

ORIGINAL

FILED

04/16/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 18-0488

DA 18-0488

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 87N

TONY EVERETT,

Plaintiff and Appellee,

v.

KIMBERLEY D. HARBERT,

Defendant and Appellant.

FILED

APR 16 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis and Clark, Cause No. CDV-17-342
Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Amy E. Hall, Hannah S. Cail, Montana Legal Services Association, Helena,
Montana

Lucas Hamilton, Luxan & Murfitt, PLLP, Helena, Montana

For Appellee:

Charles A Smith, Law Offices of Charles A. Smith, Helena, Montana

Submitted on Briefs: January 16, 2019

Decided: April 16, 2019

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 The District Court granted Harbert's M. R. Civ. P. 60(b) motion to set aside the default judgment outside of the sixty-day period set forth in M. R. Civ. P. 60(c)(1). Harbert appeals, believing her M. R. Civ. P. 60(b) motion to set aside the default judgment and decree quieting title to real estate located outside of Helena, Montana, to plaintiff Tony Everett was deemed denied by operation of law. We affirm the District Court's order granting Harbert's motion to set aside the default judgment and decree quieting title pursuant to M. R. Civ. P. 60(d)(3).

¶3 For the past thirty years, Harbert has resided on real estate located outside of Helena, Montana (the Property). Harbert received title to the Property from her mother, conveyed the Property to herself and her now deceased husband in 1992, and annually paid property taxes on the Property until 2017.

¶4 Everett owns Modern Pawn, a business located in Helena. On December 12, 2014, Harbert executed a pawn contract with Modern Pawn for a cash loan of \$210, listed the Property as security for the loan, and signed a quitclaim deed of the Property to Everett. Harbert subsequently repaid the loan and Everett returned the quitclaim deed.

¶5 In November 2015, Harbert executed another pawn contract for a cash loan of \$700, again secured by the Property and the same quitclaim deed. Harbert continued to obtain and re-pay short-term cash loans from Modern Pawn after November 2015. However, Everett claimed Harbert did not make payments on the \$700 loan, and on April 30, 2017, brought an action to quiet title to the Property in District Court.

¶6 A process server was unable to serve Harbert between May 12, 2017, and June 2, 2017. In his affidavit to the District Court requesting service by publication, Everett stated he diligently searched and inquired after Harbert, but was unable to serve her personally. The District Court ordered service by publication, with which Everett complied. Harbert did not see the publication and did not answer the quiet title action. Harbert obtained cash loans from Modern Pawn in May and June of 2017, and continued to reside on the Property without receiving any notice of Everett's action against her. On August 4, 2017, the Clerk of Court entered a default judgment against Harbert. Based on Harbert's failure to answer, on March 29, 2018, the District Court entered the default judgment and a decree quieting title of the Property to Everett.

¶7 In April 2018, Everett sold the Property to Joseph Trowbridge. Trowbridge filed an action in Justice Court to evict Harbert from the Property. On May 26, 2018, Harbert was personally served with notice of Trowbridge's action to evict her from the Property. This was the first time Harbert received notice of Everett's quitclaim action and the default judgment against her.

¶8 On June 11, 2018, Harbert filed a M. R. Civ. P. 60(b) motion (Rule 60(b) motion) to set aside the default judgment. The District Court did not rule on this motion within sixty days of its filing. Believing her motion was deemed denied by operation of M. R. Civ. P. 60(c)(1), Harbert appealed on August 17, 2018. M. R. Civ. P. 60(c)(1) requires a district court to rule on a M. R. Civ. P. 60(b) motion within sixty days.

¶9 On August 28, 2018, the District Court granted Harbert's motion to set aside the default judgment and decree quieting title outside of the sixty-day period per M. R. Civ. P. 60(c)(1) based on deficient service of process and fraud. The District Court found it troubling that Harbert resided at the Property and obtained cash loans from Modern Pawn the same months Everett's affidavit claimed Everett was diligently attempting to serve her. In her supporting affidavit, Harbert attested:

I was not out of town during that time period. I would've answered the door if I heard someone knocking. No one left me a note, asking me to call them. Tony [Everett] had my phone number and my address and he never called me or wrote to tell me he had some papers he wanted to give me.

The District Court therefore found it should grant Harbert's motion based on Harbert's surprise and excusable neglect pursuant to M. R. Civ. P. 60(b)(1).

¶10 The District Court additionally found that it should grant Harbert's motion based on fraud, misrepresentation, or misconduct by Everett pursuant to M. R. Civ. P. 60(b)(3). The court cited that Everett asserted he paid Harbert's Property taxes for five years prior to filing the complaint. Harbert's affidavit states she paid her Property taxes up until 2017, when Trowbridge began paying them. The District Court noted the default judgment and

decree quieting title were based solely on Everett's representation of the facts. Acknowledging that cases should be decided on the merits, that judgments by default are not favored, and that the findings of fact in this proceeding were in question, the District Court set aside the default judgment and the decree quieting title, albeit outside of the sixty-day period set forth in M. R. Civ. P. 60(c)(1). The issue on appeal is whether the District Court may grant Harbert's M. R. Civ. P. 60(b) motion to set aside the default judgment pursuant to M. R. Civ. P. 60(d)(3) outside of the sixty-day period mandated by M. R. Civ. P. 60(c)(1).

¶11 “The general principles which guide this Court in considering a motion to set aside a default are: every case should be decided on its merits, judgments by default are not favored, and district courts are vested with discretion” to grant or deny motions to set aside a default judgment. *Engelsberger v. Lake Cnty.*, 2007 MT 211, ¶ 8, 339 Mont. 22, 167 P.3d 902. Consistent with these general principles, a district court must manifestly abuse its discretion before this Court will reverse the grant of a motion to set aside a default judgment. *Engelsberger*, ¶ 8.

¶12 Conversely, where a district court denies a motion to set aside a default judgment, the policy favoring trial on the merits weighs against a district court's discretion. *Lords v. Newman*, 212 Mont. 359, 364, 688 P.2d 290, 293 (1984). Only a slight abuse of discretion is sufficient for this Court to reverse the denial of a motion to set aside a default judgment. *Engelsberger*, ¶ 8; *Lords*, 212 Mont. at 364, 688 P.2d at 293. Therefore, this Court reviews “the deemed denial of a motion to set aside a default judgment for a slight abuse of

discretion.” *Green v. Gerber*, 2013 MT 35, ¶ 13, 369 Mont. 20, 303 P.3d 729. However, where a district court elects to grant a motion setting aside a default judgment pursuant to M. R. Civ. P. 60(d)(3) after the motion’s deemed denial under M. R. Civ. P. 60(c)(1), this Court reviews the district court’s decision for a manifest abuse of discretion consistent with the policy favoring trial on the merits. In determining whether a district court manifestly abused its discretion, this Court reviews a district court’s findings of fact for clear error and conclusions of law for correctness. *Larson v. State*, 2019 MT 28, ¶ 16, 394 Mont. 167, 434 P.3d 241.

¶13 M. R. Civ. P. 55(c) states: “The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).” There is a difference between a default and the default judgment at issue in this case, and different legal standards apply to each. “A default is accomplished at the request of the moving party by mere clerical entry at the expiration of the time allotted for a responsive pleading; a default judgment . . . is the final decision of a court of law.” *Green*, ¶ 41. The burden imposed on a party seeking to set aside a default is good cause, which exists where: (1) the defaulting party proceeded with diligence; (2) the defaulting party’s neglect was excusable; (3) the judgment, if permitted to stand, will affect the defaulting party injuriously, and (4) the defaulting party has a meritorious defense to plaintiff’s cause of action. *JAS, Inc. v. Eisele*, 2014 MT 77, ¶ 34, 374 Mont. 312, 321 P.3d 113 (citing *Bowen v. Webb*, 34 Mont. 61, 65, 85 P. 739, 740 (1906)).

¶14 In contrast, the burden imposed in setting aside the default judgment at issue is found in Rule 60(b). *Green*, ¶ 41. Rule 60(b) states:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

M. R. Civ. P. 60(b)(1)-(6).¹ While it is generally error to import a good cause analysis into cases concerned with setting aside a default judgment, this Court has held that a good cause analysis applies to M. R. Civ. P. 60(b)(1), whether the default judgment should be set aside for mistake, inadvertence, surprise or excusable neglect. *JAS, Inc.*, ¶ 34; *Green*, ¶ 40.

Therefore, Harbert's motion to set aside a default judgment for mistake, inadvertence, surprise or excusable neglect pursuant to M. R. Civ. P. 60(b)(1) must be based on a showing of good cause, meaning: (1) Harbert proceeded with diligence; (2) Harbert's neglect was excusable; (3) the judgment, if permitted to stand, will affect Harbert injuriously, and (4) Harbert has a meritorious defense to Everett's cause of action.

¹ "[W]here the circumstances underlying a default judgment raise grounds that are covered by Rule 60(b)(1)-(5), Rule 60(b)(6) is not available for application." *Green*, ¶ 35.

¶15 In its August 28, 2018 order granting Harbert's motion to set aside the default judgment, the District Court found that Harbert's Rule 60(b)(1) motion was based on a showing of good cause: (1) Harbert acted with diligence as soon as she discovered the default judgment; (2) Harbert's neglect was excusable due to improper service; (3) Harbert will lose the Property if the judgment stands; and (4) Harbert likely has a valid argument that the quitclaim deed is unlawful or otherwise void. The District Court further found that Harbert's motion to set aside the default judgment should be granted based on fraud, misrepresentation, and Everett's misconduct pursuant to M. R. Civ. P. 60(b)(3). This Court agrees that Harbert met her burden pursuant to M. R. Civ. P. 60(b) and the District Court's order granting her motion to set aside the default judgment reached the proper conclusion. However, the District Court reached the proper conclusion outside of the sixty-day period mandated by M. R. Civ. P. 60(c)(1).

¶16 M. R. Civ. P. 60(c)(1) requires a district court to rule on a M. R. Civ. P. 60(b) motion within sixty days or the motion is deemed denied by operation of law. The time limit is generally mandatory and strictly enforced, and a moving party's proper recourse is to timely appeal the denial, preserving the issue as to whether the default judgment should be set aside. *Green*, ¶ 27. However, a district court does not lose jurisdiction over the matter upon expiration of the sixty-day period. *Green*, ¶¶ 24-25. M. R. Civ. P. 60(d) states:

[M. R. Civ. P. 60(c)] does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief to a defendant who was not personally notified of the action;
- or

(3) set aside a judgment for fraud on the court.

A district court has discretion, on a case-by-case basis, to grant relief or set aside a judgment outside of the M. R. Civ. P. 60(c) sixty-day period when it determines a fraud on the court occurred. M. R. Civ. P. 60(d)(3).

¶17 The District Court granted Harbert's Rule 60(b) motion to set aside the default judgment outside of the sixty-day period mandated by M. R. Civ. P. 60(c)(1). Pursuant to M. R. Civ. P. 60(d)(3), the District Court retained its power to set aside the default judgment. Everett told the District Court that he diligently tried to personally serve Harbert, yet the District Court found that Harbert, in good faith, had no notice of Everett's action against her. Everett had Harbert's phone number and address, the Property at issue was Harbert's residence, and Harbert came into Modern Pawn during the period Everett represented he was diligently trying to serve her. Everett further represented that he paid Harbert's property taxes for five years. The record challenges Everett's representation of the facts and the District Court ultimately found that Harbert deserved her day in court to present her side of the story. Such a finding is in line with this Court's preference to decide cases on the merits over issuing default judgments. *See Engelsberger*, ¶ 8.

¶18 While the District Court made these findings pursuant to M. R. Civ. P. 60(b)(1) and (3), and made no mention of M. R. Civ. P. 60(d)(3), the District Court reached the right result by granting Harbert's motion to set aside the default judgment. The District Court retained the authority to do so pursuant to M. R. Civ. P. 60(d)(3). This Court "will affirm the [D]istrict [C]ourt when it reaches the right result, even if it reaches the right result for

the wrong reason.” *State v. Daffin*, 2017 MT 76, ¶ 34, 387 Mont. 154, 392 P.3d 150. Accordingly, this Court affirms the District Court’s August 28, 2018 order granting Harbert’s Rule 60(b) motion pursuant to M. R. Civ. P. 60(d)(3).

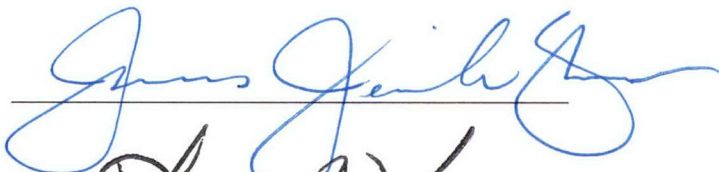
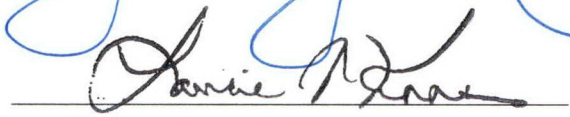

¶19 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶20 Affirmed.


Justice

We concur:


Chief Justice




Justices