

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1710-13T4

HUNTERDON MEDICAL CENTER,

Plaintiff-Respondent,

v.

DAMON LEAVELL,

Defendant-Appellant.

Argued December 16, 2014 – Decided March 6, 2015

Before Judges Haas and Higbee.

On appeal from the Superior Court of New Jersey, Law Division, Hunterdon County, Docket No. DC-000202-13.

Damon Leavell, appellant, argued the cause pro se.

Kenneth Ellman, appellant pro se.

John A. Kelleher argued the cause for respondent (Kelleher & Moore, attorneys; Mr. Kelleher, on the brief).

PER CURIAM

Defendant, Damon Leavell, appeals the denial of his motion to vacate a default judgment entered against him in favor of plaintiff, Hunterdon Medical Center. For the reasons stated

below, we reverse the order of the trial court and remand for further proceedings.

On February 7, 2013, plaintiff filed a complaint against Leavell, alleging he owed unpaid medical bills. Thereafter, on March 21, 2013, default judgment was entered against Leavell in the amount of \$919.20. Leavell contends he was unaware of the entry of the judgment. He submitted an answer dated March 20, 2013, which was stamped filed by the court on March 25, 2013, despite the fact that judgment had already been granted.¹ His check for the filing fee was cashed by the court. He then waited for his trial date, and finally became aware of the default judgment.

On August 14, 2013, Leavell filed a timely motion to vacate default judgment, which was denied on October 7, 2013 by the court. The court found that Leavell failed to raise a "meritorious defense." This appeal followed, in which Leavell argues the court erred in refusing to vacate the default.

The New Jersey Supreme Court in US Bank Nat. Ass'n v. Guillaume stated that a "trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be

¹ Leavell's "Answer/Counterclaim/Joinder" sought to join Kenneth Ellman as a necessary party and raised various defenses and counterclaims.

reversed unless it results in a clear abuse of discretion." 209 N.J. 449, 467-68 (2012). A trial court abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

The established public policy that our courts have embraced is that, whenever possible, cases should be heard on their merits. Therefore, "the opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." Marder v. Realty Constr. Co., 84 N.J. Super. 313, 319 (App. Div.) aff'd, 43 N.J. 508 (1964). Where a defendant seeks to vacate a default judgment order under Rule 4:50-1(a), "the court may relieve a party . . . from a final judgment or order for . . . mistake, inadvertence, surprise, or excusable neglect."

"'Excusable neglect' may be found when the default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Guillaume, supra, 209 N.J. at 468 (quoting Mancini v. EDS, 132 N.J. 330, 335 (1993)). In addition to excusable neglect, a motion to set aside a default judgment will not be granted absent the moving party

articulating a "meritorious defense." Marder, supra, 84 N.J. Super. at 318.

Here, the trial court rejected Leavell's motion to vacate the default, noting "[t]he Defendant has no meritorious defense, per [Rule] 4:43-3. Insurance monies were applied to Defendant's debt, leaving the remaining \$848.24 unpaid. Further, Kenneth Ellman is not an original defendant." The court did not address the question of "excusable neglect," which clearly existed in this case, and was compounded by the court's own clerical error in filing an answer three days after default judgment had entered. In denying Leavell's motion, the court failed to specify what defenses defendant had raised, or why they were not meritorious. Thus, we find no "rational explanation" as to why Leavell's motion to vacate the default judgment was denied. See Guillaume, supra, 209 N.J. 467-68.

In reversing the decision of the trial court, we find that defendant did demonstrate excusable neglect and a potentially meritorious defense. With respect to articulating a meritorious defense, defendant points to his answer to the complaint, where he stated:

No money was owed, that there is no contract and no account stated, that the insurance claims were not properly processed, that the Plaintiff had an obligation to properly process Charity Care claims, that there are offsets for violation of th[e] [sic]

F.D.C.P.A. [Fair Debt Collection Practices Act], that the Plaintiff has already received payment for the services it claims and other Defenses, Affirmative Defenses, Counterclaims, and Offsets.

Thus, defendant raised several defenses which warranted his case being heard on the merits. Therefore, we reverse the decision of the trial court and vacate the default judgment. The matter is remanded to the trial court for further proceedings including resolution of the issue of whether Kenneth Ellman should be joined as a party.

Reversed and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION