STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 2017-CP-25-250
	)	
ORANNE H. BRUNSON, Plaintiff,	)	
	)	
v.	)	**ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE DEFAULT**
	)	
SOLOMON VICTOR WALKER, Defendant.	)	

This matter came before me on March 11, 2020 at 3:00 pm, for a hearing on Defendant, Solomon Victor Walker's ("Walker") Rule 60(b), SCRCP, motion filed on November 30, 2018. Present at the hearing were William F. Barnes, III, counsel for Plaintiff, Oranne H. Brunson ("Brunson"), and E. Mitchell Griffith, counsel for Walker. All necessary and interested parties were present at the hearing. Having heard argument from counsel and reviewed the submissions in this matter, the Court denies Walker's 60(b) motion for the reasons set forth below.

FACTUAL BACKGROUND

On March 18, 2016, Brunson was traveling in an easterly direction on US Highway 278 in Allendale County, South Carolina. (Compl. ¶ 4). At the same time and place, Walker was also traveling in an easterly direction on US Highway 278 in Allendale County, South Carolina, behind Brunson. (Compl. ¶ 5). As Brunson attempted to make a left turn off of Highway 278, Walker, passing improperly, collided with Brunson's vehicle. (Compl. ¶ 6). The collision caused Brunson to suffer serious, severe, and permanent injuries. (Compl. ¶ 7).

Brunson filed a Summons and Complaint against Walker in the Hampton County Court of Common Pleas on June 12, 2017. (Compl.). The Complaint alleges that Walker was negligent in the following particulars:

a) In following too closely;

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b) In driving too fast for conditions then and there prevailing;

c) In failing to keep a proper lookout;

d) In failing to keep his vehicle under proper control;

e) In failing to apply his brakes or in failing to have his vehicle equipped with adequate brakes;

f) In failing to exercise that degree of care that a reasonably prudent person would have exercised under the same or similar circumstances;

g) In violating S.C. Code Ann. § 56-5-1520 (A); § 56-5-1860; and § 56-5-1840 (1); and

h) In such other particulars as the evidence may establish.

(Compl. ¶ 8). The Complaint alleges that Brunson "suffered severe and permanent injuries from which she has suffered and will continue to suffer physical pain and mental anguish; and has expended and will in the future expend, monies for medical care and treatment, and caused to lose the enjoyment of life." (Compl. ¶ 9).

Walker was served via Betsy Grimes, his mother-in-law, at his residence – 101 Jumper Street in Varnville, SC – on June 20, 2017. (Aff. of Serv.). Judge Young entered default against Walker on November 30, 2017. (Entry of Def.). The Entry of Default holds that "the Defendant, Solomon Victor Walker, was properly served with the Summons and Complaint in accordance with Rule 4, SCRCP, on June 20, 2017." (Entry of Def.). As a result, Walker is "in default in this matter pursuant to Rule 55, SCRCP and the allegations of the Complaint are deemed admitted." (Entry of Def.). Judge Young referred this matter to me, pursuant to Rule 53, SCRCP, "for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint against Defendant, Solomon Victor Walker." (Order of Ref.).

The Court held a damages hearing on December 21, 2017. (Judgment). Brunson mailed notice of the December 21, 2017, hearing to Walker by way of a letter dated November 29, 2017 at the address where Walker was served – 101 Jumper Street, Varnville, SC 29944. (Judgment). No one appeared on behalf of Walker at the hearing on December 21, 2017. Walker received proper notice of the December 21, 2017 hearing in accordance with Rule 55, SCRCP. (Judgment). After having heard the testimony and reviewing the evidence, the Court entered judgment against Walker in the amount of $499,811.71 in actual damages but did not award punitive damages.

Following entry of the judgment, Brunson's counsel sent the judgment to DMA Claims and Walker on February 12, 2018. (Ex. 6). DMA Claims was the third-party administrator handling the claim for Lyndon Southern, Walker's insurer. On July 11, 2018, personal counsel for Walker, Mark Tinsley, sent the judgment to DMA Claims and requested payment of the judgment. (Ex. 6A). On August 2, 2018, Judy Thompson, an employee of Jupiter Auto, wrote counsel for Brunson's office and noted that Jupiter had taken over the handling of this claim from DMA Claims. (Ex. 7). According to Thompson, the file had been forwarded to defense counsel, Graham Powell, to handle the suit: "Could you please forward these documents to our defense counsel or our office as soon as possible? I have cc'd our attorney on this." (Ex. 7). Mr. Powell was the attorney copied on the email. (Ex. 7). The email also referenced possession of a May 8, 2017 demand letter from counsel for Brunson and requested copies of Brunson's medical bills and records. (Ex. 7).

On November 7, 2018, Thompson sent Mark Tinsley a reservation of rights letter regarding this action. (Ex. 8). On November 8, 2018, Mr. Powell, as counsel for Lyndon Southern, filed a declaratory judgment action in federal court against Walker alleging Lyndon Southern did not owe a duty to defend or indemnify Walker for the judgment entered by this Court. (Ex. 9A). On November 9, 2018, Walker filed suit in the Hampton County Court of Common Pleas against

Lyndon Southern and DMA Claims Services, among others, alleging negligence and insurance bad faith. (Ex. 9). On November 30, 2018, at 4:43 pm, Walker filed the present 60(b) motion arguing the judgment should be vacated.

STANDARD

Rule 60(b) states that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (4) the judgment is void . . . ." Rule 60(b), SCRCP. "The standard for granting relief from a default judgment under Rule 60(b) is ***more rigorous*** than the 'good cause' standard established in Rule 55(c)." Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (emphasis added). Rule 60(b) ***requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise***, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Id. at 608 (emphasis added). "The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." Id. "The ***movant in a Rule 60(b) motion has the burden of presenting evidence*** proving the facts essential to entitle her to relief." BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006) (emphasis added).

FINDINGS

Walker argues that the judgment should be vacated for lack of proper service or mistake, inadvertence, or excusable neglect. The Court addresses each argument separately.

I. LACK OF SERVICE

Under Rule 60(b)(4), SCRCP, a court may relieve a party from a final judgment if the judgment is void. A judgment is void if the court acts without personal jurisdiction. BB&T, 369 S.C. at 551, 633 S.E.2d at 503. Walker argues that the judgment should be vacated under Rule 60(b)(4) for lack of proper service on the basis that he was not living at 101 Jumper Street with Betsy Grimes at the time the Summons and Complaint were served.

Under Rule 4(d)(1), SCRCP, personal service may be made upon an individual "by delivering a copy of the summons and complaint to him personally ***or by leaving copies thereof at his dwelling house or usual place of abode*** with some person of suitable age and discretion then residing therein." (emphasis added). "It is the plaintiffs burden to show that the court has personal jurisdiction over the defendant." Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005). "There is a presumption of proper service when the civil rules on service are followed." Id. "Rule 4, SCRCP serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Id. at 47, 610 S.E.2d at 844 (quoting Moore v. Simpson, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996)). "An officers return of process creates ***the legal presumption of proper service*** that cannot be 'impeached by the mere denial of service by the defendant.'" Id. (quoting Richardson Constr. Co. v. Meek Eng'g and Constr., 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980)).

As an initial matter, the Court notes that it has previously held that Walker "was properly served with the Summons and Complaint in accordance with Rule 4, SCRCP, on June 20, 2017." (Entry of Def.). This finding alone would be sufficient to deny Walker's motion, but the Court nonetheless addresses Walker's argument.

In his negligence and bad faith action against Lyndon Southern, DMA Claims, and others, Walker alleges that "[s]ervice of the Summons and Complaint in the Underlying Lawsuit

was perfected on June 20, 2017, ***at Plaintiff's residence*** by a process server who left a copy of the Summons and Complaint with Plaintiff's mother-in-law, Betsy Grimes, ***who resided with Plaintiff*** at 101 Jumper Street, Varnville, South Carolina." (Ex. 9, ¶ 12) (emphasis added). At Walker's instruction, Ms. Grimes hand delivered the Summons and Complaint to a local insurance agency. (Ex. 9, ¶ 13). This alone is also dispositive of the issue.

Despite Walker's arguments to the contrary, the Court finds it had personal jurisdiction over Walker. He testified in the negligence/bad faith case, which the Court reviewed, that he was in Utah for training related to being a truck driver on June 20, 2017 when the summons and complaint were served on Ms. Grimes. According to the testimony at that time, Walker still lived with his wife, Carlotta, their two daughters, and Ms. Grimes. (Walker Depo. p. 24, ll. 16-21). See Fassett, 364 S.C. at 47, 610 S.E.2d at 844 ("In the case of a married person, the usual place of abode is presumed to be with the family. Thus, the house wherein a married man's wife resides is prima facie his usual place of abode.").

Mere denial is not sufficient to overcome the legal presumption of proper service. The Court finds that through pleadings and testimony Walker testified 101 Jumper Street in Varnville was his primary residence on June 20, 2017. In addition to finding proper service on Walker that conferred personal jurisdiction, the Court likewise finds Walker had notice of the proceedings. The evidence and testimony is that Walker was aware of the lawsuit and instructed Ms. Grimes to take the summons and complaint to a local insurance agency, which was done. Having found proper service of the summons and complaint that conferred personal jurisdiction and gave Walker notice of the proceedings, the Court denies Walker's 60(b) motion on this basis alone.

II. MISTAKE, INADVERTENCE, OR EXCUSABLE NEGLECT

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While Walker was properly served, he nonetheless argues the judgment should be vacated for mistake, inadvertence, or excusable neglect argument under 60(b)(1). The Court holds Walker has not satisfied his burden of presenting any evidence of mistake, inadvertence, or excusable neglect to warrant relief under 60(b)(1). Brunson served Walker at his residence through a person of suitable age and discretion that took the summons and complaint to an insurance agency within the time for a responsive pleading. It is well established that "an attorney or insurance company's misconduct is imputable to the client." Sundown, 383 S.C. at 609, 681 S.E.2d at 889. There is no mistake, inadvertence, or excusable neglect in this case. The Court finds Walker did not satisfy his burden of presenting evidence warranting relief under 60(b)(1) and denies the motion on this basis alone.

III. OTHER CONSIDERATIONS

As set forth above, the Court holds Mr. Walker does not satisfy his burden warranting relief under Rule 60(b), therefore making it unnecessary to consider the other factors for relief. See Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160, 166, 375 S.E.2d 321, 324 (Ct. App. 1988) ("Having concluded there is an insufficient factual basis for finding mistake, inadvertence, or excusable neglect, we need not decide whether the Gaffneys have shown a meritorious defense."). Even if the Court were to consider the other factors, they weigh in favor of denying Walker's motion.

"Once a party has put forth a satisfactory explanation for the default, the trial court must also 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 the relief is granted." Sundown, 383 S.C. at 607-08, 681 S.E.2d at 888.

A. *Timing of the Motion*

The Court holds that the extensive delay in filing the 60(b) motion – nearly ten months – warrants denial of the motion. Following entry of the February 9, 2018 judgment, Brunson's counsel sent the judgment to DMA Claims and Walker on February 12, 2018. (Ex. 6). Walker testified about receiving this letter. (Walker Depo.). On July 11, 2018, Walker's counsel sent the judgment to DMA Claims and requested payment of the judgment. (Ex. 6A). On August 2, 2018, Judy Thompson with Jupiter Auto wrote counsel for Brunson's office and noted that Jupiter had taken over the handling of this claim from DMA Claims. (Ex. 7). According to Ms. Thompson, the file had been "***forwarded to defense counsel to handle the suit.***" (Ex. 7) (emphasis added). Mr. Powell was copied on this email. From this point, it was nearly another four months before the 60(b) motion was filed on November 30, 2018.

Instead of retaining counsel to defend, Walker, his insurer, Lyndon Southern, filed suit against him in federal court on November 8, 2018 seeking a declaration that it did not owe a duty to defend or indemnify Walker for the judgment. Even after suing its insured, another three weeks passed before the 60(b) motion was filed. Having considered the evidence, the Court finds that this unreasonable delay warrants denial of Walker's 60(b) motion on this basis alone.

B. ***Meritorious Defense***

The Court finds that Walker does not have a meritorious defense. He did not argue a meritorious defense to the Court. This factor alone warrants denial of the 60(b) motion.

C. ***Degree of Prejudice***

The Court finds that Brunson will be tremendously prejudiced if the judgment is vacated. The collision giving rise to this action occurred on March 18, 2016. (Judgment). The damages hearing occurred nearly two-and-a-half years ago on December 21, 2017. (Judgment). Walker's 60(b) motion was filed on November 30, 2018 and has been pending for nearly one-and-a-half

years. (60(b) Mot.). The motion was scheduled but continued multiple times at the parties' request. Brunson is 80 years old. The Court does not see the benefit of vacating the judgment and starting the process over for Brunson when Walker testified his mother-in-law was served at his residence and she took the summons and complaint to a local insurance agency. The overwhelming prejudice to Brunson alone warrants denial of Walker's 60(b) motion.

CONCLUSION

For the separate, independent reasons set forth above the Court denies Walker's 60(b) motion.

IT IS SO ORDERED.

Walter H. Sanders, Jr.
Special Referee

March 19, 2020
Fairfax, South Carolina

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