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Apr 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alexander S. Macauley, Circuit Court Judge

Case No. 2020-CP-23-03928

Nadira Jackson.....

Respondent,

v.

Carolina Auto Credit/Colleen Bartona.....

Appellant,

APPELLANT BRIEF

NOW COMES APPELLANT, Carolina Auto/Colleen Bartona, through the undersigned counsel. Appellant respectfully submits the following brief in support of its position. This brief follows Appellant's Notice of Appeal, filed with this Court on December 30, 2020.

FACTUAL BACKGROUND

On December 30, 2020, Appellant filed its Notice of Appeal with this Honorable Court. Appellant respectfully appealed the Order issued by the Honorable Alexander S. Macaulay. The Order, issued on December 2, 2020, denied Appellant's appeal of the Default Judgment issued by the Honorable Jacquelyn Duckett on August 10, 2020. Due

to an error by Appellant calendaring the bench trial date, a default judgment was granted for Respondent in the amount of \$7,420.00.

After Counsel for Appellant asked the Magistrate to reconsider the ruling, and after that request was denied, Appellant sought relief from the Circuit Court under Rule 60 of the South Carolina Rules of Civil Procedure. Upon the matter being heard by the Circuit Court, Appellant was asked to provide authority allowing the Circuit Court to grant the relief Appellant sought from the Court. After referencing Rule 60 and providing case law almost directly on point, the Circuit Court denied the relief Appellant requested from the Court.

Appellant would respectfully submit that the Circuit Court's Order was decided in error and would humbly ask that the error by Counsel for Appellant not prohibit this matter from being heard on its merits. Appellant states the following in support of its position to reverse the lower Court's default judgment.

LAW AND ANALYSIS

As mentioned previously, a default judgment was entered against Appellant, in the amount of \$7,420.00, on August 10, 2020. On that date, due to an error from a member of Counsel's staff in the calendaring of the bench trial date, Counsel did not appear at the scheduled hearing. Thus, Respondent received a default judgment in the aforementioned amount. In requesting that this ruling be reversed, Appellant relies on Rule 60 of the South Carolina Rules of Civil Procedure. Specifically, Appellant relies on Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, which states in pertinent part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On 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[.] S.C. R. Civ. P. 60(b)(1).

Here, Rule 60(b)(1) refers to mistake, inadvertence, surprise, or excusable neglect in the context of seeking relief from a judgment or order. Our Court of Appeals expounded upon this Rule in the case of *Micronics v. South Carolina Dept. of Rev.*, 345 S.C. 506, 548 S.E.2d (S.C. App. 2001). In *Micronics*, Micronics, Inc. filed a request for a contested case hearing before the Administrative Law Judge Division (ALJD). *Id.* Both parties were originally served with a notice of the hearing, scheduled for May 14, 1996. *Id.* However, due to a conflict, the Administrative Law Judge (ALJ) rescheduled the hearing to May 22, 1996. *Id.* The ALJ issued an amended notice to both parties to reflect the new hearing date. Additionally, a member of the ALJ's staff spoke with Thomas Blocker, President of Micronics, and told him about the new hearing. *Id.* Unfortunately, however, Mr. Blocker mistakenly understood the new date as June 22, 1996, and he made a note in his calendar reflecting that mistaken date. *Id.*

Due to Mr. Blocker's misunderstanding of the rescheduled date of the hearing, Micronics failed to appear at the hearing scheduled on May 22, 1996. *Id.* Due to Micronics' nonappearance, the ALJ entered a default judgment against Micronics and dismissed the case. *Id.* When Mr. Blocker received this order of dismissal, he immediately wrote to the ALJ and detailed his mistake. Mr. Blocker also requested that the ALJ reopen the case, and the ALJ denied this request. Micronics appealed to the Circuit Court, which reversed the ALJ's decision. *Id.*

In affirming the Circuit Court's decision, the Court of Appeals relied on Rule

60(b)(1) of the South Carolina Rules of Civil Procedure. *Id.* at 510. Specifically, the Court of Appeals found that, in determining whether to grant a motion under Rule 60(b), the “trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” *Id.* at 511. In *Mictronics*, the Court of Appeals highlighted the fact that Mr. Blocker had “immediately sought relief from the dismissal. *Id.* Furthermore, the Court of Appeals held that Mictronics had established the existence of a meritorious defense through its prehearing statement, which outlined Mictronics’ case. *Id.* Lastly, the Court of Appeals held that the opposing party would “suffer no prejudice should th[e] case proceed for a determination on the merits,” as the resolution of the case had not been “substantially delayed by the parties’ action.” *Id.* at 512.

As in *Mictronics*, in the present case, Appellant made a mistake when calendaring the date of the hearing. Here, a former employee of Appellant’s Counsel forgot to calendar the date such that Appellant’s Counsel did not appear at the hearing, resulting in a default judgment entered against Appellant. Similar to *Mictronics*, Appellant sought relief from its default judgment promptly after the trial judge entered the judgment. For example, the trial judge entered the default judgment against Appellant on August 10, 2020. Two days later, during that same week, Appellant realized its mistake and promptly motioned the trial judge to reconsider the default judgment. Akin to *Mictronics*, Appellant’s failure to appear at the hearing amounted to a “good faith mistake of fact, and, no attempt to thwart the judicial system.” *Id.*

Moreover, as in *Mictronics*, Appellant established the existence of a meritorious defense. In this case, Respondent originally filed suit against Appellant regarding the sale

of an automobile. Respondent claimed that Appellant had breached its warranty to Respondent by allegedly selling Respondent a faulty automobile. In response to this filed Summons and Complaint, Appellant filed an Answer denying liability. This action by Appellant in filing its Answer remains similar to *Mictronics* in that Mictronics' filed a "prehearing statement outlining its... meritorious defense." *Id.* As the Court of Appeals held in *Mictronics*, a party "is not required to show an absolute defense" in order to establish a meritorious defense." *Id.* Thus, in this case, Appellant's filing of its Answer denying liability before the hearing, as with the case in *Mictronics*, remained sufficient to establish a meritorious defense.

Furthermore, similar to *Mictronics*, Respondent will "suffer no prejudice should this case proceed for a determination on the merits." *Id.* As in *Mictronics*, Appellant's prompt response in addressing the default judgment "has not... substantially delayed" the resolution of the case on its merits." *Id.* Additionally, our Courts have held that South Carolina maintains a policy "favoring the disposition of issues on their merits rather than on technicalities. *Id.*

CONCLUSION

Thus, because Appellant made a good faith error in calendaring the date, promptly realized and attempted to remedy this error, maintained the existence of a meritorious defense, and caused no prejudice to the Respondent, the interests of justice favor allowing the case to be heard on its merits. Thus, Appellant respectfully requests this Court to reverse the decision of the lower Court and allow the case to be reopened and heard on its merits.

Respectfully submitted,

s/ Lauren G. Brown for
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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alexander S. Macauley, Circuit Court Judge

Case No. 2020-CP-23-0392

Nadira Jackson,

Respondent,

v.

Carolina Auto Credit/Collector
Bartona,

Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Appellant's Brief on the Respondent by delivering a copy of Appellant's Brief to the resident at Nadira Jackson's given address, 156 Taylor Chapel Road, Columbia, South Carolina 29203.

April 21, 2021

s/ Parker Turcios
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