NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 08-694

REVING BROUSSARD, PATTI HAMILTON, GOLDDEAN CROWNOVER, BYRON CROWNOVER, and LISA NORRIS APPELLANTS	**Opinion Delivered** MARCH 4, 2009
V.	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT, [NO. CV-2005-326],
GUY JONES APPELLEE	HONORABLE CHARLES E. CLAWSON, JR., JUDGE
	REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellants appeal from the circuit court's refusal to set aside a default judgment and the ensuing award of damages. We reverse and remand for a second hearing on damages.[1]

Appellee Guy Jones sued appellants pro se on May 3, 2005. He claimed that appellants improperly ousted him from membership in an unincorporated association called the Southern Social Club; that appellants released private information about him to persons outside the club; that appellants engaged in "deceptions, untruths, and misrepresentations"; and that

[1]We dismissed appellants' prior appeal without prejudice due to lack of a final order. *Broussard v. Jones*, CA07-97 (Ark. App. Sept. 26, 2007) (not designated for publication). Appellants returned to circuit court, obtained an appropriate Ark. R. Civ. P. 54(b) certification, and filed the present appeal. On August 20, 2008, we denied appellee's motion to dismiss this appeal. Appellee argues for dismissal again in his brief and contends that several of appellants' arguments are procedurally barred. We find no cause to change our ruling denying the motion to dismiss, and we hold that the merits of all issues are properly before us.

appellants "held the Plaintiff up as being dishonest [and] attacked his credibility" before third persons. Appellee sought an accounting and disbursal of his share of the club's assets; compensatory damages for appellants' conduct; and punitive damages against appellants Broussard and Norris.

After appellants answered and requested a more definite statement, their attorney, Robert Irwin, passed away. Irwin's son, attorney Seth Irwin, then assumed defense of the case. Seth Irwin obtained an extension of time to respond to outstanding discovery and timely filed appellants' responses. Months later, appellee propounded additional discovery and filed a motion challenging appellants' previous answers. The record reflects that appellee notified Irwin of a July 19, 2006 hearing on the motion, but neither Irwin nor appellants appeared. As a result, the court gave appellants twenty days to file full and complete discovery responses or suffer serious sanctions.

On August 10, 2006, having received no response from appellants, appellee filed a motion asking the court to strike appellants' answer and enter judgment in his favor. The motion contained a certificate of service to Irwin. When neither Irwin nor appellants appeared at the October 3, 2006 hearing on the motion, appellee asked the court for judgment, and he gave testimony regarding his damages. After receiving appellee's testimony, the court struck appellants' answer and entered judgment for appellee, awarding him $134,088 in compensatory damages, plus $100,000 in punitive damages against each appellant.

Appellants thereafter filed several motions to set the judgment aside, asserting lack of notice, ineffective assistance of counsel, and inadequate proof of damages. The court denied the motions, and this appeal followed.

Notice

Appellants argue first that the judgment against them should be set aside because their attorney was not notified of the October 3, 2006 hearing. We find no abuse of discretion in the court's refusal to set the judgment aside on this ground. *See generally Office of Child Support Enforcement v. Pyron*, 363 Ark. 521, 215 S.W.3d 637 (2005) (employing the abuse-of-discretion standard).

Rule 6(c) of our Rules of Civil Procedure provides that notice of a motion hearing shall be served not later than twenty days before the hearing.[2] Appellants correctly note that the record contains no written proof of such service on their attorney regarding the October 3, 2006 hearing. However, the circuit court conducted an inquiry into the matter and asked appellee if he sent opposing counsel notice of the court proceedings. Appellee replied, "Absolutely" and explained that he "sent a copy of every notice of hearing to Mr. Irwin and left it with the outgoing mail in your case coordinator's office." Irwin told the court, "I didn't receive anything from the Court directing me to be here," to which the court responded, "If my memory serves [me] right, we called your office a couple of times when things were set and nobody showed up." The court also confirmed Irwin's mailing address and noted that the

[2] We disagree with appellants that Ark. R. Civ. P. 5(c) clearly requires hearing notices to be filed with the circuit clerk.

address was "on just about everything in the file." At a subsequent hearing, the court recalled that Irwin had failed to appear on two occasions and stated, "I just didn't have much faith" in Irwin's claim that he did not receive notice.

The court had before it two conflicting versions of events and chose to believe appellee's claim that he sent notice of the hearing to Irwin. The court also relied on its own recollection of the history of the case. Under these circumstances, we defer to the court's credibility determination and decline to reverse on this ground. *See generally Rice v. Welch Motor Co.*, 95 Ark. App. 100, 234 S.W.3d 327 (2006).

Ineffective Assistance of Counsel

Appellants also argue that the judgment should be set aside because their attorney abandoned his duties as their counsel. We disagree. A client is generally bound by the acts of his attorney and cannot avoid the consequences of his attorney's neglect or omissions. *See Florence v. Taylor*, 325 Ark. 445, 928 S.W.2d 330 (1996); *Lovelace v. Director*, 78 Ark. App. 127, 79 S.W.3d 400 (2002); *Johnson v. Coleman*, 4 Ark. App. 58, 627 S.W.2d 565 (1982). In light of these authorities, we cannot say that the circuit court abused its discretion in refusing to set the judgment aside due to ineffective assistance of counsel.

Proof of Damages

The circuit court struck appellants' answer and entered a default judgment against them as a discovery sanction. *See* Ark. R. Civ. P. 37(b)(2)(C). Based on our rulings to this point, we affirm the court's imposition of that sanction. However, appellee was still required to

prove damages. *Gardner v. Robinson*, 42 Ark. App. 90, 854 S.W.2d 356 (1993). Appellee offered the following damages testimony at the October 3, 2006 hearing.

Appellee stated that he and appellants became owners of an "adult entertainment organization" in 2004 and that, due to the nature of the organization, it was important to protect the owners' right to privacy. However, appellee said, appellants intentionally breached his right to privacy. According to him, appellants Broussard and Norris disseminated a series of emails containing various rude and vulgar remarks. The emails did not clearly identify the writers and recipients, nor did they mention appellee by name. However, appellee testified that a reasonable sum for his damages for "the breach of right of privacy, the defamation and [libel]" was $25,000. He additionally requested punitive damages of $100,000 against each appellant.

Appellee also testified that he was entitled to a portion of the club's income and assets after his ouster. His testimony was unclear and lacked documentary support, but, as best we can understand, he appeared to say that the club should generate income of about $15,500 per year; that he was owed $9100 for limousine service; that the club would acquire $127,500 in assets over the course of five years; and that he was entitled to $7850 and $5160 for a one-third interest in the club's personal property. He did not explain why he measured the club's assets over a five-year period or why he, as one of at least nine club members, was entitled to a one-third interest in the club's property. He also did not explain how he arrived at a total damage figure of $167,610 or why he reduced that figure by twenty percent to $134,088, which was the amount of compensatory damages he requested from the court.

We agree with appellants that appellee's purported proof is speculative and conjectural, consisting of little more than his recitation of various dollar amounts. A damage award based on such testimony cannot stand. *See*, *e.g.*, *Volunteer Transp., Inc. v. House*, 357 Ark. 95, 162 S.W.3d 456 (2004). We therefore reverse and remand for a hearing on damages. *See id.*

Reversed and remanded.

MARSHALL and BROWN, JJ., agree.