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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-755

DOWNEY MOVING & STORAGE COMPANY, INC. APPELLANT	**Opinion Delivered** January 18, 2012
V.	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CV-2009-505]
ALFRED WISEMAN AND TAMIKA WISEMAN APPELLEES	HONORABLE MICHAEL A. MAGGIO, JUDGE REVERSED AND DISMISSED

JOHN MAUZY PITTMAN, Judge

This is an appeal from an order denying a motion to set aside a default judgment for lack of proof of service of process. Appellant asserts that the trial court erred in denying its motion because there was no proof of actual service. We agree, and we reverse and dismiss.

In 2006, appellees sued appellant Downey Moving & Storage for damages arising out of a vehicular accident that occurred on May 11, 2006. That case was dismissed without prejudice in February 2008 following a motion by appellant based on an invalid summons. The present case was then filed on May 11, 2009. Appellant did not appear, and appellees filed a motion for default judgment on January 15, 2010. A hearing on the motion for default judgment was held on March 15, 2010. The trial court found that appellant had been served on August 7, 2009, but refused to grant default judgment because appellant had not been served with notice of the hearing. Appellees were directed to serve appellant with notice of a default hearing set for April 26, 2010, and to provide the court with proof of service. The

trial court conducted a damages hearing on March 15, 2010, apparently resulting in an order on April 22, 2010, awarding each of the appellees damages in the amount of $1000.[1] Appellees moved on May 6, 2010, to set aside such order because the amount of damages was inadequate. On June 28, 2010, the trial court set aside its order of April 22, 2010, and issued substituted judgments awarding each of the appellees damages in the amount of $10,000.

Appellant first appeared by filing a motion to set aside the default judgment on January 18, 2011, arguing that the judgment was void for lack of proof of service of process and should be set aside pursuant to Ark. R. Civ. P. 55(c). After hearing arguments of counsel, the trial court entered an order denying the motion, finding that service was not deficient because "the correct agent was served, at the correct address, with the correct documents."

We agree with appellant's argument that the trial court erred. Presumably, the finding regarding service was based on the trial court's docket, which was discussed during argument, but the trial docket in the record before us reflects only that a summons was issued; it does not identify what documents were served on appellant. Appellees' original motion for default judgment asserts that a summons and complaint were served on appellant, but the affidavit of service required by Ark. R. Civ. P. 4(g) is absent. The only evidence of service in the record is a return receipt from a mailing addressed to Carolyn Downey at Downey Moving & Storage, unaccompanied by any affidavit of service or anything else to show what documents, if any, were delivered in the mailing.

[1]The record contains no order dated April 22, 2010, but such an order is referenced in the final order entered on June 28, 2010.

Appellant's attorney designated the entire record on appeal, and appellees filed no motion to correct or modify the record pursuant to Ark. R. App. P.–Civil 4(e). No summons whatsoever appears in the record before us. A default judgment is void under Ark. R. Civ. P. 55(c)(2) if it is improperly served or if the summons does not strictly comply with the requirements of Ark. R. Civ. P. 4. *Southern Transit Co. v. Collums*, 333 Ark. 170, 966 S.W.2d 906 (1998). Because there is no evidence that the summons and complaint were served on appellant, and because compliance with Rule 4 cannot be determined given the absence of the summons itself from the record, the default judgment is void, and we hold that the trial court erred in denying appellant's motion to set it aside.

Reversed and dismissed.

ROBBINS and GLOVER, JJ., agree.

Michael U. Sutterfield, for appellant.

No response.