[Cite as *Defreeze v. Lynch*, 2016-Ohio-3464.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103608

WYTONYA DEFREEZE

PLAINTIFF-APPELLANT

vs.

XAVIER LYNCH

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-846253

BEFORE: Stewart, J., Kilbane, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: June 16, 2016

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MELODY J. STEWART, J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. Accordingly, plaintiff-appellant Wytonya Defreeze agrees to this court's rendering an opinion in brief and conclusory form. *See State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1.

{¶2} Defreeze appeals the trial court's grant of defendant-appellee Xavier Lynch's Civ.R. 60(B) motion for relief from judgment. Based on our review of the record, we affirm the decision of the trial court and remand for further proceedings.

{¶3} On May 28, 2015, Defreeze filed a landlord-tenant lawsuit against Lynch, her landlord. The docket reflects that the summons and complaint were sent to Lynch via FedEx on June 3, 2015, and were signed for by an individual named L. Rankins. After Lynch's failure to timely answer the complaint, the court set a default hearing for July 28, 2015, and served Lynch with notice of the hearing through certified mail. On the morning of July 28, Lynch appeared at court to explain that he had retained counsel and to request that the default hearing be continued to a later date. The court rescheduled the default hearing for August 20, 2015 and subsequently rescheduled the hearing for August 25, 2015. After Lynch failed to appear at the hearing, the court granted default judgment in favor of Defreeze.

{¶4} Lynch, via counsel, timely filed a Civ.R. 60(B) motion for relief from judgment. In it, he argued that he never received a copy of the complaint and that the motion for default judgment was the first notice that he had received of the lawsuit. He further argued that his notice of the rescheduled default hearing contained a typographical error indicating that the hearing was rescheduled to September 25, 2015, not August 25, 2015. The court granted Lynch's motion for relief from judgment.

{¶5} We review an order granting relief from judgment for an abuse of discretion. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 148, 351 N.E.2d 113 (1976). The Ohio Rules of Civil Procedure allow trial courts to vacate default judgments through Civ.R. 60(B). *See* Civ.R. 55(B). Pursuant to Civ.R. 60(B)(1) and (5), upon motion, the court may relieve the party from final judgment due to "mistake, inadvertence, surprise or excusable neglect" or for "any other reason justifying relief from the judgment."

{¶6} In this case, Lynch provided evidence that he was unaware of the pending case and the date of the rescheduled default hearing by attaching an affidavit to the motion for default judgment averring that he never received the complaint and by attaching a copy of the default hearing notice. The attached notice contains some ambiguity as to whether the notice indicates that the hearing was rescheduled to 08/25/2015 or 09/25/2015 because the ink on the postcard was either not transferred correctly in the printing process, or was somehow rubbed off.[1] Because Lynch provided evidence establishing that he lacked notice of the rescheduled default hearing, we cannot conclude that the trial court abused its discretion by ordering relief from judgment.

{¶7} Judgment affirmed.

It is ordered that appellee recover of said appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MELODY J. STEWART, JUDGE

[1] We note that, because these notices are sent by postcard through the mail with the salient information exposed, there may be some adulteration to the print due to the normal wear of mail delivery. We also note that the print font size is quite small.

MARY EILEEN KILBANE, P.J., and
EILEEN T. GALLAGHER, J., CONCUR