

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

BRENT HANN,	:	
	:	
Plaintiff-Appellant,	:	Case No. 24CA12
	:	
v.	:	
	:	
RICHARD TONNOUS, ET AL.,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
Defendants-Appellees.	:	

APPEARANCES:

Benjamin Felton, Dyer, Garofalo, Mann & Schultz, Dayton, Ohio, for appellant.

Michael Paglia, Jonathon Angarola, Ritzler, Coughlin & Paglia, Ltd., Cleveland, Ohio, for appellee Nationwide Mutual Insurance Company. ¹

Smith, P.J.

{¶1} Brent Hann appeals the July 3, 2024 Order of the Washington County Court of Common Pleas. After Mr. Hann “Hann” obtained a default judgment against Nationwide Mutual Insurance Company “Nationwide” in the amount of \$418,291.44, Nationwide filed a “Motion for Nunc Pro Tunc Relief from Default Judgment or Alternatively to Vacate the Judgment Award on December 27, 2023.” The trial court overruled the portion of

¹ Richard Tonnous has not participated in this appeal.

Nationwide's motion requesting nunc pro tunc relief and granted the portion of Nationwide's motion requesting vacation of the default judgment. After reviewing the parties' arguments, the record, and the applicable law, we are not persuaded that the trial court erred in granting Nationwide's motion to vacate. Consequently, Hann's sole assignment of error, assigning the trial court's decision as error, is overruled. The judgment of the trial court is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

{¶2} Hann was in an automobile collision on October 21, 2020 and subsequently pursued claims against Richard Tonnous and Nationwide, the underinsured motorist "UIM" carrier for Jacqueline Scott. On October 12, 2022, Hann filed a complaint against Tonnous and Nationwide. Nationwide was served via certified mail at its business address listed with the Ohio Department of Insurance at One Nationwide Plaza, Columbus, Ohio 43215 on October 17, 2022. Nationwide did not answer or otherwise respond.

{¶3} On March 22, 2023, Hann perfected certified mail service on the complaint on Nationwide at the address of its statutory agent, the Corporation Service Company, located at 3366 Riverside Drive, Suite 103, Upper Arlington, Ohio 43221. Again, Nationwide did not answer or otherwise respond. On October 23, 2023, Hann moved for default judgment

against Nationwide. Hann sent a copy of the motion to Nationwide, yet Nationwide continued to be nonresponsive.

{¶4} On November 3, 2023, the trial court granted Hann’s motion. The matter was set for a damages hearing on December 4, 2023. Again, Nationwide did not respond or appear. On December 23, 2023, the trial court entered judgment against Nationwide for \$418,291.44. A copy of the judgment entry was sent to Nationwide. In his brief, Hann describes, and the record confirms, Hann’s multiple attempts throughout all stages of the proceedings to contact and communicate with Nationwide regarding UIM potentially available to Hann.

{¶5} On May 7, 2024, “Nationwide filed a Motion for Nunc Pro Tunc Relief from Default Judgment or Alternatively to Vacate the Judgment Award on December 27, 2023.” The motion was supported by the affidavit of Robert Sawyer, an adjuster for Nationwide, who had worked on Hann’s pre-suit “medpay” claims. Sawyer conceded that Nationwide received Hann’s complaint.

{¶6} Hann filed a response to Nationwide’s alternative motion. Hann also filed a Motion to Correct Record to reflect the proper name of Nationwide’s corporate entity. The trial court heard arguments on the

pending motions on June 25, 2024. The parties stipulated to the admissibility of the exhibits which had been filed with their pleadings.

{¶7} At this hearing, the trial court granted Hann’s motion to correct the record and ordered that the pleadings reflect the proper name of Defendant Nationwide as “Nationwide Mutual Automobile Insurance Company.” Furthermore, counsel for Nationwide acknowledged that service of process had been made, though not on the properly named defendant. The trial court denied Nationwide’s motion for nunc pro tunc relief.

{¶8} However, the trial court found that Nationwide’s motion for relief under Civil Rule 60(B), which requested vacation of the default judgment, was timely and presented a meritorious claim or defense. The court further found that Nationwide had demonstrated excusable neglect. It is from this order that Hann has timely appealed.²

{¶9} Having finally responded as a result of the default judgment, and here on appeal, Nationwide points out several issues. First,

² In the appealed-from Order, the trial court granted relief, indicated it would set the matter for case management, and indicated it would also hear Hann’s arguments as to attorney fees. We note that the complaint did not request attorney fees. Further, the docket indicates that upon receiving notice of the appeal, the trial court placed the proceedings on hold pending the outcome of the appeal. In *Hopkins v. Quality Chevrolet, Inc.*, 79 Ohio App. 3d 578 (4th Dist.1992), this court stated: Although the trial court’s order granting relief from judgment clears the way for additional proceedings in this case, it is nevertheless well settled that an order vacating a judgment is a ‘final order’ for purposes of R.C. 2505.02 such that this court has jurisdiction to consider the matter.

(Citations omitted.) See, *Hopkins*, at fn 1. Therefore, we proceed to determine the merits of this case.

Nationwide asserts that Hann had never named and served the proper corporate entity.³ Nationwide also asserts that Hann had incorrectly referenced himself as Nationwide’s “insured,” when in fact the insured is an individual named Jacqueline Scott.⁴ Nationwide asserts there is a question as to whether Hann can even recover UIM benefits under Scott’s Nationwide policy.

{¶10} Though obviously failing to respond or communicate with Hann until a default judgment had been rendered, Nationwide also faults Hann for failing to attach the Nationwide policy to his complaint pursuant to Civ.R. 10(D) and further failing to explain the omission. The Nationwide policy with UIM benefits and policy limits of \$100,000/\$300,000 was not in evidence at the damages hearing. Thus, the trial court ultimately entered a judgment against Nationwide of over \$400,000.00.

{¶11} Our consideration of this matter is based solely upon whether or not the dictates of Civ.R. 60(B) were met, and whether or not the trial court abused its discretion in finding that the requirements were met.

³ Hann’s complaint named “Nationwide Insurance Company.” Nationwide’s “Motion for Nunc Pro Tunc Relief from Default Judgment or Alternatively to Vacate the Judgment Award of December 27, 2023” was filed on behalf of “Nationwide Mutual Insurance Company.” Sawyer’s affidavit in support avers that he is employed by “Nationwide Insurance Company.” At the June 25, 2024 hearing on motions, counsel for Nationwide represented that Scott’s policy was underwritten by “Nationwide Mutual Automobile Insurance Company,” and that is the name reflected in the court’s July 3, 2024 Order.

⁴ At the June 2024 motions hearing, Nationwide’s attorney indicated that Jacqueline Scott’s daughter was Hann’s girlfriend.

ASSIGNMENT OF ERROR

I. THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE DEFENDANT-APPELLEE'S MOTION TO VACATE THE DEFAULT JUDGMENT.

Standard of Review - 60(B)

{¶12} A Civ.R. 60(B) motion for relief from judgment is committed to the trial court's sound discretion and its ruling will not be disturbed absent an abuse of that discretion. *See Milton Banking Co. v. Dulaney*, 2012-Ohio-1494, at ¶ 9 (4th Dist.); *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153 (1997); *Griffey v. Rajan*, 33 Ohio St.3d 75, 77 (1987). We note that generally an abuse of discretion is more than an error of law or judgment; rather, it implies that a trial court's attitude is unreasonable, arbitrary or unconscionable. *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342 (1998); *Malone v. Courtyard by Marriott L.P.*, 74 Ohio St.3d 440, 448 (1996). In applying the abuse of discretion standard, appellate courts must not substitute their judgment for that of the trial court. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 732 (1995); *In re Jane Doe I*, 57 Ohio St.3d 135, 137–138 (1991).

Analysis

{¶13} Civil Rule 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; (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.

Generally, to prevail on such motion, a party must meet the following test:

To prevail on a motion brought under Civ.R. 60(B), 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 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.

See GTE Automatic Elec., Inc. v. ARC Industries, Inc., 47 Ohio St.2d 146 (1976), at paragraph two of the syllabus. A failure to satisfy these criteria will result in a denial of the motion. *Strack v. Pelton*, 70 Ohio St.3d 172, 174 (1994); *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988).

{¶14} The trial court found that Nationwide had filed its motion in a reasonable time, within one year of judgment. The trial court further found that Nationwide had a meritorious defense “as this is a contractual matter

and their liability may be limited to the amount contained in the policy.”

The trial court further found:

As to the excusable neglect, the Court does find that the policies and procedures of Nationwide Mutual Automobile Insurance Co. relating to the notification of litigation department are shoddy, at best. Counsel for the Defendant acknowledged that service was made, however, not on the contractually obligated entity who issued the UM/UIM policy. The Court GRANTS relief from Judgment and will set this matter for a case management conference.

{¶15} The primary basis for Nationwide’s claim for relief from the default judgment is that its failure to answer, and its delay of over seven months after it had been served with summons and over five months after it had been mailed a copy of the default judgment before it even entered an appearance and requested relief under Civ.R. 60(B), occurred because of “excusable neglect.” “Excusable neglect” is “an elusive concept which has been difficult to define and to apply,” *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20 (1996), and the determination of whether excusable neglect justifies relief depends upon a consideration of “all the surrounding facts and circumstances.” *Colley v. Bazell*, 64 Ohio St.2d 243, 249 (1980). *See also Ellison v. K2 Motors, L.L.C.*, 2023-Ohio-1871, at ¶ 21 (10th Dist.); *Settler’s Bank v. Burton*, 2014-Ohio-335, at ¶ 40 (4th Dist.).

{¶16} In general, “a failure to plead or respond after admittedly receiving a copy of a court document is not ‘excusable neglect,” *Natl. City Home Loans Serv., Inc. v. Gillette*, 2006-Ohio-2881, ¶ 18 (4th Dist.) and a defendant's inaction is not excusable neglect if it constitutes a “complete disregard for the judicial system.” *Kay*, 76 Ohio St.3d at 20.

“Consequently, ‘there is a fine line between excusable and inexcusable neglect and the courts, including this court, must defer to the trial court's determination on whether the neglect is excusable given our abuse of discretion standard.’ ” *Burton, supra*, at ¶ 41, quoting *Norman v. Hanover Motor Cars, Inc.*, 2012-Ohio2697, ¶ 27 (7th Dist.).

{¶17} Affidavits provide a sufficient basis for the trial court to find excusable neglect when they demonstrate that:

there is a set procedure to be followed in the corporate hierarchy for dealing with legal process, and (2) such procedure was inadvertently not followed until such time as a default judgment had already been entered against the corporate defendant.

See Hopkins Chevrolet, supra, at 583; *Burton*, at ¶ 43. Here, the supporting affidavit by Richard Sawyer states, in its totality, as follows:

1. I am employed by Nationwide Insurance Company as a Litigation Adjuster and was assigned to Medpay claims involving Brent Hann regarding a motor vehicle accident on October 21, 2020 in Waterford Township with Richard Tonnous assigned Claim No. 037330-GN.

2. Although Plaintiff Brent Hann's Complaint against Richard Tonnous and Nationwide Insurance Company in Case No. 22TR000212 filed in the Washington County Court of Common Pleas was received by Nationwide, it was not forwarded through the proper channels to retain counsel and file an Answer on Nationwide's behalf to these uninsured/underinsured claims.
3. There was nothing intentional or willful in failing to file this Answer but was an inadvertent oversight in procedure.

Based upon our review of cases which have discussed or resolved the issue of "excusable neglect," we find that the trial court here erred in finding that Nationwide sufficiently set forth operative facts in the Sawyer affidavit to demonstrate excusable neglect.

{¶18} In *Kormanik, Guardian v. HSBC Mtge*, 2012-Ohio-5975 (10th Dist.), the appellate court affirmed the probate court's determination that the facts were insufficient to suggest that HSBC's inaction was the result of excusable neglect. There, the appellate court quoted the magistrate's decision as follows:

"[a]side for [sic] generally asserting that HSBC has an internal procedure for the handling of receipt of summons company wide, [the company's representative] could offer no insight into what the procedure and process is, and in what ways the procedure was not followed." (Magistrate's Decision, at 4.) The magistrate further noted that [the company representative] "was unable to present

evidence of the specific policies and procedures concerning the receipt of summons and was only able to testify as to what she would have done if she received service. [The company representative] was unable to testify as to when she became aware of the Complaint filed in this action, noting only that she was aware of it now.” (Magistrate's Decision, at 10.)

As is obvious, the affidavit was conclusory and submitted by someone who could not provide specific facts as to policies and procedures.

{¶19} In *Burton, supra*, this court noted that the only evidence submitted by the pertinent party to support its claim of excusable neglect was a “conclusory affidavit of the...Vice President, who stated that the company ‘has an established process...’ and it appears to not have been followed.” *Id.* at ¶ 45. Consequently, there we found that the mortgagee’s failure to file an answer was not the result of excusable neglect.

{¶20} In *Ellison, supra*, the appellate court affirmed the trial court’s finding that excusable neglect was not shown. In the opinion, the appellate court noted that K2’s argument in support of its right to relief under Civ.R. 60(B) constituted a single paragraph, which stated in conclusory fashion:

“Defendant here meets all the requirements [for relief] and judgment should be vacated. The affidavit of R.J. Elser outlines the reason [why] the underlying complaint was not answered. It was clearly not answered due to mistake, inadvertence and/or excusable neglect.”

The appellate court further observed that the Elser affidavit noted that it was his responsibility to forward legal complaints to the company's attorney.

Elser admitted he received an email alerting him to the complaint but explained "because [he] never received the paper copies of the complaint, and despite my usual practice, I neglected to forward the complaint to" K2's attorney. *See id.* at ¶ 22.

{¶21} In another Fourth District decision, *Hopkins v. Quality Chevrolet, Inc., supra*, this court held that the evidence supported determination that automobile dealership's failure to file an answer to Hopkins' complaint **was** the result of excusable neglect. There, the affidavit attached to the dealership's motion for relief from judgment was supported by the president of the dealership, Nourse. We observed:

Nourse attested that in the ordinary course of appellee's business, all legal matters were to be referred to the General Manager, David Hendrix, or to himself. The affidavit further set forth that the summons and complaint, previously served on appellee, had not been placed on his desk until December 17, 1990, and that neither he, nor Hendrix, were aware that the action was pending before that date. Finally, Nourse attested that he had "reason to believe" that a specific former employee had failed to forward the summons and complaint to his supervisor so that the appropriate steps could be taken. This particular employee had been dismissed on December 14, 1990, for among other reasons, failing "to thoroughly follow up on jobs assigned to him."

Id. at 582. On the basis of those sworn statements, the trial court correctly found that the dealership had made a sufficient demonstration of excusable neglect. *Id.*

{¶22} Based upon our review of Sawyer’s affidavit, we disagree with the trial court’s reasoning in granting Nationwide’s motion under Civ.R. 60(B)(1), that Nationwide sufficiently set forth operative facts in order to demonstrate excusable neglect in failing to answer Hann’s complaint. We find the Sawyer affidavit to be vague and conclusory. In Paragraph 2, Nationwide’s representative fails to explain when the complaint was actually received or who received it - just that it was received. Paragraph 2 also states that the complaint was not “forwarded through the proper channels,” but Sawyer fails to explain what Nationwide’s internal process for receiving complaints or other legal documents actually is, or how the proper procedures were not followed. Paragraph 3 simply states that the failure to file an answer was an “inadvertent oversight.” At the hearing on motions, the trial court expressed its hope that Nationwide would “tighten up some of their procedures.” In the July 3, 2024 Order, the trial court described them as “shoddy at best.”

{¶23} Rather, we find that the trial court did not abuse its discretion in granting Nationwide’s Civ.R. 60(B) motion, but reason that it may be

properly granted under Civ.R. 60(B)(5). Civ.R. 60(B)(5) reflects “the inherent power of a court to relieve a person from the unjust operation of a judgment.” *State ex rel. Gyurcsik v. Angelotta*, 50 Ohio St.2d 345, 346 (1977). “The grounds for invoking Civ.R. 60(B)(5) should be substantial.” *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64 (1983), paragraph two of the syllabus. *See also PHH Mtge. Corp. v. Northup*, 2011-Ohio-6814, at ¶ 24 (4th Dist.); *Smith v. Stacy*, 2003-Ohio-3467, at ¶ 11 (4th Dist.)(Given the highly unusual facts and circumstances of the case, appellate court found two grounds for invoking relief under Civ.R. 60(B)(5)).

{¶24} In *Wells Fargo Financial Leasing Inc.v. Gilliland*, 2004-Ohio-1755, this court found that sufficient grounds existed to invoke relief under Civ.R. 60(B)(5). There, Gilliland filed a motion for relief from a cognovit judgment entered against him as a result of purported default on the lease of farm equipment. The trial court granted Gilliland’s motion, the creditor appealed, and we affirmed. We noted that it was uncontroverted that Gilliland did not execute the lease agreement at issue, which was forged by his father. Furthermore, there was no question that the father suffered from Alzheimer’s disease at the time he forged the instrument. Gilliland had also immediately attempted to resolve the dispute after he found out what his father had done. In light of the facts and circumstances of the case, we

agreed with the trial court that it was patently unjust to allow the judgment to stand and to deprive Gilliland of the opportunity to defend the claims against him.

{¶25} The underlying dispute between Hann and Nationwide concerns Hann's entitlement to UIM benefits under the Nationwide automobile insurance policy issued to Jacqueline Scott, an issue of contract law. An insurance policy is a contract between the insurer and the insured. *See Feick v. Miller*, 2025-Ohio-1538, at ¶ 12, (internal citations omitted.) *See also Pilkington N. Am. Inc. v. Travelers Cas. & Sur. Co.*, 2006-Ohio-6551, at ¶ 23. The judgment granted by default was in excess of the UIM coverage limits of \$100,000/\$300,000 of the Nationwide policy. As a matter of law, Hann, if he proves entitlement to UIM benefits, can never receive more than the UIM benefit.

{¶26} In *Qualchoice v. Nationwide*, 2008-Ohio-6979, (11th Dist.), Nationwide argued that the trial court erred in rendering a verdict in excess of Nationwide's med pay limits of \$5,000. The appellate court agreed, noting that "[g]enerally, insurers are only liable for a judgment exceeding their policy limits if bad faith in handling a claim is shown." *Id.*, at ¶ 26. (Certainly, Nationwide is not obligated to pay more than the limits of the med pay portion of [the insured's] policy, when and if QualChoice proves its

own case). *See also J. Spang Baking Co. v. Trinity Universal Ins. Co.*, 68 N.E.2d 122 (8th Dist.1946). The court noted there was no indicia of bad faith in that case. The same seems to be true in the matter within.

{¶ 27} In *Fors v. Beroske*, 2013-Ohio-1079 (6th Dist.), paragraph three of the syllabus, the court held that “violation of rule providing that default judgment shall not...exceed in amount that prayed for in demand for judgment presents a basis for relief from judgment under catch-all provision of rule governing relief from judgment.” In doing so, the court reasoned that where judgment was awarded in excess of the amount demanded in the complaint, the appellant had presented a meritorious defense to the judgment as it violated Civ.R. 54(C). *Id.* at ¶ 18. The trial court herein also noted Nationwide’s meritorious defense based on contractual policy limits.

{¶ 28} In conclusion, we find that the trial court did not abuse its discretion by determining that Nationwide was entitled to relief. However, we affirm the trial court’s judgment on other grounds and pursuant to Civ.R. 60(B)(5). *See State v. Allen*, 2025-Ohio-2789, at ¶ 25; *State ex rel. Neguse v. McIntosh*, 2020-Ohio-3533, ¶ 10 (a correct judgment will not be reversed merely because erroneous reasons were given for it); *See also Bender v.*

Logan, at ¶ 65 (4th Dist.). Hann's assignment of error is without merit and is hereby overruled.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County 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.

Abele, J. and Hess, J., concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.