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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

Daniel Coble, Circuit Court Judge

Appellate Case No. 2024-002139
Case No. 2022CP4001357

Vanessa Hollaway, Respondent,

v.

Legrantt Nesbitt Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This case arises from a violent assault committed by the Appellant, Legrantt Nesbitt, against the Respondent, Vanessa Holloway, on October 2019. The Respondent filed a civil suit against the Appellant, who was incarcerated at the time, and served him with the Summons and Complaint on April 6, 2022. The Appellant failed to file a responsive pleading, and a default judgment was entered on May 8, 2023, awarding the Respondent \$750,000 in actual damages and \$900,000 in punitive damages. The Appellant subsequently moved for relief from the default judgment, which the trial court denied. The Appellant now appeals, arguing that the default judgment is void due to the lack of a Guardian ad Litem (GAL) and alleged violations of his due process rights.

Here is a timeline of the relevant events leading up the subject appeal:

- March 16, 2022 – Summons and Complaint filed
- Apr 6, 2022 – Service perfected on Appellant
- May 16, 2022 – Order of Entry of Default granted
- May 23, 2022 – Criminal Court First Finding of Lack of Competence
- May 24, 2022 – Motion for Damages Hearing filed
- May 26, 2022 – Motion for Damages Hearing served on Appellant
- February 3, 2023 – Criminal Court Second Finding of Lack of Competence
- March 7, 2023 – Notice of Damages Hearing served
- March 23, 2023 – Default Damages Hearing held
- May 8, 2023 – Final Judgment granted
- June 2, 2023 – Probate Court Finding of Incapacitated Individual
- June 8, 2023 – Final Judgment served on Appellant

- January 22, 2024 – Motion for Relief filed by Appellant
- November 12, 2024 – Hearing on Appellant’s Motion for Relief
- November 20, 2024 – Order denying Motion for Relief

STANDARD OF REVIEW

The denial of a motion for relief from a default judgment under Rule 60, SCRPC is reviewed for abuse of discretion. An abuse of discretion occurs when the trial courts decision is based on an error of law or lacks evidentiary support.

ARGUMENT

A. The Default Judgment Was Valid and Enforceable Under South Carolina Law

The trial court properly entered the default judgment against the Appellant in accordance with SCRPC Rule 55. Rule 55(c) allows the court to set aside an entry of default for "good cause shown," while Rule 60(b) provides more rigorous standards for setting aside a default judgment, including mistake, inadvertence, excusable neglect, or other misconduct. The standard for setting aside an entry of default is whether "good cause" exists under Rule 55(c), whereas the standard to set aside a judgment of default is "excusable neglect" under Rule 60(b). In re Moore, 342 S.C. 1, 5, 536 S.E.2d 367, 369 (2000). The Appellant failed to meet these standards, as he did not provide a sufficient explanation for his failure to respond to the Summons and Complaint or demonstrate how vacating the default judgment would serve the interests of justice.

Rule 55 directs that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default...” Rule 55(a), SCRPC (emphasis added).

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. Harbor Island Owners’ Ass’n v. Preferred Island Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The trial court’s decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). 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. In re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 459 (Ct. App. 1997).

Unless an extension is granted, a defendant must serve his answer within thirty days after the service of the complaint upon him. Rule 12(a), SCRPC. If a party has failed to “plead or otherwise defend as provided by the [South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise,” the clerk of court will enter default. Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 508-09, 602 S.E.2d 99, 102 (Ct. App. 2004) (quoting Rule 55(a), SCRPC). An entry of default is a ministerial act which a clerk of court is required to perform once default is made to appear by the affidavit of the moving party. Thymes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987) (holding that “whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit” of the moving party). Some jurisdictions hold that entry of default is improper if even a late answer is filed prior to an entry of default; however, that is not the law of South Carolina. Stark Truss Co. at 509, 602 S.E.2d at 102.

An entry of default may be set aside for good cause shown, which is a less stringent standard than the excusable neglect standard for setting aside a final judgment on the basis of mistakes, inadvertence, excusable neglect, newly discovered evidence, or fraud. Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211 (Ct. App. 2011), rehearing denied, certiorari granted, reversed 404 S.C. 93, 744 S.E.2d 566, on remand 2014 WL 462987 (emphasis added). The good cause standard for setting aside default judgment requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Id. (emphasis added) (holding that negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default judgment).

The law of South Carolina is well settled: to be relieved from an entry of default, defendant must first “put forth a satisfactory explanation for the default.” Sundown Operating Co., Inc. v. Intedge Industries, Inc., 681 S.E.2d 885, 888 (S.C. 2009) (citing Wham v. Shearson Lehman Bros., Inc., 381 S.E.2d 499, 501-02 (S.C. Ct. App. 1989)). If a defendant does not put forth a satisfactory explanation for the default – in other words, does not show good cause for failing to answer the complaint – **then the analysis ends, and the court does not consider the Wham factors.** See Regions Bank v. Owens, 741 S.E.2d 51, 55 (S.C. Ct. App. 2013) (emphasis added) (“Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the Wham factors.”); Sundown, 681 S.E.2d at 888 (holding a court need only consider the Wham factors “[o]nce a party has put forth a satisfactory explanation for the default”); Dixon v. Besco Eng’g, Inc., 463 S.E.2d 636, 639 (S.C. Ct. App. 1995) (holding the trial court is not required to make specific findings of fact on the record for the finding of lack of good cause).

The Appellants argument that the default judgment is void due to the lack of a GAL is unavailing. South Carolina courts have held that the failure to appoint a GAL does not render a judgment void if the individual was otherwise adequately represented or if the court had jurisdiction over the parties and subject matter. See S.C. Dep’t of Soc. Servs. v. McDow, 276 S.C. 509, 280 S.E.2d 208 (1981). In this case, the trial court had personal jurisdiction over the Appellant, who was properly served with the Summons and Complaint, and subject matter jurisdiction over the civil action.

B. A Finding of Incompetence to Stand Trial in a Criminal Case Does Not Automatically Require the Appointment of a Guardian ad Litem in a Civil Case

Under SCRCP Rule 17(c), the appointment of a GAL for an incompetent person in a civil case is discretionary, not mandatory. The rule provides that the court "shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented in an action or shall make such order as it deems proper for the protection of the minor or incompetent person" *Rule 17, SCRCP*. South Carolina case law further clarifies that the appointment of a GAL is not automatic and depends on the specific circumstances of the case. See Gossett v. Gilliam, 317 S.C. 82 S.C. Dep't of Soc. Servs. v. Wells, 2019 S.C. App. Unpub. LEXIS 350.

The Appellants reliance on his incompetence to stand trial in a criminal case is misplaced. Incompetence to stand trial is a determination based on the individuals ability to understand the proceedings and assist in their defense, which does not automatically translate to a finding of legal incompetence requiring the appointment of a GAL in a civil case. South Carolina law requires a separate determination of incompetence for purposes of appointing a GAL in civil proceedings Rule 17, SCRCP.

C. The Trial Court Properly Exercised Its Discretion in Denying the Appellants

Motion for Relief from Default Judgment

The trial court acted within its discretion in denying the Appellants motion for relief under Rule 60, SCRCP. The Appellant failed to demonstrate excusable neglect or any other grounds for relief under Rule 60(b). The Appellant was properly served with the Summons and Complaint, as well as notices of the damages hearing, and had ample opportunity to respond but failed to do so. The Appellants argument that his incompetence invalidates the default judgment is unpersuasive, as he was not declared legally incapacitated until June 2, 2023, after the default judgment was entered.

D. The Appointment of a Guardian ad Litem Is Not Jurisdictional

The failure to appoint a GAL does not deprive the court of jurisdiction or render a judgment void. South Carolina courts have consistently held that the absence of a GAL does not invalidate a judgment if the individuals rights were otherwise adequately protected. See See S.C. Dep't of Soc. Servs. v. McDow, 276 S.C. 509, 280 S.E.2d 208 (1981). In this case, the Appellant was properly served and had the opportunity to respond to the civil proceedings, satisfying the requirements of due process.

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that this Court affirm the trial courts entry of default judgment. The Appellant has failed to demonstrate that the trial court abused its discretion or that the judgment is void. The default judgment was valid and enforceable under South Carolina law, and the trial court properly exercised its discretion in this matter.

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Vanessa Hollaway on Legrantt Nesbitt by electronic means a copy sent by email on August 29, 2025, to attorney of record, Herbert E. Buhl, III, herb@herbbuhl.com.

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