[Cite as *Viking Ins. Co. of Wisconsin v. Sawyer's Towing, L.L.C.*, 2026-Ohio-4707.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

VIKING INSURANCE COMPANY OF WISCONSIN,	:	APPEAL NO. C-260163 TRIAL NO. A-2303756
Plaintiff-Appellant,	:	
vs.	:	*JUDGMENT ENTRY*
SAWYER'S TOWING, LLC,	:	
Defendant-Appellee,	:	
and	:	
DKR AUTO SALES, LLC,	:	
Defendant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 11/25/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By:_____
Administrative Judge

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Plaintiff-Appellant,	:	
vs.	:	*O P I N I O N*
SAWYER'S TOWING, LLC,	:	
Defendant-Appellee,	:	
and	:	
DKR AUTO SALES, LLC,	:	
Defendant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: November 25, 2026

Curry Roby, LLC, *Edwin J. Hollern* and *Jon M. Lee*, for Plaintiff-Appellant,

Humbert Legal Services, LLC, and *Mark A. Humbert*, for Defendant-Appellee.

MOORE, Judge.

{¶1} This appeal concerns a challenge to the trial court's entry setting aside a default judgment against defendant-appellee Sawyer's Towing, LLC, ("Sawyer"). Plaintiff-appellant Viking Insurance Company of Wisconsin ("Viking") brings this appeal, asserting three assignments of error that challenge the trial court's judgment.

{¶2} For the reasons explained below, we sustain the first and second assignments of error, overrule the third assignment of error, reverse the judgment of the trial court, and remand the cause for the trial court to enter judgment denying Sawyer's motion to set aside the default judgment because Sawyer failed to rebut the presumption of proper service and failed to meet its burden to show entitlement to relief under Civ.R. 60(B)(1) through (5).

I. Factual and Procedural History

{¶3} Viking initiated this action against Sawyer and defendant DKR Auto Sales, LLC, ("DKR"). The complaint sought money damages for the alleged wrongful sale of a vehicle that was held at Sawyer's storage facility. Of note, the complaint alleged that Sawyer transferred the title to the vehicle and then sold the vehicle.

{¶4} The clerk issued summonses for service via certified mail to Sawyer and DKR and both certified mail receipts were returned as delivered. The summons issued to Sawyer was sent to 21 Byrnes Lake Court, Cincinnati, Ohio 45216, the address listed in the complaint. The return receipt indicated delivery on September 8, 2023.

{¶5} Several months later, after neither Sawyer nor DKR appeared in the action, Viking moved for default judgment against them, and the trial court granted the motion finding that Sawyer and DKR failed to answer or otherwise respond within the requisite time after service was perfected. The default judgment was mailed to all parties by regular mail.

{¶6} Approximately two months after that, Sawyer filed a motion to set aside the default judgment against it under Civ.R. 60(B). In support of the motion, David Sawyer, the owner of Sawyer, filed an affidavit in which he stated that the signature on the return receipt was not his signature, no Sawyer employee recognized the signature on the return receipt, and he never received notice of the complaint. He further stated, "I had no knowledge of this lawsuit until I received the Judgment Entry Granting Default Judgment that was filed on September 9, 2024, and was unable to file an Answer responding to the Complaint." Sawyer also asserted that it filed the motion within a reasonable time and that it "has a meritorious defense in this matter which will be proven by both witnesses and evidence it will present if th[e] motion is granted."

{¶7} Viking opposed the motion, arguing that Sawyer failed to demonstrate that it was entitled to relief under Civ.R. 60(B), failed to provide any credible evidence that service was not proper, and failed to allege a meritorious defense. Viking attached a Google Maps photograph to its motion, asserting that the image shows that there is only one building at the address and that the address provided is Sawyer's usual place of business and the address is shown on the door, just below the Sawyer's Towing sign.

{¶8} Sawyer filed a reply in support of its motion, now suggesting that service was improper where the return receipt does not contain an address of delivery and the signature and address lines contain illegible smudges, and it "submitted an uncontested affidavit from its agent reflecting that it did not receive service of the summons and complaint."

{¶9} The trial court held a hearing on the motion on March 4, 2026. The transcript reflects that counsel for Sawyer told the court that his client indicated never receiving notice of the summons that was issued via certified mail. Counsel also told

the court that the return receipt was "not legible to [him] or anybody [he knows]." He said they could not determine "anybody's name or information" on the return receipt. When asked by the court how his client found out about the default judgment, counsel informed the court that an employee was "doing a Court Clerk search and found out just by happenstance" about the default judgment. He further informed the court that he filed an answer "outlining all of [their] defenses, including affirmative defenses." He also explained to the court how his client came into possession of the title to the vehicle at issue in the complaint. Notably, he told the court that Sawyer received the title to the vehicle from the City of Cincinnati ("the city") as it was actually the city that obtained the salvage title for the vehicle. He stated, "My client had no dealings with the city regarding the action of securing the salvaged title."

{¶10} Counsel for Viking argued that the affidavit of David Sawyer was insufficient where he merely said that the signature was not his and that no employee recognized the signature, which is not enough to show improper service. Counsel pointed out that Sawyer did not claim that the address used was improper or that an employee did not sign for the process. Counsel further argued that Sawyer's motion only made a general statement that Sawyer had a meritorious defense. Of note, the court asked counsel about the defense offered by Sawyer's counsel at the hearing regarding title to the car being acquired by the city rather than by Sawyer. Counsel seemed to agree that this defense could be "a defense that would warrant merit." Once counsel agreed, the court then said, "Well, I'm glad we're reasonable minds." The trial court then orally informed the parties that it was granting the motion and setting aside the default judgment.

{¶11} Shortly after, the trial court entered a judgment consistent with its oral ruling. The court's entry expressly purports to base its finding on the arguments at the

hearing. Viking now appeals, raising three assignments of error.

II. Analysis

A. First Assignment of Error

{¶12} In the first assignment of error, Viking argues that the trial court abused its discretion by setting aside the default judgment against Sawyer, despite Sawyer's failure to rebut the presumption of proper service. Viking asserts that there is a distinction between service and actual notice and the facts in this case do not indicate improper service. Viking claims that the trial court granted the motion based on a finding of a meritorious defense, rather than any finding of nonservice.

{¶13} A trial court's findings regarding service are reviewed for an abuse of discretion. *Custom Pro Logistics, LLC v. Penn Logistics, LLC*, 2022-Ohio-1774, ¶ 7 (1st Dist.). However, legal questions regarding service, including whether a certified mail receipt contains a valid signature, are reviewed de novo. *See Cuc Properties VI, LLC v. Smartlink Ventures, LLC*, 2021-Ohio-3428, ¶ 7 (1st Dist.) (stating that the question of whether a mark on a certified mail receipt constitutes a valid signature under Civ.R. 4.1(A)(1)(a) is a purely legal question that this court reviews de novo); *see also Altman v. Parker*, 2018-Ohio-4583, ¶ 6 (1st Dist.) ("Ordinarily, we review a trial court's decision on a common-law motion to set aside a void judgment under an abuse-of-discretion standard. . . . But if the challenge implicates an issue of law, we apply a de novo standard of review.").

{¶14} "The Ohio Supreme Court has held that a trial court lacks jurisdiction to enter a judgment against a party where service of process has not been made on that party, and the party has not appeared in the case and waived service." *Sanders & Assocs., LPA v. Responsive Surface Technology, LLC*, 2023-Ohio-3990, ¶ 7 (1st Dist.), citing *State ex rel. Ballard v. O'Donnell*, 50 Ohio St.3d 182, 184 (1990). "Ohio courts

of appeals, including this one, have recognized that a defaulting party can challenge a default judgment on the grounds of defective service by way of a motion to vacate a void judgment, and not Civ.R. 60(B)." *Id.* (collecting cases).

{¶15} Service on an LLC "is valid if 'any person' at the LLC's usual place of business signs for the certified mail, even where the recipient is not the defendant's agent." *Custom Pro Logistics* at ¶ 8, citing *Adams, Babner, Gitlitz, LLC v. Tartan Dev. Co. (West), LLC*, 2013-Ohio-1573, ¶ 9 (10th Dist.); *see* Civ.R. 4.2(G) and 4.1(A)(1). A presumption of proper service arises where the Ohio Rules of Civil Procedure governing service of process are followed. *Id.* at ¶ 9, citing *Adams* at ¶ 10. A defendant can rebut the presumption of proper service with sufficient evidence that service was not accomplished. *Adams* at ¶ 10, citing *Erin Capital Mgt. LLC v. Fournier*, 2012-Ohio-939, ¶ 18 (10th Dist.).

{¶16} Here, certified mail was issued to 21 Byrnes Lake Court, Cincinnati, Ohio 45216. Sawyer did not challenge that this was the proper address for service. Rather, Sawyer submitted evidence below, by way of an affidavit, indicating that the owner of Sawyer did not sign for the certified mail and none of the employees recognized the signature on the return receipt.

{¶17} "[W]hen certified mail service is delivered to a proper address, a defendant's claim that the signatory is unknown or unrelated is insufficient to rebut the presumption of proper service." *Custom Pro Logistics*, 2022-Ohio-1774, at ¶ 12 (1st Dist.), citing *Adams* at ¶ 12. "Additionally, certified mail service does not require actual service upon the party receiving the notice; rather, it is effective upon certified delivery." *Id.* (collecting cases).

{¶18} Thus, the claims in the affidavit are insufficient to rebut the presumption of proper service where service did not have to be accomplished on David

Sawyer, the owner of the LLC, and the claim that no employee recognized the signature is insufficient to rebut the presumption that service was made to "any person" at the LLC's address.

{¶19} Nevertheless, Sawyer further argued below that service was not proper because the certified mail receipt does not contain an address of delivery and the signature and address lines on the return receipt contain only illegible smudges.

{¶20} In *Sanders*, 2023-Ohio-3390 (1st Dist.), this court held that a certified mail return receipt failed to comport with Civ.R. 4.1 where the "address line and signature line both contain[ed] nothing more than smudges, and the return receipt provided by USPS provides only that it was delivered in Atlanta, Georgia." *Sanders* at ¶ 11.

{¶21} Here, the return receipt contains more than illegible "smudges." The signature line contains a signature starting with the letter L and the address line contains an address that starts with "21 B," which matches the address of service. Further, the receipt lists a zip code that matches the address of service.

{¶22} Beyond that, in *Sanders*, the party contesting service successfully rebutted the presumption of proper service by submitting an uncontested affidavit from the LLC's employee showing that he was the sole person present at the address on the day of service, the LLC did not share the space with any other tenants, and he did not receive service for the LLC that day. *Id.* at ¶ 11. No similar evidence was offered by Sawyer here to rebut the presumption of proper service. While Sawyer did claim that no employee recognized the signature, this is not the same as saying that no employee signed for service and there was no accompanying evidence stating that only employees were present at the address that day.

{¶23} "The entire purpose of certified mail service . . . is to ensure that proof

exists that someone actually received service, which explains why both sections (1)(a) and (1)(b) emphasize the signature requirement." *Cuc Properties VI*, 2021-Ohio-3428, at ¶ 8 (1st Dist.).

{¶24} Here, although the return receipt is not entirely legible, it nevertheless indicates that someone did receive service at the proper address and Sawyer did not offer any evidence to suggest otherwise. *See id.* at ¶ 10 (defining the verb "sign" as "'[t]o identify (a record) by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it,'" and "signature" as "'[a] person's name or mark written by that person or at the person's direction[.]'"); *see also Cincinnati Ins. Co. v. Hall*, 2022-Ohio-1112, ¶ 21-22 (2d Dist.) (stating that an illegible signature is sufficient to constitute prima facie evidence of successful and proper service), and *In re K.L.D.*, 2026-Ohio-2326, ¶ 33 (8th Dist.) (stating that service was presumptively complete where the certified mail receipt contained an illegible signature).

{¶25} Therefore, to the extent that the trial court set aside the default judgment on the basis of improper service, this was in error as Sawyer failed to rebut the presumption of proper service. Accordingly, we sustain the first assignment of error to the extent that the trial court made such a finding.

B. Second Assignment of Error

{¶26} In the second assignment of error, Viking argues that the trial court abused its discretion by granting Sawyer's Civ.R. 60(B) motion despite Sawyer's failure to establish a meritorious defense or entitlement to relief under Civ.R. 60(B)(1) through (5).

{¶27} A trial court may set aside a default judgment in accordance with Civ.R. 60(B). *Custom Pro Logistics*, 2022-Ohio-1774, at ¶ 14 (1st Dist.), citing Civ.R. 55(B).

"An argument that a defendant did not receive actual notice is not jurisdictional and is thus properly brought pursuant to Civ.R. 60(B)." *Id.*, citing *Broadvox LLC v. Oreste*, 2009-Ohio-3466, ¶ 15 (8th Dist.).

{¶28} In relevant part, Civ.R. 60(B) provides, "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; . . . or (5) any other reason justifying relief from the judgment." "To prevail on a Civ.R. 60(B) motion, 'the 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 for 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.'" *Custom Pro Logistics* at ¶ 15, citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 150-151 (1976). "'The decision to grant relief from judgment lies within the trial court's discretion.'" *Id.*, citing *Engelhart v. Bluett*, 2016-Ohio-7237, ¶ 16 (1st Dist.).

{¶29} Viking does not challenge whether Sawyer's motion was timely filed. Rather, Viking only challenges whether Sawyer set forth a meritorious defense and showed its entitlement to relief under Civ.R. 60(B)(1) through (5).

{¶30} Sawyer moved to set aside the default judgment against it based on lack of knowledge, i.e., lack of actual notice of the suit against it. In doing so, Sawyer did not specifically identify which provision of Civ.R. 60(B) entitled it to relief in its initial motion to set aside the default judgment. In its reply brief in support of its motion, Sawyer suggested it was entitled to relief under Civ.R. 60(B)(5) based on lack of proper service. However, courts have said that insufficient service of process is properly

considered in a common-law motion to vacate a void judgment, rather than a motion under Civ.R. 60(B)(5). *See Treasurer of Lucas Cty. v. Mt. Airy Invests. Ltd.*, 2019-Ohio-3932, ¶ 25 (6th Dist.), citing *Romp v. Jean-Pierre*, 2016-Ohio-5072, ¶ 14 (6th Dist.) ("A motion for relief from judgment based on insufficient service of process (i.e., the trial court's lack of personal jurisdiction over the defendant) is properly considered as a common-law motion to vacate a void judgment, not as a Civ.R. 60(B)(5) motion for relief based on 'any other reason justifying relief from the judgment.'"); *see also generally, e.g., Abouharga v. Elghadban*, 2024-Ohio-3413, ¶ 15 (10th Dist.) (explaining that "Civ.R. 60(B) provides a means for obtaining relief from voidable judgments, but does not apply when a motion to vacate is premised on jurisdictional grounds.").

{¶31} In *Custom Pro Logistics*, 2022-Ohio-1774 (1st Dist.), this court addressed an LLC's claim of lack of actual notice under Civ.R. 60(B)(1) and held that the trial court did not abuse its discretion in failing to find excusable neglect under Civ.R. 60(B)(1) where the LLC failed to have adequate internal procedures in place to ensure appropriate delivery of its mail. *See id.* at ¶ 18-21. In doing so, this court distinguished the case from this court's decision in *Heard v. Dubose*, 2007-Ohio-551, ¶ 19 (1st Dist.), wherein this court upheld a trial court's finding of excusable neglect where a company had appropriate internal procedures in place to receive service, but the complaint was never received by the appropriate office due to an "unknown, inadvertent clerical error during the process." *Custom Pro Logistics* at ¶ 18-21.

{¶32} The existence of adequate internal procedures to receive service of process is what distinguishes excusable neglect from inexcusable neglect for purposes of Civ.R. 60(B)(1). *See id.* at ¶ 17, citing *John W. Judge Co. v. USA Freight, LLC*, 2018-Ohio-2658, ¶ 27 (2d Dist.) ("Negligent or insufficient internal procedures in an

organization may not constitute excusable neglect.").

{¶33} "'Courts have defined excusable neglect in the negative, stating that a defendant's inaction is not excusable neglect when it shows a complete disregard for the judicial system or its [sic] falls substantially below what is reasonable under the circumstances.'" *Id.* at ¶ 16, citing *Engelhart*, 2016-Ohio-7237, at ¶ 18 (1st Dist.). "Neglect is inexcusable when it is a consequence of the party's own carelessness, inattention, or willful disregard of the process of the court . . ., as opposed to a consequence of some unexpected or unavoidable hinderance or accident." (Cleaned up.) *Id.* at 17, citing *Treasurer of Lucas Cty.*, 2019-Ohio-3932, at ¶ 26 (6th Dist.).

{¶34} Courts have found that a trial court abuses its discretion in affording relief under Civ.R. 60(B)(1) where the entity receiving service fails to set forth operative facts showing that it had adequate internal procedures in place to receive service of process. *See John W. Judge* at ¶ 27-29; *Bowling v. Grange Mut. Cas. Co.*, 2005-Ohio-5924, ¶ 43-56 (10th Dist.).

{¶35} "A determination of excusable neglect depends on the facts and circumstances of each case." *Custom Pro Logistics*, 2022-Ohio-1774, at ¶ 16 (1st Dist.), citing *Engelhart* at ¶ 18.

{¶36} Here, Sawyer only stated in its motion that "it had no knowledge of this lawsuit until it received the Judgment Entry Granting Default Judgment that was filed on September 9, 2024, and, accordingly, was not able to file an Answer responding to the Complaint." Sawyer did not set forth any allegations or evidence to indicate why it lacked actual notice of the lawsuit, despite proper service, or any operative facts showing that it had adequate internal procedures in place to receive service of process. It was Sawyer's burden to set forth facts showing that the lack of notice was the result of some unexpected or unavoidable hinderance or accident, rather than its own

carelessness or inattention. Without any facts indicating excusable, rather than inexcusable neglect, Sawyer failed to meet this burden. Thus, the record lacks any evidence of inadvertence or excusable neglect sufficient to warrant relief under Civ.R. 60(B)(1).

{¶37} On appeal, Sawyer suggests—for the first time—that "if nothing else, Sawyer demonstrated that the default judgment at issue in this case was the result of surprise." However, this argument was not made below, and Sawyer does not cite any authority to show it would be entitled to relief on the basis of surprise.

{¶38} Because Sawyer failed to meet its burden to show entitlement to relief under Civ.R. 60(B)(1) through (5), we sustain the second assignment of error and hold that the trial court abused its discretion in granting Sawyer's motion to set aside the default judgment under Civ.R. 60(B). *See generally, e.g., Clayton v. Luka Inc.*, 2026-Ohio-1676, ¶ 25 (2d Dist.) ("'The movant must set forth operative facts to satisfy the burden of proof for each of the three elements [to prevail on a Civ.R. 60(B) motion.]'"); *GEICO Advantage Ins. Co. v. Williams*, 2026-Ohio-4284, ¶ 10 (8th Dist.) ("A court must overrule a motion to vacate where a movant fails to establish even one of the three requirements in the [Civ.R. 60(B)] test.").

C. Third Assignment of Error

{¶39} In the third assignment of error, Viking argues that the trial court erred in setting aside the default judgment against DKR where DKR was not a movant for relief under Civ.R. 60(B) and failed to establish any entitlement to relief. Viking asserts, "To the extent that the Trial Court's entry is construed as vacating the default judgment against DKR, the decision goes against the plain language of Civ.R. 60(B)" where it is the movant who must show entitlement to relief. Viking further asserts that "nothing in [Sawyer]'s motion authorized the court to adjudicate DKR's rights."

{¶40} Based on the record, we construe the trial court's judgment as only granting relief to Sawyer, not DKR. The trial court purported to grant *Sawyer's* motion when vacating the default judgment. At no point did the trial court mention DKR or in any way indicate that it was also granting relief to DKR. Accordingly, because the trial court did not grant relief to DKR, we overrule the third assignment of error.

III. Conclusion

{¶41} For the foregoing reasons, we sustain the first and second assignments of error, overrule the third assignment of error, reverse the judgment of the trial court, and remand the cause for the trial court to enter a judgment denying Sawyer's motion to set aside the default judgment because Sawyer failed to rebut the presumption of proper service and failed to meet its burden to show entitlement to relief under Civ.R.60(B)(1) through (5).

Judgment reversed and cause remanded.

CROUSE, P.J., and **BOCK, J.,** concur.