IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 3, 2022

JIM SANDERS v. AM USED AUTO PARTS, LLC

Appeal from the Circuit Court for Hamilton County
No. 21-C-1065 Ward Jeffrey Hollingsworth, Judge

No. E2022-00479-COA-R3-CV

This case concerns service of process on an out-of-state defendant's registered agent by mail and a subsequently entered default judgment in the general sessions court. The defendant moved under Tenn. R. Civ. P. 60.02 to set aside the default judgment based on insufficient service of process. The defendant also asserted that the default judgment was void because the general sessions court awarded a judgment greater than the amount prayed for in the summons. The circuit court found service was valid and upheld the default judgment in all respects. We agree that service was sufficient and could serve as a basis for default judgment under Tenn. Code Ann. § 16-15-904(e); however, we reduce the amount of the judgment to conform with the amount the plaintiff requested in the summons. The trial court's judgment is affirmed as modified.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed as Modified

ANDY D. BENNETT, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY and KENNY W. ARMSTRONG, JJ., joined.

Marvin Bernard Berke, Chattanooga, Tennessee, for the appellant, AM Used Auto Parts, LLC.

Bryson Andrew Lype and Jeremy Matthew Cothern, Chattanooga, Tennessee, for the appellee, Jim Sanders.

OPINION

FACTUAL AND PROCEDURAL HISTORY

On February 26, 2021, Jim Sanders ("Mr. Sanders" or "Plaintiff") filed a civil summons against AM Used Auto Parts, LLC ("AM Used Auto Parts" or "Defendant") in

the General Sessions Court for Hamilton County alleging "damages resulting from breach of contract, fraud, and violation of the Tennessee Consumer Protection Act." Mr. Sanders requested $24,999.99 in damages. Mr. Sanders sent Defendant the summons via certified mail properly addressed to the registered agent for AM Used Auto Parts in Florida. On April 19, 2021, Plaintiff filed, in the general sessions court, an affidavit of service by Chelsea Coyle stating:

> I, Chelsea Coyle, being duly sworn, make[] oath as follows:
> 1. That I am a resident of Tennessee and that I have attained the age of eighteen (18) years; and
> 2. That I am not a party to this action; and
> 3. That on March 3, 2021, I personally served a copy of this Civil Summons upon registered agent Alexandria Metallo by certified mail return receipt to 7526 Lithia Pinecrest Road, Lithia, Florida 33547 and they were served on March 8, 2021, Certified Mail Receipt attached hereto.

Attached to the affidavit was a U.S. Postal Service Certified Mail Receipt showing that the date of delivery was March 8, 2021. In the section with the heading "COMPLETE THIS SECTION ON DELIVERY" there is an unintelligible handwritten marking in section "A. Signature" that appears to be "DS[1]17" with the box "Agent" circled or marked with a handwritten "X." In section "B. Received by (Printed Name)" there is another unintelligible handwritten marking that appears to be "C-19."

On April 26, 2021, the general sessions court granted Mr. Sanders a default judgment for $25,000.00 plus interest at the rate of 5.25 percent against AM Used Auto Parts. On July 2, 2021, Mr. Sanders served AM Used Auto Parts with a subpoena requesting "most recent financial state for each bank account associated with AM Used Auto Parts, LLC." Attached to the subpoena was a U.S. Postal Service Certified Mail Receipt which is nearly identical to the return receipt attached to Ms. Coyle's affidavit. Again, the signature is handwritten and appears to be "DS17" with a handwritten notation of "C19" in the section for "Received by (Printed Name)." The handwritten date of service appears to be July 9, 2021. Defendant did not respond to the subpoena, and Mr. Sanders filed a Motion for an Order to Show Cause on August 12, 2021, which the trial court entered on August 23, 2021. The court required Defendant to appear on September 13, 2021 and show cause why it should not be punished for contempt.

Upon Defendant's request, Mr. Sanders agreed to reschedule the show cause hearing until October 4, 2021. On September 23, 2021, Defendant filed a "Petition for Writ of Error Coram Nobis" asserting that service of process was deficient and that the judgment is "illegal in that the suit asks for . . . $24,999.99 . . . and the judgment was for more than

[1] We are unable to discern whether the letter "S" or the number "5" is on the signature line.

that." Mr. Sanders filed a response in opposition and motion to dismiss on October 21, 2021. The next day, Defendant filed a Motion Under Rule 60.02 with the same assertions of error.

The general sessions court heard and denied Defendant's motion on November 8, 2021. Defendant appealed the general sessions court's denial to the circuit court and, on February 10, 2022, the circuit court heard Defendant's Rule 60.02 motion.[2] On April 12, 2022, the circuit court entered an Order and Final Judgment finding that:

> 6. Plaintiff properly served Defendant pursuant to Tennessee Code annotated § 16-15-901, et seq.
> 7. Defendant has not presented any sworn evidence, such as the testimony or an affidavit of its representative, to challenge the authenticity of the Signature.
> 8. Pursuant to Tennessee Code Annotated § 16-15-501(d)(1), the jurisdiction of courts of general sessions extends to the sum of twenty-five thousand dollars ($25,000).
> 9. The final judgment previously entered by the General Sessions Court in the amount of twenty-five thousand dollars ($25,000) is not void.

The court then entered a final judgment of $25,000 in favor of Mr. Sanders against AM Used Auto Parts. Defendant timely filed his notice of appeal to this Court asserting that there is "no signature" on the return receipt and the service was therefore insufficient. Defendant further asserts that the default judgment was invalid because it was entered for one cent more than the amount sued for in the civil summons. We will address each contention in turn.

STANDARD OF REVIEW

We have recently set forth the applicable standard of review of a trial court's ruling on a motion for default judgment under Tenn. R. Civ. P. 60.02 as follows:

> Ordinarily, this Court reviews a trial court's ruling on a motion for relief from a final judgment under the abuse of discretion standard. *Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012). However, the trial court's decision on a Rule 60.02(3) motion is reviewed pursuant to the de novo standard, with no presumption of correctness, as the question of whether a court has personal jurisdiction over a defendant involves a question of law to which de novo review applies. *Turner v. Turner*, 473 S.W.3d 257, 268 (Tenn. 2015) (citing *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 645 (Tenn. 2009)); *see also Amresco Independence Funding, LLC v.*

[2] The record on appeal contains no transcript from this hearing.

> *Renegade Mountain Golf Club, LLC*, No. E2014-01160-COA-R3-CV, 2015 WL 1517921, at *2 (Tenn. Ct. App. Mar. 31, 2015) (noting that "sufficiency of service of process, is a question of law, which is reviewed *de novo* by this Court without a presumption of correctness.") (citing *State ex rel. Barger v. City of Huntsville*, 63 S.W.3d 397, 398-99 (Tenn. Ct. App. 2001)). The party requesting relief from such a judgment must "establish by clear and convincing evidence that the judgment was void." *Hussey v. Woods*, 538 S.W.3d 476, 485 (Tenn. 2017). Clear and convincing evidence leaves "no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). "Any factual findings a trial court makes shall be reviewed de novo, with a presumption of correctness, unless the evidence preponderates otherwise." *Turner*, 473 S.W.3d at 269.

300 Kate St. Partners, LLC v. NIS Trading, Inc., No. M2020-01253-COA-R3-CV, 2021 WL 5013747, at *2 (Tenn. Ct. App. Oct. 28, 2021).

ANALYSIS

Rule 55.02 of the Tennessee Rules of Civil Procedure provides that "[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02."[3] Generally, there are two avenues for obtaining relief from a default judgment. "Most commonly, the movant sets forth facts explaining why it is entitled to relief and demonstrating that it has a meritorious defense to the underlying action[; . . .] a default judgment can also be set aside upon proof in accordance with Tenn. R. Civ. P. 60.02(3) that the judgment itself is void." *Third Nat'l Bank of Nashville v. Estes*, No. 85-142-II, 1986 WL 3155, at *4 (Tenn. Ct. App. Mar. 12, 1986) (citing *Patterson v. Rockwell Int'l*, 665 S.W.2d 96, 100-01 (Tenn. 1984); *Hopkins v. Hopkins*, 572 S.W.2d 639, 640 (Tenn. 1978)). In this case, we consider whether the judgment itself is void. We note that "[w]hen a party seeks relief under Rule 60.02, the burden of proof is on the moving party, and it is that party's duty to prove by a preponderance of the evidence that one of the Rule 60.02 grounds for relief exists." *Smith v. Potter*, No. M2011-01560-COA-R3CV, 2012 WL 2159596, at *2 (Tenn. Ct. App. June 13, 2012) (*Henry v. Goins*, 104 S.W.3d 475, 482 (Tenn. 2003)).

[3] Rule 60.02 provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (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 a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. . . .

The exercise of personal jurisdiction over a party is predicated on effective service of process. *Watson v. Garza*, 316 S.W.3d 589, 593 (Tenn. Ct. App. 2008) (citing *Stitts v. McGown*, No. E2005-02496-COA-R3-CV, 2006 WL 1152649, at *2 (Tenn. Ct. App. May 2, 2006) ("Because the trial court's jurisdiction of the parties is acquired by service of process, proper service of process is an essential step in a proceeding."). This Court has held that "a judgement [sic] based on void service is a void judgment." *Ramsay v. Custer*, 387 S.W.3d 566, 569 (Tenn. Ct. App. 2012); *see also Johnson v. McKinney*, 222 S.W.2d 879, 883 (Tenn. Ct. App. 1948) ("The general rule is that notice by service of process or in some other manner provided by law is essential to give the court jurisdiction of the parties; and a judgment rendered without such jurisdiction is void and subject to attack from any angle.").

Here, Defendant asserts that service was insufficient and cannot form the basis for a default judgment because 1) Plaintiff did not comply with Tenn. Code Ann. § 16-15-902 and 2) the return receipt does not have a signature showing personal acceptance of the summons by the Defendant or its registered agent. Defendant is correct that Tenn. Code Ann. § 16-15-901 to -905 sets forth the service of process requirements for a civil warrant filed in general sessions court. *See Yousif v. Clark*, 317 S.W.3d 240, 245 (Tenn. Ct. App. 2010). As an initial matter, however, Defendant failed to raise its argument regarding Plaintiff's failure to comply with Tenn. Code Ann. § 16-15-902 in the court below; thus, the trial court did not have an opportunity to review or rule upon that issue. Generally, this Court does not entertain issues that were not raised in the court below. *Moses v. Dirghangi*, 430 S.W.3d 371, 381 (Tenn. Ct. App. 2013) ("It is well settled that issues not raised at the trial level are considered waived on appeal."); *see also Consol. Waste Sys., LLC v. Metro. Gov't of Nashville & Davidson Cty.*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at *31 (Tenn. Ct. App. June 30, 2005) (citing *Simpson v. Frontier Cmty. Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991). Therefore, Defendant has waived its arguments with respect to Plaintiff's compliance with Tenn. Code Ann. § 16-15-902 and any effect that alleged non-compliance had on the default judgment.

Tennessee Code Annotated section 16-15-904(d) governs the proper service of process on an out-of-state defendant:

> Service by mail upon a partnership or unincorporated association, included a limited liability company, that is named defendant upon a common name shall be addressed to a partner or managing agent of the partnership or to an officer or managing agent of the association, or to an agent authorized by appointment or by law to receive service on behalf of the partnership or association.

Tennessee Code Annotated section 16-15-904(e) states that "[s]ervice by mail is complete upon mailing[,]" however, service by mail cannot serve as the basis for default judgment unless certain conditions, outlined in Tenn. Code Ann. § 16-15-904(e)(1)-(2) are met:

> Service by mail shall not be the basis for the entry of a judgment by default unless the record contains either:
> (1) A return receipt showing personal acceptance by the defendant or by persons designated by statute; or
> (2) A return receipt stating that the addressee or the addressee's agent refused to accept delivery, which is deemed to be personal acceptance by the defendant pursuant to this subsection (e).

At issue here is subsection (e)(1)—whether the return receipt shows personal acceptance by Defendant or its registered agent. Plaintiff served the summons by sending it certified mail to AM Used Auto Parts's registered agent—Alexandria Metallo—in Florida. Defendant does not argue that Alexandria Metallo was the incorrect person to receive service, nor does Defendant argue that the wrong address was used. The return receipt was returned "signed" by "agent." We recognize that the return receipt was not "signed" in the traditional way, as it does not include a cursive signature of Alexandria Metallo. However, as described above, the letters and numerals "DS17" appear on the "Signature" line, and the letters and numerals "C-19" appear on the "Received by" line. Regarding what markings constitute a signature, our Supreme Court has stated:

> It has been held that a cross mark is a good signature; also initials; *even numerals*, when used with the intention of constituting a signature; and a typewritten name or imprint made by a rubber stamp has the same effect; and this is equally true, though the typewriting or stamp impression be made by another, if the person to be charged has directed it.

Waddle v. Elrod, 367 S.W.3d 217, 227 (Tenn. 2012) (quoting *Gessler v. Winton*, 145 S.W.2d 789, 794 (Tenn. 1940) (citations and internal quotation marks omitted) (emphasis added). We hold that the markings on the signature line constitute a valid signature. It is also worth noting that Defendant does not provide an affidavit or any other evidence that its registered agent did not receive service, and Defendant has proffered no evidence to challenge the authenticity of the signature on the return receipt. As we mentioned, Defendant bore the burden of proving that the default judgment was void under Rule 60.02. *See Smith*, 2012 WL 2159596, at *2. In our view, any error that occurred in this case was on the part of the person who negligently signed the return receipt without including their legible name on the "Received by" line. This Court has recognized that a registered agent's negligence cannot serve as the basis for setting aside a default judgment. *See Herring v. Interstate Hotels, Inc.*, No. W1999-01055-COA-R3-CV, 2000 WL 34411154, at *4 (Tenn. Ct. App. Aug. 14, 2000). Therefore, in light of the fact that the return receipt was properly addressed to Defendant's registered agent, was marked received by the agent, and was "signed," we agree with the trial court that the record contains "a return receipt showing personal acceptance by the defendant or by persons designated by statute." The default judgment stands.

Next, Defendant argues that the default judgment was void because the trial court's award exceeded the amount Plaintiff requested in the summons: the trial court awarded $25,000 and Plaintiff requested $24,999.99. The Tennessee Supreme Court has held that "'[a] judgment or decree in excess of the amount pleaded is void,' but that is so only 'to the extent of the excess.'" *Morrison v. Allen*, 338 S.W.3d 417, 441 (Tenn. 2011) (quoting *Gaylor v. Miller*, 59 S.W.2d 502, 504 (Tenn. 1933)). Our Supreme Court has further explained:

> judgment by default is limited to the relief demanded in the complaint. The theory of this provision is that once the defending party receives the original pleading he should be able to decide on the basis of the relief requested whether he wants to expend the time, effort, and money necessary to defend the action.

Qualls v. Qualls, 589 S.W.2d 906, 909 (Tenn. 1979) (quoting Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2663 at 99-100 (1973)). In the case of *Wenzel v. Orren*, No. E2006-01228-COA-R3-CV, 2007 WL 2984691, at *5 (Tenn. Ct. App. Oct. 15, 2007), we applied these principles when considering a trial court's award of compensatory damages nearly three times the amount of compensatory damages requested in the plaintiffs' complaint. The *Wenzel* court determined that the award of damages should be reduced to the amount the plaintiffs requested. *Wenzel*, 2007 WL 2985691, at *5. Likewise, we modify the trial court's judgment in this case by reducing it to $24,999.99 in accordance with the amount requested in Plaintiff's general sessions summons.

CONCLUSION

The judgment of the trial court is affirmed as modified. Costs of the appeal are assessed against the appellant, AM Used Auto Parts, LLC, for which execution may issue if necessary.

_/s/ Andy D. Bennett_____
ANDY D. BENNETT, JUDGE