

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-132

No. COA20-258

Filed 6 April 2021

Cumberland County, No. 18 CVS 6976

AARON THOMAS and METCON, INC., RORY EDDINGS and R&R PROTECTIVE SERVICES, L.L.C., ERIC LOCKLEAR and FULLERS BBQ FAYETTEVILLE, INC., and JARETTE SAMPSON and AGENTS, INC., Plaintiffs,

v.

GEROME CHAVIS, Defendant.

Appeal by defendant from judgment entered 12 November 2019 by Judge Jeffery K. Carpenter in Cumberland County Superior Court. Heard in the Court of Appeals 26 January 2021.

The Charleston Group, by Jose A. Coker and R. Jonathan Charleston, for plaintiffs-appellees.

Randolph M. James, P.C., by Randolph M. James, for defendant-appellant.

ZACHARY, Judge.

¶ 1

Defendant Gerome Chavis appeals from the trial court's default judgment entered against him in favor of Plaintiffs Aaron Thomas; Metcon, Inc.; Rory Eddings; R&R Protective Services, L.L.C.; Eric Locklear; Fullers BBQ Fayetteville, Inc.; Jarette Sampson; and Agents, Inc. (collectively "Plaintiffs"). However, in that Defendant failed to seek relief from the default judgment at the trial level, he is

precluded from attacking it on appeal. Accordingly, we dismiss.

Background

¶ 2

This action arises from Chavis’ publication, on various social media sites, of certain defamatory statements regarding Plaintiffs, beginning in February 2018. Plaintiffs Aaron Thomas and his business Metcon, Inc. provide general contracting and construction management services throughout North Carolina, South Carolina, and Maryland. Plaintiffs Rory Eddings and his business, R&R Protective Services, L.L.C., provide unarmed and armed security services throughout North and South Carolina. Plaintiffs Eric Locklear and his business, Fullers BBQ Fayetteville, Inc., operate several restaurants throughout North Carolina. Plaintiffs Jarette Sampson and his business, Agents Inc., provide commercial insurance services throughout North Carolina.

¶ 3

On 25 October 2018, Plaintiffs filed a verified complaint against Chavis stating the following claims: (1) libel *per se*, (2) libel *per quod*, (3) slander *per se*, (4) slander *per quod*, (5) punitive damages, and (6) temporary restraining order/preliminary injunction/permanent injunction. Plaintiffs also requested a trial by jury.

¶ 4

That same day, the trial court entered an *ex parte* temporary restraining order (“TRO”) against Chavis, prohibiting him from publishing any defamatory statements regarding Plaintiffs, and setting the hearing on the preliminary injunction for 5 November 2018 at 10:00 a.m. On 31 October 2018, a Robeson County Sheriff’s deputy

served Chavis with copies of the civil summons, verified complaint, and TRO. At the 5 November 2018 preliminary injunction hearing, Chavis appeared *pro se*, and the parties consented to the extension of the TRO and continuance of the hearing on Plaintiffs' pending motion for preliminary injunction until 26 November 2018 to allow Chavis additional time to obtain counsel.

¶ 5 On 20 November 2018, Plaintiffs filed a motion for order to show cause, alleging that Chavis had failed to comply with the provisions of the TRO. Chavis again appeared *pro se* at the 26 November 2018 hearing on Plaintiffs' motion for preliminary injunction. On 3 December 2018, the trial court entered a preliminary injunction, ordering, *inter alia*, that Chavis cease publication of any defamatory statements regarding Plaintiffs.

¶ 6 On 4 December 2018, Plaintiffs moved for entry of default pursuant to Rule 55(a) of the North Carolina Rules of Civil Procedure, on the grounds that Chavis did not file a responsive pleading to the Plaintiffs' complaint within the time provided by statute. That same day, the Clerk of Cumberland County Superior Court entered default against Chavis.

¶ 7 Two days after the entry of default against Chavis, Chavis' attorney made an appearance on his behalf and filed a motion for an extension of time within which to file responsive pleadings and a motion to set aside entry of default and default judgment. Defense counsel never noticed either of these motions for hearing.

¶ 8 On 6 February 2019, the Cumberland County Superior Court Trial Court Administrator (“TCA”) served counsel with notice of a civil calendar setting conference, scheduled for 27 February 2019. Following the conference, this case was set for trial on 26 August 2019.

¶ 9 On 18 March 2019, Plaintiffs filed and served on defense counsel their motion for default judgment and notice of hearing for 25 March 2019 at 10:00 a.m. At the request of Chavis’ attorney, the trial court held the matter open so that Chavis and his attorney could attend the hearing. The trial court called Plaintiffs’ motion for hearing at approximately 11:45 a.m. At 11:51 a.m., Plaintiffs’ counsel stated that he had spoken with defense counsel that morning, and that defense counsel indicated that he would arrive shortly after 11:00 a.m. In that neither Chavis nor his attorney had appeared, the trial court heard the matter in their absence, and orally ruled in favor of Plaintiffs shortly before noon. During the hearing, at 11:54 a.m., defense counsel filed an untimely answer to Plaintiffs’ complaint; defense counsel did not, however, appear in the courtroom.

¶ 10 The following day, 26 March 2019, the trial court entered default judgment as to liability against Chavis on all claims. The trial court set a hearing for 29 April 2019 to ascertain Plaintiffs’ damages, and ordered, *inter alia*, that “Plaintiffs . . . engage in discovery . . . to determine [Chavis’] assets and other sources to satisfy judgment[.]”

¶ 11 On 29 March 2019, Plaintiffs served defense counsel with written discovery,

including a request for admissions, to which Chavis did not respond. On 23 April 2019, Plaintiffs moved to continue the hearing on damages until 20 May 2019, which the trial court granted. On 1 May 2019, Plaintiffs' counsel informed defense counsel by letter that Chavis had failed to respond to Plaintiffs' written discovery.

¶ 12 Plaintiffs noticed Chavis' deposition for 15 May 2019. Chavis and his counsel appeared for the deposition, but Chavis was not prepared to give complete testimony regarding his assets and income. Plaintiffs made an emergency motion via telephonic conference for an order compelling Chavis to provide complete testimony. On 8 July 2019, the trial court entered an order granting Plaintiffs' motion to compel and sanctioned Chavis by ordering him to pay Plaintiffs for one hour of their attorney's legal fees. One month later, on 8 August 2019, Plaintiffs moved to continue the trial on damages because Defendant had not yet responded to Plaintiffs' written discovery requests or been successfully deposed. On 16 August 2019, the trial court continued the trial on the issue of damages until 10:00 a.m. on 28 October 2019. On 18 October 2019, Plaintiffs' counsel deposed Defendant.

¶ 13 On 21 October 2019, the TCA emailed counsel for the parties, requesting their proposed pretrial orders by 24 October 2019. On 24 October 2019, Plaintiffs submitted their proposed pretrial order to the TCA by email; defense counsel was copied on the email but did not respond or submit an alternative proposed pretrial order.

¶ 14 The case came on for a bench trial on the issue of damages in Cumberland County Superior Court before the Honorable Jeffery K. Carpenter on 28 October 2019. Although the case was set for 10:00 a.m., defense counsel notified the TCA and emailed Plaintiffs' counsel at 9:08 a.m. that he had a hearing in Robeson County District Court at 9:00 a.m. The trial court held the matter open; Plaintiffs, their counsel, and Chavis were in attendance, but Chavis' counsel did not appear.

¶ 15 At 11:45 a.m., the trial court called the matter for hearing. Plaintiffs submitted the affidavits of Plaintiffs Thomas, Locklear, Eddings, and Sampson in support of their claims for damages. After reviewing the court file, Plaintiffs' verified complaint and supporting affidavits, and hearing the arguments of Plaintiffs' counsel and Defendant, the trial court ruled in favor of Plaintiffs. On 12 November 2019, the trial court entered judgment on damages and an order for permanent injunction against Chavis. To Plaintiffs Thomas, Eddings, and Sampson, the trial court awarded each \$100,000 in compensatory damages and \$15,000 in punitive damages; to Plaintiff Locklear, the trial court awarded \$150,000 in compensatory damages and \$15,000 in punitive damages; and to Plaintiffs Metcon, R&R, Agents, and Fullers BBQ, the trial court awarded each \$1 in compensatory damages and \$1 in punitive damages.

¶ 16 Chavis gave notice of appeal on 11 December 2019. After filing his notice of appeal, Defendant filed a motion for relief from judgment in the trial court pursuant to Rules 55(d) and 60(b).

Discussion

¶ 17 On appeal, Chavis alleges that the trial court’s default judgment “fails to adhere to the North Carolina Rules of Civil Procedure and North Carolina constitutional and statutory prescription”; that the “subsequent default judgment trial on damages fails to adhere to the North Carolina Rules of Civil Procedure, common law and constitutional law, thereby prejudicing Chavis’ constitutional right[s] to a jury trial” and to have his attorney of record present for the proceeding; and that the compensatory and punitive damages awards were not supported by competent evidence. However, this appeal is not properly before us, because Chavis failed to first secure a ruling from the trial court on a motion for relief from judgment pursuant to Rules 55(d) or 60(b).

¶ 18 Although Chavis filed a motion for relief from judgment pursuant to Rules 55(d) and 60(b), he filed it after noticing his appeal, and did not set the motion for hearing. Indeed, the trial court now lacks jurisdiction to hear Chavis’ motion. *See Wiggins v. Bunch*, 280 N.C. 106, 111, 184 S.E.2d 879, 882 (1971) (holding that the trial court lacks jurisdiction to rule on a Rule 60 motion after notice of appeal is filed). In sum, Chavis failed to seek relief from the judgment at the trial level.

¶ 19 “This Court has previously held, with respect to a default judgment, that failure to attack the judgment at the trial court level precludes such an attack on appeal.” *Golmon v. Latham*, 183 N.C. App. 150, 151, 643 S.E.2d 625, 626 (2007)

(citation and internal quotation marks omitted). *Golmon* outlines the proper procedure for seeking review of a default judgment: “Defendants should have first filed a motion pursuant to N.C.R. Civ. P. 55(d) or 60(b). They would then have been able to appeal to this Court from any denial of that motion. Because defendants failed to follow this procedure, we are precluded from reviewing the issues they raise.” *Id.* at 152, 643 S.E.2d at 626.

Conclusion

¶ 20 Accordingly, in that Chavis failed to secure a ruling in the trial court on a motion for relief from judgment pursuant to Rules 55(d) or 60(b), we are proscribed from reviewing the issues he raises and dismiss the appeal.

DISMISSED.

Chief Judge STROUD and Judge GORE concur.

Report per Rule 30(e).