

TATE OF SOUTH CAROLINA)
)
 COUNTY OF MARLBORO)
)
 Martha C. Rankin,)
)
 Plaintiff,)
)
 vs.)
)
 Reinaldo Enrique Alfonso,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 Case No.: 2017-CP-34-00023

**ORDER DENYING DEFENDANT'S
 MOTION TO SET ASIDE DEFAULT
 JUDGMENT
 RECEIVED**

AUG 21 2018

SC Court of Appeals

This matter came before this Court for a hearing on May 14, 2018. The Plaintiff Martha C. Rankin (hereinafter "Plaintiff") was involved in a catastrophic crash with Defendant Reinaldo Enrique Alfonso (hereinafter "Defendant") while traveling north on Interstate 95 on January 21, 2016. The case at hand arises from personal injuries sustained by the Plaintiff.

The Summons and Complaint were filed in Marlboro County on January 23, 2017. The Defendant was thereafter served pursuant to S.C. Code Ann. 15-9-350 by delivery of the pleadings to the South Carolina Department of Motor Vehicles.

No answer or responsive pleading was filed and a damages hearing was held before this Court on October 17, 2017. On that date, judgment was entered by this Court for the Plaintiff in the amount of \$900,000.

The Defendant appeared for the first time two months later - on December 12, 2017 - and filed this Motion before the Court seeking to set aside the Plaintiff's default judgment.

A "court may relieve a party or his legal representative from a final judgment, order, or proceeding for mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCF. In determining whether a default judgment should be set aside under Rule 60(b)(1) a court is to consider, "[t]he promptness with which relief is sought, the reasons for the failure to act

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promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant.” New Hampshire Ins. Co. v. Bey Corp., 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct.App.1993) (quoting Harry M. Lightsey & James F. Flanagan, South Carolina Civil Procedure 82 (1985)).¹ This standard is more stringent than the “good cause” standard for relief under Rule 55, SCRCP. Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). However, the Court finds relief in this case would not be appropriate under either standard.

This Court has listened carefully to all oral arguments of counsel and has considered all written submissions. This Court has also carefully considered all the facts and circumstances of this particular case involving serious injuries to a Plaintiff who is now 90 years old and in declining health.

The Court finds it important and relevant that process in this case was validly served. The Court also finds that if the default judgment was set aside there would likely be a significant prejudicial impact upon this elderly Plaintiff, who has already participated in a damages hearing conducted for the sole purpose of reaching a fair account of her damages. Given the circumstances, the Court finds it would be prejudicial to ask the Plaintiff to try this case a second time. Specifically, the degree of prejudice to the plaintiff if the default were set aside would be substantial because the plaintiff, who is now 90 years old, has already been through the damages hearing and testified extensively about the collision and her injuries, a lengthy experience which was traumatic in and of itself. In addition, her daughter also testified before this Court at the damages hearing regarding this event and its effect on her mother's life and independence, testimony which was very painful. It would cause significant prejudice to make both the elderly plaintiff and her daughter relive this traumatic experience by having them testify all over

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again. It would also cause substantial prejudice to the plaintiff because the plaintiff incurred significant expenses to prepare for the damages hearing including the video deposition testimony presented from the treating Board-certified neurologist.

This Court also finds that at no time did the Defendant make an argument or take the position that service was not proper under S. C. Code Section 15-9-360, which reads as follows:

The acceptance by a nonresident of the rights and privileges conferred by the laws in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways, the streets of any incorporated municipality or the public roads of this State or anywhere within this State, or the operation by such nonresident of a motor vehicle on any such public highways, streets or public roads or anywhere within the State other than as so permitted or regulated shall be deemed equivalent to the appointment by such nonresident of the Director of the Department of Motor Vehicles or of his successor in office to be his true and lawful attorney upon whom may be served all summons or other lawful process in any action or proceeding against him growing out of any accident or collision in which such nonresident may be involved by reason of the operation by him, for him or under his control or direction, express or implied, of a motor vehicle on such public highways, streets or public roads or anywhere within this State. Such acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally. (emphasis added).

There is no dispute that the Defendant availed himself of the rights and privileges conferred by the laws in force in South Carolina permitting the operation of a motor vehicle. As such, the Defendant made an implied agreement as set forth in the above statute that any such process served against the Department of Motor Vehicles shall be of the same legal force and validity as if served on him personally.

The Defendant has filed an affidavit indicating that he moved following the accident and that he no longer resided at the address listed on his Florida driver's license. The Defendant's

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affidavit further provides that he never received any notification of any lawsuit being filed against him.

The Court rejects this argument for several reasons. First, since January of 2016 and at all times relevant to this matter, Defendant was aware that he had been charged at fault in a crash in South Carolina in January of 2016 and that the Plaintiff had suffered bodily injury. The fact that the Defendant moved after the accident has nothing to do with the implied consent statute and how it applies to this case.

Secondly, this Court finds that any reasons for the default can be traced back to the Defendant's own neglect. The affidavit indicates the Defendant vacated the property listed on his Florida driver's license in July of 2016, but the affidavit does not include any indication or explanation about whether the Defendant notified the United States Postal Service or the Government of Florida about his change in address. Had such notification been given, the Defendant would likely have received the process that was validly served on him. A brief review of the United States Postal Service website reveals that a party changing addresses can have mail forwarded temporarily or permanently, and this can be accomplished at the post office or online for a fee of \$1.00. South Carolina case law is clear that negligence in defaulting does not satisfy the "good cause" requirement of Rule 55(c) or the "excusable neglect" standard of Rule 60(b). Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009); Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). "A party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988).

Furthermore, I find and conclude that the Plaintiff's counsel had no duty to inform the insurance carrier or adjuster of the filing of a complaint against the Defendant. This is well settled in South Carolina. White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1,753,S.E.2d 537 (2014). The Defendant submitted an affidavit of Adjuster Debra Brown which failed to establish any misleading or deceptive conduct on the part of Plaintiff's counsel. In fact, the affidavit indicated that Ms. Brown had no contact with Plaintiff's counsel in a 20 month period leading up to the judgment being entered.

It is also the finding of this Court that the Defendant has made no attempt to establish any legislative intent beyond the plain and unambiguous language of the code section and furthermore failed to even address the issue.

The primary rule of statutory construction requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statute's language is plain and unambiguous, "the text of the statute is considered the best evidence of a legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015). Courts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule. Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005). The code section at issue in this controversy is clear and without ambiguity.

It is unchallenged in this case that the Defendant was properly served pursuant to South Carolina Code Section 15-9-360. This code section was clearly drafted and implemented by the South Carolina Legislature setting forth that any such process against the Defendant was of the same legal force and validity as if served on him personally. Had the South Carolina Legislature intended to impose additional duties upon a party attempting to serve an out-of-state motorist, those duties could have easily been outlined in this code section. This statute's language is clear and unambiguous. In this case, I find and conclude that not only was the service valid, but also that the conduct of Plaintiff's counsel, who had no duty to correspond or communicate with the insurance carrier, was reasonable, appropriate and within the applicable legal standards applying thereto.

After carefully reviewing all the facts and circumstances of this case and after reviewing all arguments and submissions of counsel, I find and conclude that the Defendant's Motion to Set Aside the Default Judgment should be, and hereby is, denied.

IT IS SO ORDERED.


ROGER E. HENDERSON, Presiding Judge
Fourth Judicial Circuit

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CLERK OF COURT
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Chesterfield, S.C.

This 14th day of June 2018.