[Cite as *Estrella v. Dr. Gupta, Eye M.D., L.L.C.*, 2018-Ohio-589.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105999

AUGUSTO ESTRELLA

PLAINTIFF-APPELLEE

vs.

DR. GUPTA, EYE M.D., L.L.C., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-861556

BEFORE: Keough, J., Laster Mays, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: February 15, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Defendants-appellants, Ajay Gupta, M.D. ("Dr. Gupta"), Chhaya Patel, M.D. ("Dr. Patel"), Dr. Gupta, Eye M.D., L.L.C. ("Gupta L.L.C."), and Chhaya Patel M.D., L.L.C. ("Patel, L.L.C.") (collectively "appellants" or "defendants"), appeal from the trial court's decision denying their Civ.R. 60(B) motion to vacate the judgments entered on August 15, 2016 and September 20, 2016. For the reasons that follow, we affirm the trial court's decision.

{¶3} In April 2016, plaintiff-appellee, Augusto Estrella ("Estrella"), filed a complaint against the appellants for unpaid wages. Estrella alleged that the appellants were joint employers who failed to pay him for work performed in January and February 2016. Service was perfected on the appellants and when they failed to respond, Estella moved for default judgment. The hearing on Estrella's motion was scheduled for July 14, 2016. After receiving notice of the default hearing, Dr. Gupta contacted Estrella's counsel. As a result of the conversation, the default hearing was continued.

{¶4} On August 4, 2016, a default hearing was held and only Dr. Gupta appeared. He was prepared to represent all the defendants. However, the trial court advised Dr. Gupta that he could only represent himself, and not Dr. Patel (Dr. Gupta's wife), and the

other L.L.C. defendants. The trial court granted Dr. Gupta until August 19, 2016 to file an answer, but entered default judgment against the other defendants — Dr. Patel, Gupta, L.L.C., and Patel, L.L.C. The entry granting default was filed on August 15, 2016. No direct appeal was filed.

{¶5} On August 18, 2016, Estrella's counsel presented the trial court with an agreed judgment entry signed by Drs. Gupta and Patel, and by both as representatives of their respective companies. The parties agreed that they would be jointly and severally liable to Estrella in the amount of $5,000. However, the trial court refused to accept the agreed judgment entry as against all of the defendants because it had previously entered a default judgment against those defaulting defendants in the amount of $6,986.90, including costs and interest. The court, however, accepted the agreed entry with respect to Dr. Gupta; it was filed on September 20, 2016. No direct appeal was taken.

{¶6} On November 11, 2016, Estrella filed a garnishment notice against Dr. Patel. Her wages were subsequently garnished from her employer, Metro Health System.

{¶7} On June 2, 2017, the appellants filed a Civ.R. 60(B) motion to vacate the default judgment entered on August 15, 2016, and the agreed entry dated September 20, 2016. The appellants sought to vacate both judgment entries because they "were entered when [appellants] were not represented and did not understand the consequences of their inaction; because the judgments would never have been entered had the true facts been timely pleaded; and because the judgments have severely impacted their medical

practices." The trial court denied the motion, finding that the appellants failed to meet their burden necessary to support relief pursuant to Civ.R. 60(B).

{¶8} Appellants timely appeal, contending in their sole assignment of error that the trial court erred and abused its discretion by denying their Civ.R. 60(B) motion to vacate the default judgment.

{¶9} Although appellants' Civ.R. 60(B) motion sought to vacate both the August 15, 2016 default judgment and the September 20, 2016 agreed judgment, the appeal only challenges the trial court's decision denying the Civ.R. 60(B) motion as it pertains to the August 15, 2016 default judgment. Accordingly, our decision will only address the trial court's decision to deny the Civ.R. 60(B) motion as it pertains to the default judgment; the September 20, 2016 agreed judgment entry remains in effect.

{¶10} A reviewing court will not disturb a trial court's decision regarding a Civ.R. 60(B) motion absent an abuse of discretion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 684 N.E.2d 1237 (1997). To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (B)(5); and (3) the motion is made within a reasonable time, and where the grounds for relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment was entered. *GTE Automatic Elec. v. ARC Indus*., 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. If any of

these three requirements is not met, the motion is properly overruled. *Svoboda v. Brunswick*, 6 Ohio St.3d 348, 351, 453 N.E.2d 648 (1983).

{¶11} Appellants contend they have a meritorious defense because Estrella was an employee of only Gupta L.L.C. However, Gupta L.L.C. was a movant to the Civ.R. 60(B) motion and is an appellant to this appeal. The appellants fail to identify who is actually seeking relief from the judgment. Although their contention may be a potential defense for the other appellants, it would not be a defense for Gupta L.L.C. Accordingly, the trial court did not abuse its discretion in denying relief from judgment under the first prong of the *GTE* test because the party seeking relief is unidentifiable.

{¶12} As for the second and third prongs of the *GTE* test, appellants brought their motion to vacate judgment within one year of the judgment and pursuant to Civ.R. 60(B)(1) and (5). Civ.R. 60(B)(1) allows a court, "on motion and upon such terms as are just," to grant relief from a final judgment, order, or proceeding due to "mistake, inadvertence, surprise or excusable neglect." Civ.R. 60(B)(5) allows a court to grant such relief for "any other reason justifying relief from judgment."

{¶13} A trial court does not abuse its discretion in overruling a Civ.R. 60(B)(1) motion for relief from default judgment on the grounds of excusable neglect if it is evident from all the surrounding facts and circumstances that the conduct of the defendants, combined with the conduct of those persons whose conduct is imputed to the defendants, exhibited a disregard for the judicial system and the rights of the plaintiff. *Griffey v. Rajan*, 33 Ohio St.3d 75, 514 N.E.2d 1122 (1987), syllabus.

{¶14} In the Civ.R. 60(B) motion filed with the trial court, appellants state that their inactions constitute "excusable neglect" because their medical practices were in substantial financial distress and they were receiving pressure by their landlord for back rent — giving "priority to this pressing demand instead of filing Answers to this Complaint." Despite being aware of the complaint, appellants admittedly chose to disregard the complaint, thus disregarding the judicial system. Moreover, after Dr. Gupta attempted to appear on behalf of all of the defendants at the default hearing and was advised he could not do so, the remaining defendants, specifically Dr. Gupta's wife, Dr. Patel, did not immediately appeal the default judgment or move to vacate the judgment. It was only after Dr. Patel's wages were garnished that they attempted to vacate the judgments. Even then, the delay was over six months. Based on the surrounding circumstances and admissions, the appellants have failed to show excusable neglect.

{¶15} Additionally, the trial court did not abuse its discretion in denying relief from judgment pursuant to the catchall provision of Civ.R. 60(B)(5). Matters of extraordinary nature fall within the purview of Civ.R. 60(B)(5), and relief may be granted on this basis when operative facts that are different from those contemplated by Civ.R. (B)(1) are presented. *Cerney v. Norfolk & W. Ry. Co.*, 104 Ohio App.3d 482, 493, 662 N.E.2d 827 (8th Dist.1995), citing *Whitt v. Bennett*, 82 Ohio App.3d 792, 797, 613 N.E.2d 667 (2d Dist.1992). In this case, the appellants did not present any different

operative facts justifying relief under Civ.R. 60(B)(5). Instead, the motion requested relief entirely on the basis that their actions should be regarded as excusable neglect.

{¶16} Accordingly, the trial court did not abuse its discretion in denying appellants' Civ.R. 60(B) motion for relief from judgment, and the assignment of error is overruled.

{¶17} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

It is ordered that a special mandate be sent to said 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.

KATHLEEN ANN KEOUGH, JUDGE

ANITA LASTER MAYS, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR