Cite as 2013 Ark. App. 47

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-608

LIEUX'RITA GREEN
APPELLANT

V.

JERRY DARNELL PRUITT and
ERICA ANN BALDWIN PRUITT
APPELLEES

Opinion Delivered January 30, 2013

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, THIRD DIVISION
[NO. 60 CV-2012-268]

HONORABLE JAY MOODY, JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

This case arises from a vehicle collision in Jacksonville, Arkansas, on October 8, 2011. Appellant Lieux'Rita Green argues on appeal that the circuit court (1) abused its discretion by setting aside a default judgment, and (2) "erred by failing to enforce the oral settlement between the parties because the undisputed evidence shows a valid agreement existed." We affirm.

Green filed a claim against appellees Jerry and Erica Pruitt in the Small Claims Division of Pulaski County District Court on October 11, 2011. On January 11, 2012, the district court entered a judgment against the Pruitts because they failed to appear. The district court awarded Green $3500 plus costs and dismissed the Pruitts' counterclaim with prejudice. The Pruitts appealed the judgment to Pulaski County Circuit Court pursuant to Arkansas District Court Rule 9. Green filed a complaint in circuit court on February 24, 2012, in which she

alleged negligence and breach of the parties' verbal settlement agreement. She filed a motion for default judgment on March 28, 2012.

A bench trial was held in circuit court on April 13, 2012. Immediately before the trial began, counsel for Green stated that the court had entered a default judgment the day before. The court responded that if it had entered a default judgment, it was by mistake and would be withdrawn. Counsel for Green raised no objection, and the trial proceeded.

The evidence at trial included the testimony of Robert Gilliam, the driver of Green's vehicle at the time of the collision; Green, who was not present for the collision; Jerry Pruitt, who was driving the Pruitts' vehicle; Erica Pruitt, who was not present for the collision but was there for the post-collision discussions; and Erica's uncle, who was a passenger in the Pruitts' vehicle. Immediately after the wreck, Gilliam and Jerry Pruitt agreed not to call the police. They went to a nearby park to discuss the matter, and Gilliam's brother and sister-in-law showed up. Everyone then drove to Green's apartment. The main points of dispute were who had the red light at the intersection; whether any intimidation caused the Pruitts to agree to fix Green's vehicle; and what exactly the Pruitts had agreed to—with Jerry Pruitt testifying that he had agreed to fix the damage himself, not pay to have it fixed.

After Green rested, the court stated that there was no claim against Erica Pruitt personally because she simply owned the vehicle and there was no reason to hold her responsible for Jerry Pruitt's actions. Jerry Pruitt, who appeared pro se, then presented his case. The circuit court found in favor of the defendant and entered a judgment on April 13, 2012. This appeal followed.

Default Judgment

For her first point on appeal, Green argues that the circuit court abused its discretion by setting aside the default judgment that it had entered against the defendants. She contends that the circuit court's action in sua sponte setting aside the default judgment should be reversed. The first problem with appellant's argument is that the record contains no default judgment entered by the circuit court. This court is faced with statements by Green's counsel and by the circuit court indicating that a default judgment might have been entered on April 12; the circuit court clearly indicated that *if* a default judgment had been entered, it was a mistake. It is appellant's burden to bring up a record sufficient to demonstrate error. *Young v. Young*, 316 Ark. 456, 463, 872 S.W.2d 856, 860 (1994) (citing *Bratton v. Gunn*, 300 Ark. 140, 777 S.W.2d 219 (1989)). When an appellant fails to demonstrate error, we affirm. *Id.* (citing *Jenkins v. Goldsby*, 307 Ark. 558, 822 S.W.2d 842 (1992)).

Even if it were clear from the record that a default judgment had been entered and withdrawn, we would still affirm for failure to preserve the argument for appellate review. When the trial court stated that if a default judgment had been entered it was done in error and would be withdrawn, Green made no objection. A contemporaneous objection is necessary in order to preserve an issue for appellate review. *Berry v. St. Paul Fire & Marine Ins. Co.*, 328 Ark. 553, 564, 944 S.W.2d 838, 844 (1997). Our supreme court has explained:

> It is elementary that this court will not consider arguments that are not preserved for appellate review. We will not do so because it is incumbent upon the parties to raise arguments initially to the trial court in order to give that court an opportunity to consider them. Otherwise, we would be placed in the position of possibly reversing a trial court for reasons not addressed by that court.

Bell v. Misenheimer, 2009 Ark. 222, at 4, 308 S.W.3d 120, 122 (internal citations omitted). For the reasons stated above, we affirm on this point.

Settlement Agreement

Next, Green argues that the circuit court "erred by failing to enforce the oral settlement between the parties because the undisputed evidence shows a valid agreement existed." However, the court did not make a finding as to the existence of a settlement agreement. Instead, the court based its ruling on which party was at fault in causing the collision, stating as follows:

> I have weighed the evidence and find it to be, I guess in terms of a jury verdict, equally balanced. So when that happens, I've got to rule against the party who has the burden of proof. Basically, it's a swearing match on who had the red light. I don't consider the other witness's testimony to be particularly probative on that issue. So I am going to rule in favor of the Pruitts[.]

To preserve an argument for appeal, even a constitutional one, the appellant must obtain a ruling below. *Fritzinger v. Beene*, 80 Ark. App. 416, 424–25, 97 S.W.3d 440, 445 (2003) (citing *Doe v. Baum*, 348 Ark. 259, 72 S.W.3d 476 (2002)). Even if the issue in question was actually argued to the trial court, a ruling must still be obtained to preserve the issue on appeal. *Id*. Because appellant failed to obtain a ruling from the trial court on her breach-of-contract claim, her argument is not preserved for this court's review.[1]

Affirmed.

HARRISON and BROWN, JJ., agree.

Williams & Anderson, PLC, by: *Andrew King*, for appellant.

No response.

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[1]In her notice of appeal, Green abandons any pending but unresolved claim. *See* Ark. R. App. P.–Civ. 3(e)(vi) (2012). Thus, we have determined that the order from which she appeals is a final order. *See Ford Motor Co. v. Washington*, 2012 Ark. 354.