[Cite as *Ohio FAIR Plan Underwriting Assn. v. Hitchman Ins. Agency, Inc.*, 2012-Ohio-6170.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio FAIR Plan Underwriting Association,	:	
Plaintiff-Appellant,	:	
		No. 12AP-642
v.	:	(C.P.C. No. 12CV-04-5201)
Hitchman Insurance Agency, Inc.,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 27, 2012

Crabbe, Brown & James LLP, and *Matthew R. Planey*, for appellant.

Gallagher, Gams, Pryor, Tallan & Littrell LLP, and *Barry W. Littrell*, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Plaintiff-appellant, Ohio FAIR Plan Underwriting Association ("the Plan"), appeals the judgment of the Franklin County Court of Common Pleas, which granted the motion of defendant-appellee, Hitchman Insurance Agency, Inc. ("Hitchman"), to set aside the default judgment granted in favor of the Plan. Because the trial court did not abuse its discretion by granting Hitchman's motion, we affirm.

I. BACKGROUND

{¶ 2} On April 24, 2012, the Plan filed a complaint against Hitchman. In it, the Plan alleged that negligent and fraudulent acts by Hitchman caused it to pay more than $30,000 on an insurance claim related to property that should not have qualified for insurance coverage through the Plan. Delivery information contained within the record shows that Hitchman was served with the complaint on April 27, 2012.

{¶ 3} On June 11, 2012, the Plan moved for default judgment against Hitchman for its failure to answer the complaint. That same day, the court granted default judgment in favor of the Plan in the amount of $32,884.41, plus interest and costs.

{¶ 4} On July 3, 2012, Hitchman moved to set aside the default judgment pursuant to Civ.R. 60(B). Hitchman contended that its failure to answer the complaint was due to mistake or excusable neglect and attached affidavits in support. Specifically, beginning on April 26, 2012, Hitchman's principal, Jamie Hitchman ("Mr. Hitchman"), was traveling out of the country, and then traveling out of state for the wedding of his daughter, Hitchman employee Jenna Hitchman, and then out of state for business. In total, Mr. Hitchman was out of state from April 26 to June 8, 2012, an absence he said had never happened before during his association with the agency. Three of Hitchman's remaining four employees, including Jenna, were also out of state for the wedding for part of the answer time. The one remaining employee signed for the complaint, but did not recognize it as business-related, and therefore, did not inform anyone of its receipt. Mr. Hitchman took immediate action to respond to the complaint upon his return to the office on June 8, 2012. Hitchman also contended that it had a meritorious defense to the complaint.

{¶ 5} The trial court granted Hitchman's motion and vacated the default judgment. The court found that Hitchman employed just five people, four of whom were out of office at the same time, which happened to coincide with the filing of the complaint and the answer time. Hitchman had a mail-handling procedure in place, but the remaining employee inadvertently failed to comply with it. The court concluded that Hitchman had demonstrated that its failure to answer was the result of excusable neglect.

II. ASSIGNMENT OF ERROR

{¶ 6} The Plan filed a timely appeal and raises the following assignment of error:

> The trial court erred to the substantial prejudice of [the Plan] in granting [Hitchman's] Motion for Relief from Judgment, because [Hitchman] failed to show that its neglect in failing to timely answer should be excused.

III. DISCUSSION

{¶ 7} In its assignment of error, the Plan contends that the trial court erred by granting Hitchman's motion for relief from the default judgment granted in favor of the Plan. 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.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus. 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.

{¶ 8} Here, there is no dispute that Hitchman's motion was timely or that it presented a meritorious defense. The only issue is whether the trial court erred by finding that Hitchman had demonstrated that its failure to answer was the result of "mistake, inadvertence, surprise or excusable neglect" pursuant to Civ.R. 60(B)(1).

{¶ 9} This court recently articulated the two-part test for determining whether a court should excuse internal corporate errors. *See Kormanik v. Haley*, 10th Dist. No. 12AP-18, 2012-Ohio-____, ¶ 17, citing *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. No. 05AP-51, 2005-Ohio-5924. To meet the test, a party must present circumstances sufficient to show the following: (1) there is a set procedure, within the corporate structure, for dealing with legal process, and (2) the procedure was, inadvertently, not followed until a default judgment had been entered against the corporate defendant. *Kormanik* at ¶ 20, citing *Perry v. Gen. Motors Corp.*, 113 Ohio App.3d 318, 324 (10th

Dist.1996), citing *Hopkins v. Quality Chevrolet, Inc.*, 79 Ohio App.3d 578, 582 (4th Dist.1992). We conclude that the trial court did not err by determining that Hitchman met the two-part test here.

{¶ 10} Hitchman presented evidence of an internal policy for dealing with all business-related correspondence in Mr. Hitchman's unusual absence and evidence that the policy, inadvertently, was not followed until it was too late. Specifically, the policy applied during Mr. Hitchman's travel outside the country, then out of state to attend Jenna's wedding, and then for business. Jenna and two other employees, also family members, were also out of state for the wedding during part of the answer time. Penny Herzman, the only employee in the office during the absence of the other four employees, was to accept the mail and take care of any items that were business-related. She was to place personal mail on Mr. Hitchman's desk. Ms. Herzman signed a receipt for the summons and complaint, placed it on Mr. Hitchman's desk, and did not inform anyone of its presence. Mr. Hitchman did not see it until he returned to the office on Friday, June 8, 2012, when Jenna Hitchman attempted to contact Hitchman's liability carrier and called the court to inquire about the case. The Plan moved for, and the court granted, default judgment against Hitchman on Monday, June 11, 2012, before Hitchman could file an answer. While the Plan complains that the policy was too informal, we agree with the trial court that the level of formality was appropriate for the size of the business, which had never been sued before, particularly given the unusual nature and extent of the absences involved. Therefore, we conclude that the trial court did not err in determining that Hitchman had demonstrated excusable neglect for purposes of Civ.R. 60(B)(1) and granting Hitchman's motion for relief from judgment.

IV. CONCLUSION

{¶ 11} For all these reasons, we overrule the Plan's assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.