[Cite as *Halliburton-Cohen v. Shrigley*, 2011-Ohio-2545.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kim M. Halliburton-Cohen,	:	
Plaintiff-Appellant,	:	
		No. 10AP-871
v.	:	(M.C. No. 2010 CVF 011861)
Paul Shrigley,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on May 26, 2011

Kevin O'Brien & Associates Co., L.P.A., and *Kevin O'Brien*, for appellant.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Plaintiff-appellant, Kim M. Halliburton-Cohen ("appellant"), appeals the judgment of the Franklin County Municipal Court, which granted the motion of defendant-appellee, Paul Shrigley ("appellee"), to set aside the default judgment previously granted to appellant. Having concluded that the trial court did not abuse its discretion by granting appellee's motion, we affirm.

{¶2} On March 23, 2010, appellant filed a complaint against appellee, alleging that appellee had engaged appellant for legal services. Under their contract, appellee agreed to pay an hourly rate for those services. Although appellee had paid some of the billings, appellee owed appellant $901.75. Appellant sought judgment in that amount, plus interest and costs.

{¶3} Appellant's initial attempt to serve appellee by certified mail was unsuccessful. On April 8, 2010, appellant sent the complaint to appellee by regular mail. The notice mailed to appellee stated that he must answer the complaint by May 7, 2010.

{¶4} On May 11, 2010, appellant moved for default judgment.

{¶5} On May 13, 2010, appellee filed an answer, pro se. He admitted that he had retained appellant for legal services. He stated that appellant had failed to perform adequately under the contract. He raised two affirmative defenses—failure to state a claim and payment of any obligations owed.

{¶6} On May 14, 2010, the trial court signed a judgment entry, which granted judgment in favor of appellant in the amount of $901.75, plus interest and costs. The entry was filed on May 19, 2010.

{¶7} On June 16, 2010, an affidavit and order of garnishment was filed. It ordered that appellee's wages be garnished in the amount of $1,103.75.

{¶8} On August 23, 2010, through counsel, appellee moved to stay the wage garnishment and to set aside the default judgment. His two-sentence memorandum in support of his motion to set aside the judgment stated that the answer had been filed only two days after appellant moved for default. It also stated: "Defendant was acting

as *pro se* and alleges the timeliness error occurred through misinformation." (Emphasis sic.)

{¶9} On September 2, 2010, the trial court issued an entry granting appellee's motion to set aside the judgment and to stay garnishment.

{¶10} Appellant appealed to this court and raises the following assignment of error:

> THE TRIAL COURT ERRED IN GRANTING THE DEFENDANT-APPELLEE'S AUGUST 23, 2010, MOTION TO SET ASIDE DEFAULT JUDGMENT AND VACATING THE JUDGMENT OF MAY 19, 2010.

{¶11} Civ.R. 60(B) governs motions seeking relief from final judgment. In order to prevail on a Civ.R. 60(B) motion, a movant must demonstrate the following: (1) the party has a meritorious defense or claim to present if the court grants relief; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time and, where the grounds for relief fall under Civ.R. 60(B)(1), (2) or (3), not more than one year after judgment. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of syllabus.

{¶12} The law favors disposition of cases by a trial on the merits, and courts should resolve doubt, if any, as to the establishment of a meritorious defense or a ground for relief in favor of the movant. *Coover Constr. Co., Inc. v. Johnson* (Aug. 24, 1982), 10th Dist. No. 82AP-305, citing *Colley v. Bazell* (1980), 64 Ohio St.2d 243. We will reverse a trial court's decision to grant or deny a motion for relief under Civ.R. 60(B) if the court abuses its discretion. *Ohio Neighborhood Fin., Inc. v. Massey*, 10th Dist. No. 10AP-1020, 2011-Ohio-2165, ¶6.

{¶13} As to the first prong, appellant contends that appellee did not present a meritorious defense. We disagree.

{¶14} In her complaint, appellant alleged that appellee failed to pay fees due under their contract for legal services. In general terms, a plaintiff attempting to recover under a contract must show that she fulfilled her obligations under that contract. See *Farmers Mkt. Drive-in Shopping Ctrs., Inc. v. Magana*, 10th Dist. No. 06AP-532, 2007-Ohio-2653, ¶31.

{¶15} Appellee's motion for relief referred to the answer he had filed. Within that answer, appellee contended that appellant did not fulfill her obligations under the contract between them. Specifically, appellee stated that he hired appellant to provide information to opposing counsel in a divorce matter and to negotiate a settlement. He stated that appellant failed to provide the information and failed to negotiate a settlement. These facts were sufficient to articulate a meritorious defense to appellee's alleged nonpayment. See *Mattingly v. Deveaux*, 10th Dist. No. 03AP-793, 2004-Ohio-2506, ¶10, citing *Elyria Twp. Bd. of Trustees v. Kerstetter* (1993), 91 Ohio App.3d 599, 602 (stating, "the movant must allege supporting operative facts with enough specificity to allow the court to decide that the movant has a defense he could have successfully argued at trial").

{¶16} As to the second prong, appellant contends that appellee failed to show that he was entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5). Here, appellee's motion to vacate judgment stated that he was acting pro se and that his untimeliness was due to "misinformation."

{¶17} Civ.R. 60(B)(1) allows relief from judgment if the movant shows mistake, inadvertence or excusable neglect. The court's discretion to determine whether excusable neglect exists "necessarily connotes a wide latitude of freedom of action * * * and a broad range of more or less tangible or quantifiable factors may enter into the trial court's determination. Simply put, two trial courts could reach opposite results on roughly similar facts and neither be guilty of an abuse of discretion." *McGee v. C&S Lounge* (1996), 108 Ohio App.3d 656, 661.

{¶18} To be sure, appellee's attempt to show grounds for relief was weak, and the trial court had the discretion to reject it. Nevertheless, resolving all doubts in favor of appellee, we cannot conclude that the trial court erred by accepting appellee's claim of "misinformation." By filing a detailed answer within one week of the deadline and two days after appellant moved for default judgment, and by thereafter retaining counsel to defend him, appellee had not shown a complete disregard for the judicial proceedings. See *Anderson-Harber v. Harber*, 10th Dist. No. 05AP-1255, 2006-Ohio-3106, ¶14 (affirming trial court's grant of relief from judgment where movant's actions throughout the proceedings had not shown complete disregard).

{¶19} As to the third prong, appellant contends that appellee did not file his motion within a reasonable time. We disagree. As noted, appellee filed his answer within one week of the filing deadline and within two days after appellant moved for default judgment. Through counsel, he filed his motion for relief three months after the court granted default judgment and about two months after the order of garnishment was served on his employer. Appellee's filings fall well within the one-year term

identified in Civ.R. 60(B). The trial court did not abuse its discretion by determining that appellee filed within a reasonable time.

{¶20} Finally, appellant asks this court to reinstate the default judgment in her favor because of what she calls "contemptuous" behavior by appellee's counsel. This alleged behavior, even if true, is irrelevant to the legal question before us, i.e., whether the trial court abused its discretion in determining that appellee met the standard for relief under Civ.R. 60(B).

{¶21} For all these reasons, we overrule appellant's single assignment of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.