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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1276

Filed: 16 May 2017

Durham County, No. 16 CVD 2432

JING ZENG, Plaintiff,

v.

BRETT DURMONT DURHAM and THE WENDY'S COMPANY, Defendants.

Appeal by plaintiff from order entered 25 August 2016 by Judge Pat Evans in Durham County District Court. Heard in the Court of Appeals 4 May 2017.

Hedrick Gardner Kincheloe & Garofalo, LLP, by M. Duane Jones and John S. Byrd, II, for plaintiff-appellant.

Young Moore and Henderson, P.A., by Jonathan L. Crook, for defendant-appellees.

TYSON, Judge.

Jing Zeng (“Plaintiff”) appeals from the trial court’s order granting The Wendy’s Company (“Wendy’s”) motion for default judgment and Defendants’ motion for summary judgment. We affirm.

I. Factual Background

ZENG V. DURHAM

Opinion of the Court

Plaintiff initiated this action on 9 March 2016 by filing a complaint for money owed in Durham County Small Claims Court. Plaintiff sought monetary damages to repair her car after being involved in an accident with a vehicle driven by Defendant Durham. The magistrate determined Plaintiff did not prove her case by the greater weight of the evidence and denied Plaintiff's alleged damages.

Plaintiff appealed to Durham County district court and the matter proceeded to arbitration. Defendant Durham had retained counsel and Plaintiff proceeded *pro se*. The arbitrator, after conducting a hearing and considering "all the evidence plus any arguments and contentions of the parties," awarded Plaintiff nothing and taxed the costs of the action against Plaintiff. Plaintiff then requested a trial *de novo*.

On 27 June 2016, the court entered a consent order, which allowed Plaintiff's motion to add Wendy's as a defendant. Defendants filed an answer and counterclaim on 1 July 2016. Wendy's alleged it employed Defendant Durham as a maintenance technician when the vehicle collision occurred, and Plaintiff's negligence proximately caused damage to Wendy's vehicle, which Defendant Durham was driving at the time. On 5 July 2016, Plaintiff filed answers and objections to Defendants' interrogatories in which Plaintiff stated, "Plaintiff objects any counterclaim under this circumstances [sic] to avoid complicating the civil court procedure."

On 12 August 2016, after having received no formal answer or responsive pleading from Plaintiff, Wendy's moved for entry of default on its counterclaim. The

clerk entered default and concluded Wendy's properly served Plaintiff with the counterclaim and Plaintiff failed to file an answer or responsive pleading. On 16 August 2016, Plaintiff filed her answer to the counterclaim. That same day, Wendy's moved for default judgment on its counterclaim. Two days later, both Defendants moved for summary judgment on Plaintiff's claims against them. A hearing was scheduled for 23 August 2016.

On 17 August 2016, Plaintiff filed a "motion to continue" opposing the motion for default judgment, but requested the hearing date remain the same. On 19 August 2016, Plaintiff filed a "motion to continuance for summary judgment," which opposed any of Defendants' motions to block the case from proceeding to trial on 23 August 2016. On 22 August 2016, Plaintiff filed a "Motion to Continue of Trial De Novo as Opposing of Defendants' EODF/DEFJ/SUMJ."

Plaintiff asserts she attempted to file her answer to the counterclaim on 11 July 2016, but was told by the clerk's office there was no counterclaim in the case file. In the motions filed before the trial court, Plaintiff contended the court committed a "blocking action" preventing her from timely filing an answer and there was no "transparency" in the filing process. Plaintiff asserted that, "with court support," Defendants improperly "manipulat[ed]" the timing of the filings and "created an extreme difficulty for plaintiff to find the file's location in order to file an answer[] and objections to [the counterclaim] in a timely manner." Plaintiff also claimed,

“someone pulled plaintiff’s answers and objections to defendant’s counterclaim out of court system and removed the record/log.”

On 23 August 2016, the trial court conducted a hearing and concluded Plaintiff failed to demonstrate good cause sufficient to set aside entry of default. The trial court entered default judgment in favor of Wendy’s for \$1,453.88. The trial court also granted Defendants’ motion for summary judgment and dismissed Plaintiff’s claims. Plaintiff appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b) (2015).

III. Issues

Plaintiff contends the trial court erred by granting Defendants’ motion for summary judgment, entering default judgment, and dismissing Plaintiff’s claims.

IV. Standard of Review

“A trial court’s decision of whether to set aside an entry of default, will not be disturbed absent an abuse of discretion.” *Luke v. Omega Consulting Grp., LC*, 194 N.C. App. 745, 748, 670 S.E.2d 604, 607 (2009). The trial court “is subject to a reversal for abuse of discretion only upon a showing by a litigant that the challenged actions are manifestly unsupported by reason.” *RC Associates v. Regency Ventures, Inc.*, 111 N.C. App. 367, 374, 432 S.E.2d 394, 398 (1993).

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A-1, Rule 56(c) (2015).

V. Analysis

“When default is entered due to [a party’s] failure to answer, the substantive allegations raised by . . . [the] complaint are no longer in issue, and for the purposes of entry of default and default judgment are deemed admitted.” *Peebles v. Moore*, 48 N.C. App. 497, 503, 269 S.E.2d 694, 698 (1980). However, the trial court may set aside the entry of default pursuant to Rule 55(d) of the North Carolina Rules of Civil Procedure for good cause. N.C. Gen. Stat. § 1A-1, Rule 55(d) (2015).

The defaulting party carries the burden of showing good cause to set aside entry of default. *Granville Med. Ctr. v. Tipton*, 160 N.C. App. 484, 487, 586 S.E.2d 791, 794 (2003). “What constitutes ‘good cause’ depends on the circumstances in a particular case.” *Peebles*, 48 N.C. App. at 504, 269 S.E.2d at 698. Our Court considers the following factors when determining whether the defaulting party has shown good cause: “(1) was [the defaulting party] diligent in pursuit of this matter; (2) did [claimant] suffer any harm by virtue of the delay; and (3) would [the defaulting party] suffer a grave injustice by being unable to defend the action.” *Automotive Equipment*

Distributors, Inc. v. Petroleum Equipment & Service, Inc., 87 N.C. App. 606, 608, 361 S.E.2d 895, 896-97 (1987).

While this Court “give[s] consideration to the fact that default judgments are not favored in the law. . . . [I]t is also true that rules which require responsive pleadings within a limited time serve important social goals, and a party should not be permitted to flout them with impunity.” *Howell v. Haliburton*, 22 N.C. App. 40, 42, 205 S.E.2d 617, 619 (1974).

Plaintiff asserted her failure to file her answer to the counterclaim in a timely manner was due to Defendants’ and the court’s efforts to obstruct her. Nothing in the record supports these contentions. Plaintiff’s only evidence is an email she sent to the Civil District Court and Arbitration coordinator stating, “I checked with the clerk’s office today and was told that there is no counterclaim for the file numbered 16-CVD-002432.”

Plaintiff proceeded *pro se* through the entirety of the trial court proceedings. Her choice to represent herself does not absolve her responsibility to follow the Rules of Civil Procedure. See *Harrison v. Harrison*, 180 N.C. App. 452, 455, 637 S.E.2d 284, 287 (2006) (“Though we are not unsympathetic to the difficulties faced by a *pro se* litigant, we have recognized that fairness to opposing parties requires holding *pro se* litigants to minimal standards of compliance with the Rules of Civil Procedure.”). Furthermore, she suffers no “grave injustice by being unable to defend this action,”

as she previously had argued her case before both a magistrate and an arbitrator, who both found no merit in her claims. *See Automotive Equipment Distributors, Inc.*, 87 N.C. App. at 608, 361 S.E.2d at 896-97.

The trial court held Plaintiff had failed to demonstrate good cause in not timely filing her answer. On appeal, Plaintiff has failed to show the trial court abused its discretion when it denied her motion to set aside entry of default. Plaintiff's argument is overruled.

As the trial court did not err in granting Wendy's motion for default judgment, the substantive allegations raised by the counterclaim "are no longer in issue, and for the purposes of entry of default and default judgment are deemed admitted." *Peebles*, 48 N.C. App. at 504, 269 S.E.2d at 698. The trial court properly granted Defendants' motion for summary judgment.

VII. Conclusion

The trial court did not abuse its discretion when it granted Wendy's motion for default judgment and did not err when it granted Defendants' motion for summary judgment. The judgment appealed from is affirmed. *It is so ordered.*

AFFIRMED.

Judge Dillon and Judge Dietz concur.

Report per Rule 30(e).