

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 11-1008

BUDDY YORK BAIL BONDS, INC.
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered April 11, 2012

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTH DIVISION
[NO. CR-10-2889]

HONORABLE HERBERT WRIGHT,
JUDGE

AFFIRMED

DOUG MARTIN, Judge

Appellant, Buddy York Bail Bonds, Inc. (“York”), brings this appeal from an order of the Pulaski County Circuit Court denying York’s motion to set aside a bond-forfeiture judgment. We affirm.

On November 6, 2009, York executed a \$15,000 bond for the release of Vincent Gomez and to ensure Gomez’s appearance in court on his criminal charges of two counts of obtaining drugs by fraud and driving on a suspended driver’s license. Gomez failed to appear for plea and arraignment on his assigned court date of September 27, 2010, and that same day, the Pulaski County Circuit Court issued an “order for issuance of arrest warrant and summons/order for surety to appear.” That order directed York to appear before the circuit court on January 31, 2011, to show cause why the full amount of the bail bond should not



be forfeited. Neither York nor Gomez appeared at the hearing, and the circuit court entered a bond-forfeiture judgment on January 31, 2011.

On June 17, 2011, York filed a motion to set aside the bond-forfeiture judgment, arguing that York had sent the court information showing that Gomez was incarcerated at the time he was supposed to appear in Pulaski County Circuit Court.¹ York attached to its motion copies of documents purporting to show that Gomez had been incarcerated on the pertinent date.

The State filed an objection to York's motion to set aside the bond-forfeiture judgment, asserting that it could not confirm whether the court had ever received the documentation York purported to have provided. The State also noted that York's motion to set aside was not filed within ninety days of the bond-forfeiture judgment, as required by Arkansas Rule of Civil Procedure 60.

The circuit court entered an order on June 24, 2011, denying York's motion to set aside. In so doing, the court noted that the bond-forfeiture judgment was entered on January 31, 2011, and further found as follows:

The Motion to Set Aside Bond Forfeiture judgment was filed June 17, 2011, one hundred thirty-seven days after the bond-forfeiture judgment was entered. Arkansas Rule of Civil Procedure 60(a) provides that the court may modify or vacate a judgment in order to correct errors, mistakes, or to prevent a miscarriage of justice, within ninety days of the entry of judgment. The Court does not find that any of the grounds provided in Arkansas Rule of Civil Procedure 60(c), which allow the court to act beyond the ninety day limitation, have been shown to exist.

¹The charges against Gomez were dismissed on speedy-trial grounds on April 18, 2011.



Therefore, the court finds and determines that it is without jurisdiction to grant the relief requested by the Motion to Set Aside Bond Forfeiture Judgment, which is hereby ordered denied.

York filed a timely notice of appeal on July 13, 2011, and argues in its brief that the trial court's ruling was in error.

The rules of civil procedure apply in a bond-forfeiture case. Ark. R. Civ. P. 60(a) (2011); *see also Holt Bonding Co., Inc. v. State*, 353 Ark. 136, 114 S.W.3d 179 (2003); *Arvis Harper Bail Bonds, Inc. v. State*, 91 Ark. App. 95, 208 S.W.3d 809 (2005). Arkansas Rule of Civil Procedure 60 provides for relief from a judgment and allows a circuit court to modify or vacate a judgment within ninety days of its having been filed “[t]o correct errors or mistakes or to prevent the miscarriage of justice.” Ark. R. Civ. P. 60(a). Rule 60(c) grants the circuit court, after the expiration of ninety days from filing the judgment, the power to set aside or otherwise vacate or modify a judgment or order if new evidence is discovered or if the judgment or order was procured by misrepresentation or fraud. Ark. R. Civ. P. 60(c)(1), (3); *see also Arvis Harper Bail Bonds, supra*. In order to reverse the circuit court's decision on a Rule 60 matter, we must find an abuse of discretion. *Arvis Harper Bail Bonds, supra*.

York acknowledges that it did not seek to set aside the bond-forfeiture judgment until after ninety days had expired but argues on appeal that there was both newly discovered evidence and a misrepresentation by the State that should have caused the circuit court to set aside the judgment pursuant to Rule 60(c). We are unable to reach the merits of York's



arguments on appeal, however, because the issues he now raises are not properly preserved for appeal.

In its motion to set aside, York never cited Rule 60(c); instead, the motion simply stated the following:

1. That Buddy York Bail Bonds, Inc., wrote a bond on the above case and subsequently defendant failed to appear in Fourth Division.

2. That a bond-forfeiture judgment was entered on January 31, 2011, in the amount of \$15,000.00.

3. That Buddy York Bail Bonds, Inc. was ordered to appear on a show cause [hearing set for] January 31, 2011, and he [*sic*] sent Fourth Division information along with copies of a surrender of prisoner and other forms showing that defendant was incarcerated in Garland County Detention from July 2010 until he was sent to Saline County Detention Center, then on to the Arkansas Department of Correction when a bed was available.

4. That the defendant was incarcerated on September 27, 2010 at Garland County Detention Center the day he was due in court in Pulaski County Circuit, Fourth Division.

5. That copies of notices, surrenders, and letters to Fourth Division are attached.

6. The charges against defendant were dismissed April 18, 2011.

7. That respondent moves the court to vacate and set aside the judgment in this matter.

Clearly, the motion makes no mention of Rule 60(c), newly discovered evidence, or fraud. Where an argument is not addressed to the circuit court, it is not preserved for appellate review. *Bob Cole Bonding v. State*, 340 Ark. 641, 645, 13 S.W.3d 147, 150 (2000) (citing *Pyle v. State*, 340 Ark. 53, 8 S.W.3d 491 (2000)). As such, we decline to reach York's argument on this issue.



York raises an alternative argument wherein he contends that this court could view the bond-forfeiture judgment “as a default judgment since [York] did not appear and defend,” and thus set aside the judgment pursuant to Arkansas Rule of Civil Procedure 55.² We reject this argument for two reasons. First, it was not raised below and thus cannot be raised for the first time on appeal. See *Bob Cole Bonding, supra*. Second, this court has held that Rule 55 has no application in bond-forfeiture proceedings. *M & M Bonding Co. v. State*, 59 Ark. App. 228, 232, 955 S.W.2d 521, 523 (1997) (explaining that Rule 55 “contemplates that an opposing party request a default judgment against another party. In a bond-forfeiture case, the money or other sufficient surety has been deposited with the court. Once the defendant has failed to appear, the entire amount of the bond is subject to forfeiture.”).

Because neither of York’s arguments is preserved for appeal, we affirm the circuit court’s denial of York’s motion to set aside the bond-forfeiture judgment.

Affirmed.

GRUBER and ABRAMSON, JJ., agree.

James P. Clouette, for appellant.

Dustin McDaniel, Att’y Gen., by: *Karen Virginia Wallace*, Ass’t Att’y Gen., for appellee.

²Rule 55(c), governing the setting aside of default judgments, provides that “[t]he 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.”