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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-551

Filed: 7 January 2020

Rowan County, No. 17 CVS 1395

SUE STEELE-CORRELL, Plaintiff,

v.

QUENTINA STEELE PRICE, Defendant.

Appeal by defendant from order entered 19 November 2018 by Judge Anna Mills Wagoner in Rowan County Superior Court. Heard in the Court of Appeals 14 November 2019.

Jones Law Firm, by Jeffrey D. Jones, and Bridges Law Firm, by Benjamin H. Bridges, III, for plaintiff-appellee.

Hoffman Law Firm, PLLC, by James P. Hoffman, Jr., for defendant-appellant.

ARROWOOD, Judge.

Quentina Steele Price (“defendant”) appeals from the trial court’s order denying her motion for relief from judgment pursuant to N.C.R. Civ. P. 60(b) (2019). For the following reasons, we affirm.

I. Background

STEELE-CORRELL V. PRICE

Opinion of the Court

This case arises from defendant's efforts to avoid the effects of a default judgment entered against her. Sue Steele-Correll ("plaintiff") filed her complaint against defendant in Rowan County Superior Court on 14 June 2017. Plaintiff served defendant with a copy of the summons and complaint by certified mail with a return receipt requested on 20 June 2017. Someone at the address signed the return receipt with an illegible signature, without any name written beneath in manuscript. Plaintiff filed an affidavit averring that defendant had been properly served at her address in Mount Holly by certified mail, return receipt requested. Defendant neither answered the complaint nor otherwise appeared in the action, and plaintiff filed a motion for entry of default on 24 July 2017. The Rowan County Clerk of Superior Court made an entry of default against defendant on the same day. A default judgment was subsequently entered by the clerk of court on 1 August 2017.

Defendant filed a motion for relief from judgment on 15 March 2018. The clerk entered an order denying the motion, which defendant appealed to Rowan County Superior Court. Judge Anna Mills Wagoner held a hearing on defendant's motion on 29 October 2018. Defendant, her daughter Quenna Moutselos, her granddaughter Lila Moutselos, and her son-in-law Spero Moutselos submitted affidavits to the court and testified at the hearing.

Defendant's evidence suggested that she had been watching her granddaughter during the weekdays for a couple of weeks during the summer of 2017.

The two stayed in defendant's mountain home in Ashe County during the weekdays, and on the weekends returned to defendant's address in Mount Holly so that defendant could work at her daughter's restaurant. Defendant and her witnesses maintained that defendant and her granddaughter were in Ashe County on 20 June 2017. Only defendant and her witnesses had access to the home during the week in question, but none of them had signed any return receipt or seen the postman when at defendant's Mount Holly address.

The trial court asked the parties to submit briefs regarding the legal meaning of "then residing therein" as contemplated in the service requirements of N.C.R. Civ. P. 4 (2019). The parties did so, and the court subsequently entered an order denying defendant's motion for relief from judgment on 19 November 2018. Defendant timely noted her appeal to this Court.

II. Discussion

On appeal, defendant argues that the trial court abused its discretion in denying her motion for relief from judgment. We are not convinced.

A trial court may relieve a party from a final judgment upon motion if "[t]he judgment is void." N.C.R. Civ. P. 60(b)(4) (2019). A judgment is void if the rendering court lacked personal jurisdiction over the movant. *Chen v. Zou*, 244 N.C. App. 14, 16, 780 S.E.2d 571, 572-73 (2015) (citations omitted). Personal jurisdiction over a defendant requires proper service of process in compliance with N.C.R. Civ. P. 4.

Fender v. Deaton, 130 N.C. App. 657, 659, 503 S.E.2d 707, 708 (1998) (“[I]t is well established that a court may only obtain personal jurisdiction over a defendant by the issuance of summons and service of process by one of the statutorily specified methods. Thus, absent valid service of process, a court does not acquire personal jurisdiction over the defendant and the action must be dismissed.”) (internal citations omitted).

Defendant argues that the trial court abused its discretion by basing its order upon several erroneous findings of fact and conclusions of law concerning proper service of process and personal jurisdiction. We first address the sufficiency of the court’s findings of fact, then turn to whether they support its conclusions of law.

A. Standard of Review

“A trial court’s ruling on a Rule 60(b) motion is reviewable only for an abuse of discretion.” *Copley v. Copley*, 128 N.C. App. 658, 663, 496 S.E.2d 611, 616 (1998) (citations omitted). “Accordingly, the trial court’s decision is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision.” *Kingston v. Lyon Constr., Inc.*, 207 N.C. App. 703, 709, 701 S.E.2d 348, 353 (2010) (internal quotation marks and citation omitted). The trial court’s findings of fact are conclusive on appeal if they are supported by competent evidence, even when other evidence of record would support a contrary finding. *Woods v. Billy’s Auto.*, 174 N.C. App. 808, 811, 622 S.E.2d 193,

196 (2005) (citation omitted). “Where no exception is taken to a finding of fact by the trial court, the finding is presumed to be supported by competent evidence and is binding on appeal.” *Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). The trial court’s conclusions of law are subject to *de novo* review. *Copley*, 128 N.C. App. at 663, 496 S.E.2d at 616 (citations omitted).

B. Findings of Fact

Defendant argues that several findings of fact related to plaintiff’s service of process upon her are not supported by competent evidence. We disagree.

1. Finding of Fact 3

Finding of fact 3 states that “Plaintiff served Defendant pursuant to . . . Rule 4 with copies of the Summon [sic] and Complaint by certified mail, return receipt requested, addressed to the party to be served at [defendant’s proper address in Mount Holly].”

Defendant contends that this finding of fact is actually a conclusion of law subject to *de novo* review. “[A]ny determination requiring the exercise of judgment or the application of legal principles is more properly classified a conclusion of law. Any determination reached through logical reasoning from the evidentiary facts is more properly classified a finding of fact.” *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal quotation marks and citations omitted).

To the extent that this finding could be interpreted to establish plaintiff's compliance with Rule 4 service requirements, defendant would be correct. However, read as a whole, this finding merely states the trial court's determination as to the means with which plaintiff served defendant with process, and was therefore properly designated as a factual finding by the trial court.

Furthermore, finding of fact 3 is supported by competent evidence in the record. The return receipt at issue in this case was attached as Exhibit B to plaintiff's affidavit of service filed 22 June 2017. The return receipt states that it was served by "Certified Mail" addressed to "Ms. Quentina Steele Price" at defendant's proper address in Mount Holly on 20 June 2017. A United States Postal Service tracking record was also attached as Exhibit C, and indicates that the summons and complaint were delivered via "Certified Mail" "to an individual at the address at 12:19 pm on June 20, 2017[.]" This finding of fact is supported by competent evidence, and is therefore binding on appeal.

2. Finding of Fact 4

Finding of fact 4 states that "[t]he return receipt was returned showing that it had been received and signed for by an individual on June 20, 2017 indicating that the copies of the summons and complaint were delivered to the Defendant's dwelling house with some person of suitable age and discretion then residing therein."

Defendant again contends that this finding of fact is an improperly labeled conclusion of law subject to full review. We disagree. In finding of fact 4, the trial court deduced from the signed return receipt that process was served upon an individual of suitable age and discretion then residing at defendant's address. This finding does not itself determine whether the individual who *actually signed* the return receipt was, as a matter of law, a resident of the dwelling of suitable age and discretion. See *Granville Med. Ctr. v. Tipton*, 160 N.C. App. 484, 491, 586 S.E.2d 791, 796 (2003) (stating that plaintiff's affidavit of proper service is "not require[d] . . . to state the name of the individual who signed the receipt."); *Lewis Clarke Assocs. v. Tobler*, 32 N.C. App. 435, 438, 232 S.E.2d 458, 459 (1977) ("A reasonable inference to be drawn from the receipt in this case is that the summons and complaint were delivered to a person at the defendant's address whose initials are 'ES,' and that 'ES' received the summons and complaint on behalf of the defendant It can be assumed that 'ES' was a person of reasonable age and discretion authorized to receive registered mail and sign the receipt for the defendant[.]"). Thus, finding of fact 4 is properly designated as such because it involves the court's reasoning based on the evidence before it, not an application of relevant law to the facts.

Moreover, finding of fact 4 is supported by competent evidence. In addition to the exhibits attached to plaintiff's affidavit of service, discussed *supra* section B.1, there was ample evidence in the record supporting the court's finding. At the hearing

on defendant's motion for relief from judgment, the court heard conflicting testimony that defendant and Lila Moutselos may have been at her Mount Holly home on 20 June 2017. Furthermore, defendant herself introduced another signed return receipt unrelated to the instant case, which was signed for and mailed one day later on 21 June 2017.

Therefore, the trial court had competent evidence before it from which it could properly find that some individual of suitable age and discretion then residing at defendant's residence signed the return receipt on 20 June 2017.

3. Findings of Fact 17 and 22

Defendant challenges the trial court's determination that the signature on the return receipt at issue is similar to others in evidence. Finding of fact 17 states "[t]hat the signatures on [the] other two return receipts submitted by Defendants and the return receipt at issue here are remarkably similar." This finding of fact refers to defendant's Exhibits A and C submitted to the trial court, which were signed return receipts addressed to defendant in an unrelated matter with the Town of Cooleemee. Similarly, finding of fact 22 states "[t]hat the signatures on the submitted affidavits and the return receipt at issue here are remarkably similar." This finding of fact refers to the affidavits submitted to the trial court by defendant, Quenna Moutselos, Lila Moutselos, and Spero Moutselos.

We are not in the business of comparing signatures. We defer to the trial court's finding of similarity between the signatures on the various return receipts and affidavits; they were in the record and therefore constitute competent evidence from which the trial court could exercise its own discretion in comparing them.

4. Finding of Fact 20

In finding of fact 20, the trial court found “[t]hat Lila L. Moutselos, through her affidavit and sworn testimony, stated she often stayed overnight with the Defendant for weeks at a time and resided with Defendant at different locations throughout the summer of 2017.” Lila Moutselos’s affidavit states that she “stayed with [her] grandmother a couple of weeks during June 2017 and July 2017.” Lila Moutselos testified at hearing that she recalled staying with defendant the weeks of “[t]he 16th and[] . . . the 19th” of June.” Other evidence could have supported a contrary finding that Lila Moutselos only stayed with her grandmother during weekdays for two weeks in June, rather than for “several weeks at a time.” In her affidavit, Quenna Moutselos states that Lila Moutselos “was visiting with [defendant] from June 11, 2017 until June 16, 2017. She was also with [defendant] between June 18, 2017 until June 23, 2017.” Nonetheless, assessing the weight and credibility of conflicting testimony is within the sound discretion of the trial court, *Granville Med. Ctr.*, 160 N.C. App. at 489, 586 S.E.2d at 795, and thus this finding of fact is supported by competent evidence.

Defendant argues that the trial court’s finding that Lila Moutselos “resided” with defendant during the relevant period is an improperly labeled conclusion of law subject to *de novo* review. Assuming *arguendo* that defendant is correct in her assertion, an application of controlling law to the trial court’s other findings of fact supports a determination that Lila Moutselos “resided” with defendant when she stayed with her for several nights. Defendant points to *Barker v. Iowa Mut. Ins. Co.*, 241 N.C. 397, 400, 85 S.E.2d 305, 307 (1955), for the proposition that a minor does not necessarily “reside” at the location in which she is currently living, such as a college apartment. However, *Barker* is inapposite for interpretation of the term “residing therein” in Rule 4 because it dealt with our Supreme Court’s interpretation of “residence” as a contractual term in an insurance policy. *Id.* Thus, the meaning assigned to the term by the parties controlled, rather than any interpretation of the term for purposes of the North Carolina Rules of Civil Procedure.

In *Glover v. Farmer*, we directly considered the meaning of “residing” in Rule 4(j)(1)(a) (2019). 127 N.C. App. 488, 491-92, 490 S.E.2d 576, 577-78 (1997). We noted that the term “ ‘is broad enough to include a student returning home from college to stay at least overnight at her parents’ residence[,]’ ” *id.* at 492, 490 S.E.2d at 578 (quoting *M. Lowenstein & Sons, Inc. v. Austin*, 430 F. Supp. 844, 845 (S.D.N.Y. 1977) (interpreting “residing” in substantially similar language of Fed. R. Civ. P. 4(d)(1)

(2019))), and “is broad enough to include an adult daughter staying with her parents during her visit that week.” *Id.*

“[W]hether a person is a resident of a particular place is not determined by any given formula, but rather depends significantly on the facts and circumstances surrounding the particular issue.” *Id.* at 491, 490 S.E.2d at 578. In the instant case, the trial court made the following findings: (a) that Lila Moutselos was defendant’s granddaughter; (b) that she stayed with defendant during the week in which someone at defendant’s address signed the return receipt at issue; and (c) that defendant never left her alone at any time during the relevant period. The trial court also confirmed that she was 15 on 20 June 2017. Applying the principle in *Glover* to the instant case, we hold that the trial court did not abuse its discretion in making a fact-specific determination that a fifteen year old spending a couple of weeks with her grandmother under close supervision was a person of suitable age and discretion then residing in her grandmother’s usual place of abode.

C. Conclusions of Law

The essence of defendant’s challenge to the trial court’s order denying her motion for relief from judgment lies in its implicit conclusion that the default judgment against her was not void. We hold that the court did not err in making such a determination.

Defendant challenges the court's ultimate conclusion that the default judgment was not void, as well as the express conclusions of law in the court's order upon which it was based: that defendant was properly served with process under Rule 4, and thus the court had personal jurisdiction to enter the default judgment against defendant.

1. Proper Service of Process

Service of process on a natural person may be effected “[b]y mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.” N.C.R. Civ. P. 4(j)(1)(c) (2019). When a defendant served by certified mail fails to timely appear in the action, a party may obtain a default judgment only upon meeting the following evidentiary burden:

Before judgment by default may be had on service by registered or certified mail, . . . the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of [N.C. Gen. Stat. §] 1-75.10(a)(4) This affidavit together with the return receipt, . . . signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode.

N.C.R. Civ. P. 4(j2)(2) (2019); *see also* N.C. Gen. Stat. § 1-75.10(a)(4) (2017) (where disputed, proof of service is established “by affidavit of the serving party averring: . . . [t]hat a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested[,] . . . [t]hat it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee[,] and . . . [t]hat the genuine receipt or other evidence of delivery is attached.”).

Defendant concedes that the trial court correctly determined that plaintiff’s affidavit of service attached to her motion for entry of default established a rebuttable presumption that defendant was properly served in compliance with Rule 4. However, defendant argues that the trial court incorrectly concluded: (a) that defendant failed to rebut the presumption of proper service established in Rule 4(j2)(2); and (b) that plaintiff “complied with the service of process on a natural person pursuant to N.C. Gen.[]Stat. § 1A-1, Rule 4.” We hold that the court did not abuse its discretion in concluding that defendant failed to rebut the presumption of proper service established by Rule 4(j2)(2).

The presumption of valid service established in Rule 4(j2)(2) may be rebutted “by proof that the person who received the receipt at the addressee’s dwelling house or usual place of abode was not a person of suitable age and discretion residing therein[.]” N.C.R. Civ. P. 4(j2)(2). In the instant case, defendant provided no such

proof. None of the exhibits or affidavits defendant submitted to the trial court put forth any evidence directly refuting that the individual who signed the return receipt on 20 June 2017 was not an individual of suitable age and discretion residing at defendant's address or defendant's agent authorized to accept service on her behalf. Rather, they assert that neither defendant, her granddaughter who was staying with her at the time, her daughter, nor her son-in-law were the individual who signed the return receipt. *See Granville Med. Ctr.*, 160 N.C. App. at 493, 586 S.E.2d at 797 (“[A] defendant who seeks to rebut the presumption of regular service generally must present evidence that service of process failed to accomplish its goal of providing defendant with notice of the suit, rather than simply questioning the identity, role, or authority of the person who signed for delivery of the summons.”) (citations omitted).

In *Granville Med. Ctr.*, the plaintiff served the defendant by certified mail addressed to the office of his company. 160 N.C. App. at 485-86, 586 S.E.2d at 793. Plaintiff filed a Rule 4(j)(2) affidavit with an attached return receipt signed by an “F. Hedgepeth.” *Id.* at 485-86, 491, 586 S.E.2d at 793, 796. The defendant never appeared in the suit, and the plaintiff obtained a default judgment against him. *Id.* at 486, 586 S.E.2d at 793. In his motion for relief from judgment, the defendant submitted an affidavit asserting that “(1) he did not personally sign the registry receipt indicating delivery of the summons, (2) the receipt was signed by S or F

Hedgepeth, and (3) defendant had never employed a person named Hedgepeth as an agent, officer, employee, or principal.” *Id.* at 493, 586 S.E.2d at 798 (internal quotation marks and alteration omitted). Despite the defendant’s contention that the “Hedgepeth” who signed the return receipt was in no way connected with him, we held that the defendant did not rebut the presumption of proper service per Rule 4(j)(2). *Id.* at 493-94, 586 S.E.2d at 798.

In the instant case, the trial court made the following findings in support of its conclusion that defendant had not rebutted the presumption of proper service. Plaintiff was entitled to a presumption of proper service. Defendant gave her home’s security code to her daughter and granddaughter “and [the] only people that have the code are the Defendant and the people Defendant has authorized to be at her residence[.]” The signature on the return receipt at issue was similar to those on the affidavits of defendant and her witnesses, as well as signatures on other return receipts signed for at her address that year. One such return receipt was signed for one day after the service at issue in this case. Lila Moutselos stayed overnight with defendant during the week in which service was alleged to have occurred. Finally, “the sworn testimony of Defendant . . . and Defendant’s witnesses, Queena [sic] M. Moutselos and Lila L. Moutselos conflicted with their sworn affidavits.” As in *Granville Med. Ctr.*, here we must defer to the trial court’s determination that

defendant's evidence was not credible enough to rebut the presumption of proper service and countervailing evidence noted by the court in its findings of fact.

Defendant further contends that the trial court implicitly found that Lila Moutselos must have signed the return receipt. Such a finding was not necessary for the trial court to conclude that proper service had been effected, as the trial court also found that defendant's daughter "had full access to the residence . . . and was even authorized to check and get the mail at that location." Moreover, plaintiff correctly notes that in her brief defendant does not assert that the trial court erred by implicitly concluding that Lila Moutselos was a person *of suitable age and discretion* residing in defendant's home. See N.C.R. App. P. 28(a) (2019) ("Issues not presented and discussed in a party's brief are deemed abandoned."). On either ground, we decline to reach the merits of this issue. Were we to give this issue full consideration, any implicit conclusion that the requirements of Rule 4 were satisfied by service upon Lila Moutselos at defendant's address would be supported for the reasons discussed *supra* section B.4.

2. Personal Jurisdiction

Because we hold that a presumption of proper service was appropriate and un rebutted by defendant, the trial court did not err in implicitly concluding that the court entering default judgment had personal jurisdiction over defendant. Thus, denial of defendant's motion for relief from judgment per Rule 60(b)(4) was proper

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because the default judgment against defendant was not void for lack of personal jurisdiction. *See* N.C.R. Civ. P. 60(b)(4); *Fender*, 130 N.C. App. at 659, 503 S.E.2d at 708.

III. Conclusion

For the foregoing reasons, we hold that the trial court did not abuse its discretion in denying defendant's motion for relief from judgment.

AFFIRMED.

Judges DILLON and DIETZ concur.

Report per Rule 30(e).