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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA11-676

Opinion Delivered December 7, 2011

BRANDY M. TALLEY APPELLANT	APPEAL FROM THE YELL COUNTY CIRCUIT COURT, NORTHERN DISTRICT [CV-2010-142]
V.	HONORABLE DAVID H. McCORMICK, JUDGE
ASSET ACCEPTANCE, LLC APPELLEE	AFFIRMED

DAVID M. GLOVER, Judge

Appellant Brandy Talley appeals from the trial court's denial of her motion to set aside a default judgment that was entered against her and in favor of appellee Asset Acceptance LLC. The underlying default judgment was entered on December 27, 2010, and involved a credit-card account. In her motion to set aside, Talley contended that the summons that was served on her was fatally defective because it contained an incorrect zip code in the circuit court's address. The trial court denied her motion, and we affirm.

Background

Asset Acceptance filed its complaint against Talley on October 22, 2010, alleging that Talley owed an unpaid credit-card debt, plus interest. The summons that was served on Talley provided a "court address" that included the following zip code: "72834-4402." Talley did not respond to the complaint, and on December 27, 2010, the trial court entered a default judgment. On January 19, 2011, Talley filed her motion to set aside the default

judgment. She contended that service of the complaint was invalid because the zip code provided for the court address was incorrect in that the last four numbers should have been "3535," instead of "4402." Following a hearing, the trial court denied the motion, and this appeal followed. As her sole point of appeal, Talley contends, "Because the digits of the 'zip plus four' were incorrectly stated on the Summons served by appellee on appellant, service was improper and the trial court abused its discretion in refusing to set aside the default judgment against appellant." We disagree.

Standard of Review

The standard of review for the granting or denial of a motion to set aside a default judgment varies, as explained by our supreme court in *Nucor Corp. v. Kilman*, 358 Ark. 107, 118, 186 S.W.3d 720, 727 (2004):

> [I]n cases where the appellant claims that the judgment is void, we will review a trial court's granting or denial of a motion to set aside default judgment using a de novo standard. In cases where an issue arises under sections (c)(1), (3), or (4) of Rule 55, we will continue to review the trial court's granting or denial of a motion to set aside default judgment for abuse of discretion.

Rule 55 provides in pertinent part:

> (c) *Setting Aside Default Judgments*. The court may, upon motion, set aside a default judgment previously entered for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (*2) the judgment is void*; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or (4) any other reason justifying relief from the operation of the judgment. The party seeking to have the judgment set aside must demonstrate a meritorious defense to the action; however, if the judgment is void, no other defense to the action need be shown.

(Emphasis added.) Although Talley asserts an abuse-of-discretion standard in stating her point of appeal, she actually argued below and in this appeal that the default judgment entered

against her was void. Consequently, a de novo standard of review is applicable, *i.e.,* the judgment is either void as a matter of law, or it is not.

Discussion

In making her argument that an incorrect court address rendered the summons fatally defective, Talley relies on cases that hold that compliance with statutory service requirements must be exact:

> Our case law is well settled that statutory service requirements, being in derogation of common-law rights, must be strictly construed and compliance with them must be exact. This court has held that the same reasoning applies to service requirements imposed by court rules. More particularly, the technical requirements of a summons set out in Ark. R. Civ. P. 4(b) must be construed strictly and compliance with those requirements must be exact. Actual knowledge of a proceeding does not validate defective process. The reason for this rule is that service of valid process is necessary to give a court jurisdiction over a defendant.
>
> We have made it clear in a long line of cases that compliance with Rule 4(b) must be exact. The bright line standard of strict compliance permits certainty in the law; whereas, a substantial compliance standard would lead to an ad hoc analysis in each case in order to determine whether the due-process requirements of the Arkansas and U.S. constitutions have been met.

Trusclair v. McGowan Working Partners, 2009 Ark. 203, 3–4, 306 S.W.3d 428, 430 (citations omitted). We agree that the service requirements set forth in Rule 4 of the Arkansas Rules of Civil Procedure must be exact; we disagree that the circuit-court address falls within those mandatory service requirements.

Rule 4 provides in pertinent part:

> (b) *Form*. The summons shall be styled in the name of the court and shall be dated and signed by the clerk; be under the seal of the court; contain the names of the parties; be directed to the defendant; state the name and address of the plaintiff's attorney, if any, otherwise the address of the plaintiff; and the time within which these rules require the defendant to appear, file a pleading, and defend and shall notify him

> that in case of his failure to do so, judgment by default may be entered against him for the relief demanded in the complaint.

Nothing contained in subsection (b) requires the court address to appear in the summons. In addition, while it is true that the Reporter's Notes to Rule 4 contain an "Official Form of Summons," which provides a space for "Address of Clerk's Office: _____," we have concluded that, in determining whether there has been exact compliance with the service requirements, the language actually set forth in Rule 4 must take precedence over the "Official Form." This is particularly true in light of the fact that the Reporter's Notes also provide, "[t]he form . . . may be modified as needed in special circumstances." The Notes go on to explain, "The adoption of this form is in compliance with Rule 4(b) and does not modify or amend any part of that rule."

In short, the actual language of subsection (b) in Rule 4 of the Arkansas Rules of Civil Procedure sets forth the items that must be included in a summons, the lack of which might render it void under the "exact compliance" standard stated in *Trusclair*, *supra*. That language says nothing about the court address. The fact that the "Official Form" contains an additional space for the court's address is secondary. As the trial court explained in rendering its decision, the summons in this case was issued in correct form. The trial court further noted that if Talley had mailed a responsive pleading to the address shown on the summons and it been returned as undelivered or undeliverable, then it would have found that information relevant. As it is, we agree with the trial court and conclude that there was exact compliance with the requirements of Rule 4(b), and that the alleged incorrect zip code for the court

address did not render the summons fatally defective so as to require the default judgment to be set aside as void.

Affirmed.

HART and MARTIN, JJ., agree.

Sanford Law Firm, PLLC, by: *Cheslee Mahan*, for appellant.

Hosto, Buchan& Prater, P.L.L.C., by: *John William Crow*, for appellee.