all* contexts.

Moreover, this action took place in magistrate court, which has its own set of rules regarding default. "At the default hearing, the defendant [in default] may participate only by cross-examining witnesses and objecting to evidence." Rule 10(b), SCRMC. That is what occurred in this case. After filing the answer, D.R. Horton's non-attorney representatives appeared at the hearing before the magistrate court. However, they were unable to present any arguments unrelated to Respondents' alleged damages. Appellant's failure to raise the issue of improper service should not be held against Appellant now where Appellant filed an answer, appeared for a hearing, and followed the magistrate court's instructions to limit testimony to damages.

Moreover, as discussed above, a party can seek relief from a default judgment for "good cause." Rule 11(e), SCRMC. Among the grounds for good cause are "mistake, inadvertence, surprise, or excusable neglect." Rule 12(b)(1), SCRMC. A party must move for such relief within a "reasonable time," and "not more than one year after the judgment." Rule 12(b), SCRMC.

In this case, Appellant moved for relief and raised the issue of improper service *to explain its late filing* at the first opportunity it had after filing its answer and attending the default hearing. In contrast, in *Bardoon Properties, NV v. Eidolon Corp.*, the plaintiff, Bardoon, brought an action against Eidolon for breach of a lease. 326 S.C. 166, 168, 485 S.E.2d 371, 372 (1997). Eidolon did not timely file an answer, and an order of default was entered against it. *Id.* Eidolon's motion for relief from default was denied. *Id.* "Eidolon [then] filed a motion to reconsider in which it raised, for the first time, the fact that Bardoon was not the real party in interest . . . ." *Id.* This Court held that Eidolon waived the right to argue that the plaintiff was not the real party in interest when it "fail[ed] to object prior to entry of default." *Id.* The South Carolina Supreme Court affirmed this decision. *Id.* at 171, 485 S.E.2d at 374.

Nor is this case like those where a party objects to personal jurisdiction *after* moving to vacate an affidavit of default and for leave to file a late answer. *See Payne*, 283 S.C. at 213–14, 321 S.E.2d at 181. By appearing and filing such motions, the party "waive[s] its objection to any defect in service of process and submit[s] to the jurisdiction of the court." *Id.* at 214, 321 S.E.2d at 181. However, in *Payne*, the court noted that the defendant's motion related solely to the defect in service, which it waived, and "[n]either the motion nor the supporting affidavit set forth a meritorious defense to the complaint." *Id.* at 214–15, 321 S.E.2d at 181. The proposed answer contained only "a qualified general denial." *Id.* at 215, 321 S.E.2d at 181. Under those circumstances, the trial court did not abuse its discretion in denying the defendant's motion. *Id.*

This case is easily distinguishable from *Bardoon Properties* and *Payne*. Here, D.R. Horton had a meritorious warranty defense *independent of* the defect in service and filed an answer raising that substantive defense, but the magistrate court prevented Appellant from making arguments unrelated to damages. Therefore, D.R. Horton should not be penalized for "failing to object prior

to entry of default." *Bardoon Props.*, 326 S.C. at 168, 485 S.E.2d at 372. To the extent improper service was not "timely raised prior to the entry of default," *id.* at 171, 485 S.E.2d at 374, it was because Appellant had no opportunity to do so. Due to the magistrate court finding Appellant in default, D.R. Horton was not able to present such testimony or documentation at the hearing, despite the fact that D.R. Horton filed its answer prior to, and was present at, the hearing. In affirming the magistrate court, the circuit court committed an error of law.

Finally, it bears repeating that Appellant does not raise the issue of improper service to have Respondents' claim dismissed or to have a judgment on the merits reversed. *See, e.g.*, *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 202–03, 723 S.E.2d 597, 602 (Ct. App. 2012) (stating that a credit union's argument that the plaintiff failed to plead a cause of action was not preserved for appellate review where the credit union raised it for the first time in a motion to reconsider or for relief from default judgment). To the contrary, Appellant raises this issue so that a further decision can be made "consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities." *Mictronics*, 345 S.C. at 511, 548 S.E.2d at 226.

CONCLUSION

For the reasons stated herein, the circuit court should be reversed and this case remanded to the magistrate court for further proceedings.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

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