

ARKANSAS COURT OF APPEALSDIVISION III
No. CA08-1196

ANTHONY SLOAN, M.D.

APPELLANT

V.

CITY OF CORNING

APPELLEE

Opinion Delivered MAY 6, 2009APPEAL FROM THE CLAY
COUNTY CIRCUIT COURT
[NO. 2007-17]HONORABLE LARRY BOLING,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

By order entered July 14, 2009, the Clay County Circuit Court entered a default judgment against Anthony Sloan, M.D., and awarded the City of Corning \$16,996.20, postjudgment interest, and \$1,700.00 in attorney's fees. Dr. Sloan appeals from the order, contending that the circuit court erred in not requiring the City to prove damages and in denying him an adequate opportunity to cross-examine the City's witness. We affirm.

According to the City's first amended complaint, filed August 29, 2007, the City agreed to lend Dr. Sloan a total \$8,250.00 to offset medical school expenses. The interest on the loan, calculated as being the lesser of the maximum legal rate in Arkansas or five percent above the federal discount rate, was ten percent per annum. In exchange, Dr. Sloan agreed to practice medicine while residing in Corning for at least one year upon completion of his studies and residency requirements. The complaint further alleged that Dr. Sloan did not

practice medicine in Corning and that, under the terms of the agreement, repayment of the principal and interest on the loan was due and payable in full. The City pleaded the theories of breach of contract, promissory estoppel, and unjust enrichment. The amended complaint was personally served on September 1, 2007. Dr. Sloan filed a motion to dismiss on September 24, 2007, three days too late. Accordingly, the City filed a motion to strike and for default judgment. A hearing was held on February 11, 2008, where the court informed the parties that the default judgment would be granted. On February 25, 2008, Dr. Sloan requested a hearing on the issue of damages, which was granted. In response, the City filed a motion in limine, asking that a list of twenty-five facts, based on the allegations in the complaint, be deemed admitted. The City also asked that Dr. Sloan “be limited to presenting evidence that challenges or contradicts the [City’s] computation of damages[.]”

The hearing on damages, as well as the hearing on the City’s motion, took place on June 25, 2008. At the hearing, Dr. Sloan argued that the City’s motion went beyond the limits of a hearing to determine damages. He asked that he be allowed to present evidence and cross-examine witnesses with respect to the amount of damages claimed. The court stated that it was going to grant the motion in limine, but that it would also allow Dr. Sloan to cross-examine witnesses concerning the damages.

The City called mayor Duane Phelan to testify. Through Phelan, the City entered into evidence two checks made to Dr. Sloan in the amount of \$4,125.00. The first check was dated July 30, 1997; the second was dated March 13, 1998. Phelan stated that the interest rate on the first loan was ten percent, that the loan was 3983 days old, and that \$4,500.79 in

interest had accrued on the loan. He stated that the interest on the second loan was also ten percent, that the second loan was 3757 days old, and that \$4,245.41 in interest had accrued on that loan. Accordingly, \$8,625.79 was due on the first loan, and \$8,370.41 was due on the second loan.

Counsel for Dr. Sloan cross-examined Phelan, but many of her questions were met with objections. The first objection came when counsel asked Phelan whether he wanted the court to believe that Dr. Sloan accepted the loan when he could have borrowed the money from other sources at a better interest rate. The court sustained the objection based on speculation. Second, counsel asked Phelan how the interest rate was selected. The court sustained the objection based on the fact that the issue was deemed admitted. Finally, counsel asked Phelan about his personal involvement in the agreement, but the court disallowed the question because it was outside the scope of the hearing.

Dr. Sloan then testified on his own behalf. He stated that he was not expecting money from the City. He attempted to introduce into evidence a financial aid award letter from his medical school, but the court sustained the City's objection that the letter challenged the terms of the agreement between the City and Dr. Sloan. On cross-examination, he acknowledged that he received money from the City and that he used part of the money for his medical education. Dr. Sloan also called Valerie Sloan to testify. When she attempted to testify about a conversation she had with respect to the funds, the City again objected, contending that the testimony went against the allegations in the complaint. After the objection was sustained, Dr. Sloan rested his case, though he stated that he was doing so

under objection. During his closing, he proffered that he and Valerie Sloan would have testified that there was no provision for interest in the agreement because there was no agreement. After hearing arguments from counsel, the court adopted the findings of fact proposed by the City and awarded the City \$16,996.20 plus postjudgment interest and \$1,700.00 in attorney's fees.

Dr. Sloan does not challenge the entry of the default judgment, but he urges us to reverse, contending that the circuit court did not require the City to prove its damages. In Arkansas, a default judgment establishes liability only, and proof of damages must still be presented to the court. *Tharp v. Smith*, 326 Ark. 260, 930 S.W.2d 350 (1996). A defaulting defendant cannot introduce evidence to defeat the plaintiff's cause of action at a hearing on damages. *Vent v. Johnson*, ___ Ark. ___, ___ S.W.3d ___ (Feb. 26, 2009) (citing *Young v. Barbera*, 366 Ark. 120, 233 S.W.3d 651 (2006); *Divelbliss v. Suchor*, 311 Ark. 8, 841 S.W.3d 600 (1992)). A defaulting defendant does retain the right to cross-examine the plaintiff's witnesses, to introduce evidence in mitigation of damages, and to question on appeal the sufficiency of the evidence to support the amount of damages awarded. *Jean-Pierre v. Plantation Homes*, 350 Ark. 569, 89 S.W.3d 337 (2002).

Dr. Sloan argues that grant of the motion in limine and the sustained objections prevented him from questioning witnesses on the issue of damages. He further contends that the court erred in awarding damages in the absence of proof. We find no error and affirm. First, the circuit court did not err in granting the motion in limine or in sustaining any of the City's objections. By virtue of the default, the circuit court was precluded from considering

the validity of the facts establishing liability pleaded in the complaint. According to the complaint, Dr. Sloan defaulted on an \$8,250.00 loan that bore a ten-percent interest rate. The only issue at the hearing was damages. As evidenced by questions from counsel and the proffer of evidence, Dr. Sloan was attempting to ask questions regarding the interest rate. However, the City pleaded the facts regarding the interest rate in the complaint, and Phelan's testimony did not deviate from those facts. The issue of the interest rate went toward the terms of the agreement, which was deemed admitted by virtue of Dr. Sloan's default. The circuit court properly sustained objections toward questions regarding the agreement itself.

Second, contrary to Dr. Sloan's allegations, the City presented evidence of damages. Specifically, the court heard testimony that Dr. Sloan received the money under the terms of the agreement, that Dr. Sloan used the money in part to cover school expenses, and that Dr. Sloan had not repaid the money. Phelan also testified about the calculation of interest. This testimony sufficiently establishes the damages.

Because Dr. Sloan defaulted, the circuit court properly limited the hearing to the issue of damages. Further, the City presented sufficient evidence of damages. Accordingly, we affirm.

Affirmed.

GLOVER and HENRY, JJ., agree.