

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Mill-Met Development Co.

Court of Appeals No. L-12-1235

Appellee

Trial Court No. CI0200904726

v.

Stanley L. Haythorne

DECISION AND JUDGMENT

Appellant

Decided: May 31, 2013

* * * * *

Matthew L. Weisenburger, for appellee.

Thomas J. Szyperski, for appellant.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas denying Stanley L. Haythorne’s motion for relief from judgment. For the reasons set forth below, the judgment of the trial court is reversed.

{¶ 2} In June 2009, Mill-Met Development Company (“Mill-Met”) filed suit against Stanley L. Haythorne for breach of a residential real estate purchase contract. Haythorne, through counsel, filed an answer.

{¶ 3} In November 2010, Haythorne’s counsel filed a motion to withdraw. The trial court scheduled a hearing ordering Haythorne to appear and warning that his failure to appear may result in the court “granting a default judgment against the defendant and in favor of the plaintiff.” Haythorne did not appear. On February 1, 2011, the trial court issued an order granting trial counsel leave to withdraw. The order further stated:

A pretrial conference with counsel for plaintiff, Matthew Weisenburger, and Mr. Stanley Haythorne, is scheduled for **FEBRURARY 25, 2011 AT 11:30 A.M.** Both Attorney Weisenburger **and Mr. Haythorne are to be personally present in court on that date. Failure of Mr. Haythorne to appear could result in the Court imposing sanctions against him** * * *. (Emphasis original.)

{¶ 4} The trial court sanctioned Haythorne for his failure to appear at the February 25, 2011 pretrial conference by granting judgment in favor Mill-Met. The trial court converted the trial date to a hearing on damages. No evidence of liability was presented. The trial court granted judgment in favor of Mill-Met in the amount of \$34,550, plus interest.

{¶ 5} Haythorne retained new counsel and filed a Civ.R. 60(B) motion for relief from judgment. The trial court denied the motion for relief.

{¶ 6} Haythorne appeals from the judgment of the trial court, assigning a single error for our consideration:

THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING
DEFENDANT/APPELLANT’S MOTION FOR RELIEF FROM
JUDGMENT.

{¶ 7} In his brief, appellant asserts the trial court’s judgment is void because the notice of default was not served pursuant to Civ.R. 55(A). We agree the trial court’s judgment is void, but need not determine whether appellant was properly served with a notice of default. We find the trial court’s judgment is void because the court was without authority to sanction a defendant for failure to comply with a court order by granting judgment by default when that defendant had timely filed an answer to the plaintiff’s complaint.

{¶ 8} Civ.R. 55(A) authorizes a clerk to enter a default “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules.” It has long been held that “when a case is at issue because a defendant has filed an answer, there can be no default judgment.” *Disciplinary Counsel v. Jackson*, 81 Ohio St.3d 308, 311, 391 N.E.2d 262 (1998). “In that situation, the moving party is required to present a prima facie case before the court can enter a default judgment.” *Id.*

{¶ 9} In *Reese v. Proppe*, the Eighth District Court of Appeals examined the difference between a Civ.R. 41 dismissal against a plaintiff and a Civ.R. 55 dismissal against a defendant:

The Civil Rules recognize that there exists a significant difference between dismissing the suit of a plaintiff for failure to comply with a court order * * * and entering judgment against a defendant whose responsibility is only to refute the plaintiff's claims after the plaintiff has at a minimum presented a prima facie case by proper evidence * * *. Civ.R. 41(B)(1) provides for a punitive judgment of dismissal against a plaintiff: "Where the plaintiff fails to * * * comply with these rules *or any court order*, the court upon motion of a defendant or *its own motion* may, after notice to plaintiff's counsel, dismiss an action or claim." Similar punitive judgments against a defendant are not, on the other hand, authorized by Civ.R. 55. It is our judgment that these Rules correctly reflect the essential nature of burdens of proof in our system for dispute resolution, and that any order upsetting these burdens of proof is inordinately drastic and may not be utilized. (Emphasis original). *Reese v. Proppe*, 3 Ohio App.3d 103, 106, 443 N.E.2d 992 (8th Dist.1981).

{¶ 10} In *Skinner v. Leyland*, 167 Ohio App.3d 226, 2006-Ohio-3186, 854 N.E.2d 573 (6th Dist.), we held that a trial court's "failure to hold an ex parte trial

when a defendant has appeared in a case is a violation of a defendant's due process rights * * * and renders the default judgment void." *Id.* at ¶ 20.

{¶ 11} Here, Haythorne filed an answer. Therefore, it was improper to grant judgment without first requiring prima facie evidence of the alleged breach. The trial court did abuse its discretion in denying the motion for relief from judgment.

Haythorne's assignment of error is well-taken.

{¶ 12} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas is reversed, and this case is remanded for further proceedings consistent with this decision and judgment. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.