

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

AKRON GENERAL MEDICAL CENTER

C. A. No. 24484

Appellee

v.

MEDICAL MUTUAL OF OHIO

APPEAL FROM JUDGMENT
ENTERED IN THE
AKRON MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 08 CV 09221

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 10, 2009

WHITMORE, Judge.

{¶1} Defendant-Appellant, Medical Mutual of Ohio (“MMO”) appeals from the judgment of the Summit County Court of Common Pleas, denying its motion to vacate the default judgment entered against it in favor of Plaintiff-Appellee, Akron General Medical Center (“AGMC”). This Court affirms.

I

{¶2} On July 30, 2008, AGMC filed a breach of contract action against MMO demanding supplemental payment on a patient account. According to AGMC’s complaint, it billed MMO \$21,502.42 for a four day admission for one of MMO’s insureds. The contracted rate between the parties for the hospital billing code billed by AGMC was \$5,687.42. Upon receiving the bill, MMO changed the hospital billing code, which resulted in a payment of only \$3,846.45 to AGMC. AGMC unsuccessfully sought to resolve the dispute based on the contractual dispute resolution provision, so it then pursued litigation to recover the remaining

\$1,840.97 balance on the patient's account. MMO was properly served with the complaint via certified mail but failed to file an answer. Accordingly, on September 15, 2008, AGMC filed a motion for default judgment, which the trial court granted the same day.

{¶3} On September 18, 2008, MMO filed a motion to vacate the default judgment, and on September 30, 2008, AGMC filed its motion in opposition to MMO's motion to vacate. On October 14, 2008, the trial court denied MMO's motion to vacate. It is from that order that MMO has timely appealed to this Court, asserting two assignments of error for our review.

II

Assignment of Error Number One

“THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO VACATE THE DEFAULT JUDGMENT ENTERED AGAINST APPELLANT.”

{¶4} In MMO's first assignment of error, it alleges that the trial court erred in denying its motion to vacate judgment because: (1) it had a meritorious defense to AGMC's claims; (2) it demonstrated it was entitled to relief under Civ.R. 60(B)(1); and (3) its motion was timely filed. We disagree.

{¶5} Civ.R. 60(B) allows for the trial court to relieve parties from a final judgment for the following reasons:

“(1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.”

In order to prevail on a Civ.R. 60(B) motion:

“[T]he movant must demonstrate that: (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 (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.” *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, paragraph two of the syllabus.

{¶6} If any of the above requirements are not met, the motion should be overruled by the trial court. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 20. A trial court should not grant relief in a case where the movant has not demonstrated all three factors in its motion. *Adomeit v. Baltimore* (1974), 39 Ohio App.2d 97, 104. If, however, the materials submitted by the parties clearly establish that the movant is entitled to relief, then the motion should be granted. *Id.* Additionally, if the movant “does not present operative facts or presents facts of limited or meager quality, then a trial court is justified in denying relief because that party has failed to meet its burden of asserting facts entitling the party to relief.” *Cook Family Invests. v. Billings*, 9th Dist. Nos. 05CA008689 & 05CA008691, 2006-Ohio-764, at ¶13, citing *Youssefi v. Youssefi* (1991), 81 Ohio App.3d 49, 53.

{¶7} This Court reviews the grant or denial of a Civ.R. 60(B) motion for relief from judgment under an abuse of discretion standard. *Turowski v. Apple Vacations, Inc.*, 9th Dist. No. 21074, 2002-Ohio-6988, at ¶6. An abuse of discretion is more than a mere error of law or judgment, but “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Appellate courts may not substitute their judgment for that of the trial court when an abuse of discretion standard is applied. *Pons v. Ohio St. Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶8} Under the *GTE* test, we must first determine if MMO had a “meritorious defense or claim” to assert if relief were granted. In its motion to vacate the default judgment, MMO generally asserts that it should be afforded relief from the judgment because it had “confused this

case with a similarly-named matter, which caused it to inadvertently overlook *** this matter for a short period of time.” Additionally, it notes that the law disfavors default judgments and asserts that AGMC did not suffer any prejudice from the short delay between the time its answer was due and the point at which default judgment was granted. We note, however, that MMO did not allege any operative facts in its motion to demonstrate to the court that it may have had a meritorious defense to AGMC’s claims. A movant should be cautious and hesitate to “rely[] on filing a motion for relief from judgment with little or no facts and conclusions of law.” *Adomeit*, 39 Ohio App.2d at 103-04. In its four paragraph motion to vacate, MMO did not assert *any facts* that would support the trial court’s finding it was entitled to relief from the default judgment, nor was its motion accompanied by any memorandum, affidavits, answer, exhibits, or other materials in support of any claimed defense. *Id.* Instead, it merely addressed the second factor of the *GTE* test, that is, whether it was entitled to relief under Civ.R. 60(B)(1).

{¶9} On appeal, MMO alleges that it did have a meritorious defense. It supports this claim by pointing to subsequent motions it filed *after* its motion to vacate. Specifically, it directs this Court to its motion requesting leave to respond to AGMC’s motion in opposition. MMO further relies on the defenses it asserted in its subsequent response brief. Thus, by its own admission, MMO concedes on appeal that its initial motion to vacate the default judgment failed to assert any defense or claim to support its request for relief. Additionally, we note that the trial court never granted MMO’s motion for leave to respond, and even if it had permitted MMO to supplement its initial motion to vacate with a response, MMO’s response brief proffers only an unsigned affidavit and contract excerpts in support of its claimed defenses.

{¶10} Based on MMO’s failure to present any operative facts in support of its meritorious defense, the trial court did not err in denying MMO’s motion to vacate judgment

because it failed to meet its burden of demonstrating that it was entitled to relief. See *Cook Family Invests.* at ¶13. Having failed to satisfy the first factor of the *GTE* test, we need not address the balance of MMO's arguments with respect to the second and third factors. *Bench Signs Unlimited v. Stark Area Regional Transit Auth.*, 9th Dist. No. 23204, 2006-Ohio-6556, at ¶10. Accordingly, MMO's first assignment of error is without merit.

Assignment of Error Number Two

"THE COURT ABUSED ITS DISCRETION BY FAILING TO HOLD A HEARING PRIOR TO DENYING APPELLANT'S MOTION TO VACATE."

{¶11} In its second assignment of error, MMO argues that the trial court abused its discretion by failing to hold a hearing and review the evidence it sought to present in support of its motion to vacate the default judgment. Specifically, MMO argues that it should have been granted a hearing to set forth its evidentiary materials in support of its motion for relief from judgment where it would have been able to support its claim that it had a meritorious defense and that its conduct constituted mistake, inadvertence, or excusable neglect pursuant to Civ.R. 60(B)(1). Additionally, MMO argues that the trial court erred when it failed to hold a hearing on the amount of damages claimed by AGMC.

{¶12} This Court has previously held that:

"[I]f the movant files a motion for relief from judgment and it contains allegations of operative facts which would warrant relief under Civ.R 60(B), the trial court should grant a hearing to take evidence and verify these facts before it rules on the motion. If a movant alleges such operative facts that would warrant relief from judgment and the trial court refuses to grant a hearing, such a decision is an abuse of discretion. On the other hand, if the movant fails to allege operative facts that justify relief from judgment the court is not required to grant an evidentiary hearing." (Internal citations and quotations omitted.) *Blair v. Boye-Doe*, 9th Dist. No. 03CA008339, 2004-Ohio-1876, at ¶19.

Because we determined in our disposition of MMO's first assignment of error that it was not entitled to relief from judgment, it follows that the trial court was not required to hold an evidentiary hearing to review the evidence in support of its motion.

{¶13} With respect to a hearing on AGMC's damages claim, Civ.R. 55(A) provides for the entry of default judgment "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend[.]" The rule leaves it to the court's discretion as to whether a hearing is "necessary to take an account or to determine the amount of damages[.]" Civ.R. 55(A). Because MMO failed to file an answer in this case, AGMC properly moved for default judgment under Civ.R. 55(A).

{¶14} In paragraph ten of its complaint, AGMC specified that MMO owed \$1,840.97 on the patient's account. That amount was based on the difference between the contracted rate for the hospital code originally billed by AGMC and the contracted rate for the hospital code that MMO reassigned to the patient's account, both of which were identified in AGMC's complaint. By failing to appear and defend in the action, MMO admitted it had breached its contract, and consequently, that it owed the amount specified in the complaint based on the contracted rates between the parties. *Buckeye Supply Co. v. Northeast Drilling Co.* (1985), 24 Ohio App.3d 134, 136, citing *Dallas v. Ferneau* (1874), 25 Ohio St. 635, 638 (concluding that a hearing is not required when the complaint alleges damages based on an account). In light of the fact that AGMC provided a readily ascertainable amount based on an outstanding account balance, the trial court was not required to hold a hearing. *Buckeye Supply Co.*, 24 Ohio App.3d at 136. Accordingly, the trial court did not abuse its discretion when it failed to hold a hearing on the issue of damages before it granted AGMC's default judgment. MMO's second assignment of error lacks merit.

III

{¶15} MMO's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Akron Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

ROBERT D. KEHOE, JOSEPH J. KERSE, and KATHLEEN A. COLE, Attorneys at Law, for Appellant.

ANN M. KLEIN, Attorney at Law, for Appellee.