Cite as 2013 Ark. App. 686

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-12-951

Opinion Delivered November 20, 2013

DANNIE GILDER ET AL.
APPELLANTS

V.

CEDAR RIDGE FARMS, LTD.
APPELLEE

APPEAL FROM THE SALINE COUNTY CIRCUIT COURT
[NO. CV-2010-701]

HONORABLE JOHN PLEGGE, JUDGE

REVERSED AND REMANDED

BRANDON J. HARRISON, Judge

Dannie Gilder, LaDonna Gilder, and Dustin Gilder, d/b/a Dusty Gilder Barrel Horses or DG Farms (collectively "Gilder"), appeal the denial of their motion to set aside a default judgment entered against them. They argue that the default judgment is void due to defective service of process. We previously ordered Gilder to file a supplemental addendum, *see Gilder v. Cedar Ridge Farms, Ltd.*, 2013 Ark. App. 544; Gilder has done so, and we now reach the merits of the appeal and reverse.

On 4 August 2010, Cedar Ridge Farms, Ltd. filed a complaint against Gilder alleging breach of contract in the sale of a horse. Cedar Ridge sought to re-take possession of the horse and a $74,000 judgment. On 22 February 2011, the court entered a default judgment against Gilder after finding that they had been properly served with the complaint and summons. A year later, Gilder asked the court to set aside the default judgment, asserting, among other things, that the summons was defective because it stated that they had twenty

days to answer the complaint when they had thirty days to answer because they lived out of state. The court denied this motion on 14 March 2012, stating that "[i]t is obvious from the signature on the green card that Mr. Dustin Gilder was served properly" and that "the summons was not fatally defective because it said the Defendants had 20 days to answer and it was accompanied by a letter that said they had thirty days."

Gilder filed another motion to set aside, pursuant to Ark. R. Civ. P. 60 (2012), on 2 April 2012, and again argued that the summons was defective because it misstated the time in which Gilder had to respond. A hearing was held on 13 April 2012, at which the court ruled that the motion to set aside would be denied; however, before a written order was entered, Cedar Ridge filed a motion for declaratory relief, arguing that Gilder had not filed its motion to set aside within ten days of the March 14 order, therefore the time to file the notice of appeal was not extended, and the time to appeal the March 14 order had now expired.

On 26 June 2012, the court issued a written order finding that Gilder's time to appeal the March 14 order had run and ordered Gilder to return the horse to Cedar Ridge within ten days. Gilder filed a motion to set aside this order on 29 June 2012, and after another hearing on 24 July 2012, the court entered a "Final Order" setting aside its previous order and finding that Cedar Ridge had perfected service upon Gilder "since the 'green cards' were signed and returned and the summons were accompanied by a cover letter that stated the Defendants had 30 days to respond to the complaint." Gilder filed a notice of appeal on 6 August 2012.

The standard of review for the granting or denial of a motion to set aside a default judgment varies, as our supreme court explained 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.

Ark. R. Civ. P. 55(c) (2013). In this case, Gilder contends that the default judgment entered against them is void due to the defective summonses, so a de novo standard of review applies.

Gilder argues that the summonses they received were defective because they incorrectly stated that Gilder had twenty days to respond. Gilder asserts that compliance with the technical requirements of a summons must be exact, and because the summonses in this case were defective, the circuit court's denial of the motion to set aside must be reversed. Cedar Ridge responds that the summonses were "amended" by the accompanying cover letter that stated Gilder had thirty days to respond, so the circuit court should be affirmed.

The 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.

Smith v. Sidney Moncrief Pontiac, Buick, GMC Co., 353 Ark. 701, 120 S.W.3d 525 (2003). The same reasoning applies to service requirements imposed by court rules. *Id.* 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. *Id.* The reason for this rule is that service of valid process is necessary to give a court jurisdiction over a defendant. *Id.*; *Posey v. St. Bernard's Healthcare, Inc.*, 365 Ark. 154, 226 S.W.3d 757 (2006).

The service requirements of Ark. R. Civ. P. 4(b) were not strictly complied with in this case, and Cedar Ridge has cited no authority for the proposition that a cover letter can cure a defective summons. In addition, Cedar Ridge's citation of *Stivers v. Pacific Building, Inc.*, 269 Ark. 294, 601 S.W.2d 822 (1980), is misplaced. That case focused on whether service of a defective summons commences an action for limitation purposes and, more importantly, interpreted a statute, Ark. Stat. Ann. § 27–301 (Repl. 1979), that was superseded by the Arkansas Rules of Civil Procedure. We reverse the denial of the motion to set aside and remand for the court to enter an order setting aside the default judgment.

Reversed and remanded.

PITTMAN and WYNNE, JJ., agree.

The Law Offices of Thomas Burns, P.A., by: *Thomas Burns*, for appellants.

Baxter Law Firm, by: *Ray Baxter*, for appellee.