IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-419

No. COA21-514

Filed 21 June 2022

Gaston County, No. 19 CVS 1163

BROOKLINE HOMES, LLC, Plaintiff,

v.

CITY OF MOUNT HOLLY, Defendant.

Appeal by plaintiff from order entered 19 May 2021 by Judge David Phillips in Gaston County Superior Court. Heard in the Court of Appeals 23 March 2022.

Milberg Coleman Bryson Phillips Grossman, PLLC, by Daniel K. Bryson, Scott C. Harris, and J. Hunter Bryson, for plaintiff-appellant Brookline Homes, LLC.

Hamilton Stephens Steele + Martin, PLLC, by Keith J. Merritt, for defendant-appellee City of Mount Holly.

ZACHARY, Judge.

¶ 1 Plaintiff Brookline Homes, LLC, appeals from the trial court's order denying its motion for relief from final order on the basis of excusable neglect, pursuant to Rule 60(b)(1) of the North Carolina Rules of Civil Procedure. After careful review, we affirm.

Background

¶ 2 Plaintiff is a North Carolina builder and developer in the Gaston County area. On 22 March 2019, Plaintiff, acting as the class representative for "itself and others similarly situated who constructed or developed any structure in Mount Holly[,]" filed a class-action complaint against the City of Mount Holly. Plaintiff sought certification of the class and appointment of Plaintiff as its representative, and alleged that the City acted beyond the scope of its authority by charging unlawful impact fees as such were defined by our Supreme Court in *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016). More specifically, Plaintiff asserted that the City unlawfully exacted impact fees through the imposition of "[w]ater and sewer taps and System Development Fees." The City filed an answer and motion to dismiss on 28 May 2019.

¶ 3 The parties subsequently executed a settlement agreement (the "Agreement"). Among other things, the parties agreed that "[t]he City w[ould] establish a Settlement Fund equal to $483,468.00"; that "[t]he City w[ould] pay [claims] from the Fund to all Settlement Claimants, 60 days from the Effective Date"; that all claims "must be postmarked . . . on or before the Claim Form Deadline[,]" which the parties later set as 20 December 2020; and that "any remaining funds in the Settlement Fund shall revert to the City[.]" By the terms of the Agreement, Plaintiff was scheduled to

receive a $5,000 "service award" for serving as the class representative, and had an approximately $115,000 claim against the City.

¶ 4 The trial court granted preliminary approval of the Agreement on 21 July 2020. Plaintiff received a Class Action Settlement Notice and Claim Form dated 3 August 2020, which provided that all claims "must be mailed so that [they are] postmarked no later than **December 20, 2020**."

¶ 5 On 12 August 2020, Plaintiff's company president emailed Plaintiff's counsel about the form, writing, "I received this in the mail (the claim form) yesterday. Do I need to do anything with this? I thought we are finished." Plaintiff's counsel replied on 17 August 2020: "Nothing needed further. We have our final hearing coming up in September and will keep you apprised." Through this reply, Plaintiff's counsel intended to convey that Plaintiff "had no further obligations as the class representative"; counsel had "assumed that [Plaintiff] would submit the claim form by the deadline[.]" However, Plaintiff's president interpreted counsel's response to mean that the president "didn't need to do anything because [Plaintiff was] the claimant" in the lawsuit. The claims administrator mailed Plaintiff a reminder of the claim deadline on 23 November 2020.

¶ 6 On 12 October 2020, the trial court entered an order granting final approval of the Agreement. The court also certified the class for settlement purposes, granted

Plaintiff's request for attorneys' fees, and awarded Plaintiff $5,000 from the settlement fund as compensation for serving as the class representative. The trial court ordered that the parties follow the terms of the Agreement, thereby solidifying 20 December 2020 as the filing deadline for all claims.

¶ 7 On 11 December 2020, nine days before the claim-filing deadline, the claims administrator informed Plaintiff's counsel that only three members of the class had submitted their claims; Plaintiff was not one of them. When Plaintiff ultimately submitted its claim on 13 January 2021, nearly one month after the 20 December 2020 deadline, the City refused to satisfy the untimely claim. Nevertheless, Plaintiff still received its $5,000 service award from the City on 26 January 2021, one month after the award payment was due.

¶ 8 On 19 April 2021, roughly two weeks after the City satisfied all timely claims, Plaintiff filed a motion pursuant to Rule 60(b)(1) of the North Carolina Rules of Civil Procedure on the basis of excusable neglect, seeking relief from the trial court's 12 October 2020 final order. In its motion, Plaintiff asserted that the email exchange with Plaintiff's counsel in August 2020 created a "mistaken belief that [Plaintiff] did not need to submit a claim in the litigation because [it] was the class representative[,]" and that counsel "did not discover this confusion . . . until the claims

period had lapsed." Plaintiff requested that the trial court consider its claim timely and order the City to satisfy Plaintiff's claim.

¶ 9 This matter came on for hearing on 17 May 2021 in Gaston County Superior Court. Plaintiff's counsel argued that Plaintiff's confusion regarding the claim submission was understandable given its inexperience with class actions. Counsel further argued that Plaintiff's mistake regarding the filing "was reasonable given the fact that the City had not paid the service award timely and Plaintiff believed that [its] claim and the [s]ervice [a]ward would have all been paid at the same time." Moreover, counsel asserted that "[h]ad the City paid the [s]ervice [a]ward on time, . . . Plaintiff would have realized that [it] needed to submit a claim[,] as the [s]ervice [a]ward represented only $5,000 out of the approximately $120,000 that Plaintiff [wa]s owed" under the Agreement. Finally, Plaintiff contended that the City would not be prejudiced by allowing the late claim, in that the City had already established the settlement fund and was prepared to pay the entire amount.

¶ 10 In response, the City argued that Plaintiff's failure to timely submit its claim was not the result of excusable neglect, but rather due to Plaintiff and its counsel "not paying attention." As the City's counsel argued, this inattention was evidenced in part by the fact that Plaintiff's "counsel was aware nine days before the deadline and after two notices to their client that a claim had not been filed by them[,] yet they

took absolutely no action." Moreover, the City claimed that it would be prejudiced by the grant of Plaintiff's motion because it "would have to pay out the additional $115,000[,]" which the City was entitled to retain as unclaimed funds pursuant to the Agreement. Finally, the City challenged whether a motion pursuant to Rule 60(b) was the appropriate vehicle for requesting the type of relief sought by Plaintiff.

¶ 11 On 19 May 2021, after considering "the pleadings, affidavits . . . , other materials filed, and the arguments of counsel[,]" the trial court entered an order denying Plaintiff's motion. The order contained no findings of fact. Plaintiff timely filed notice of appeal.

Discussion

¶ 12 On appeal, Plaintiff argues that the trial court abused its discretion in denying Plaintiff's Rule 60(b)(1) motion because Plaintiff's failure to submit a claim by the claim-form deadline was the result of excusable neglect. After careful review, we disagree.

I. Standard of Review

¶ 13 The well-established rule is that "a motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). "Abuse of discretion is shown when the court's

decision is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Brown v. Foremost Affiliated Ins. Servs., Inc.*, 158 N.C. App. 727, 732, 582 S.E.2d 335, 339 (2003) (citation and internal quotation marks omitted).

¶ 14 "What constitutes excusable neglect is a question of law which is fully reviewable on appeal. However, the trial court's decision is final if there is competent evidence to support its findings and those findings support its conclusion." *Mitchell Cty. Dep't of Soc. Servs. v. Carpenter*, 127 N.C. App. 353, 356, 489 S.E.2d 437, 439 (1997) (citations and internal quotation marks omitted), *aff'd per curiam*, 347 N.C. 569, 494 S.E.2d 763 (1998). "[A] Rule 60(b) order without findings of fact must be reversed unless there is evidence in the record sustaining findings which the trial court could have made to support such order." *Gibson v. Mena*, 144 N.C. App. 125, 128–29, 548 S.E.2d 745, 747 (2001).

¶ 15 We note that in the present case, the trial court was not required to make findings in the order denying Plaintiff's Rule 60(b)(1) motion, as neither party requested that the court do so. *See Brown*, 158 N.C. App. at 732, 582 S.E.2d at 339 ("A trial court . . . is not required to make findings of fact absent a party's request."). Accordingly, in deciding whether the trial court's denial of Plaintiff's Rule 60(b)(1) motion was "manifestly unsupported by reason" or "so arbitrary that it could not have

been the result of a reasoned decision[,]" *id.* (citation omitted), we must determine whether "there is evidence in the record sustaining findings which the trial court could have made to support" the denial, *Gibson*, 144 N.C. App. at 128–29, 548 S.E.2d at 747.

II. Analysis

¶ 16 Rule 60(b)(1) of the North Carolina Rules of Civil Procedure provides that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . [m]istake, inadvertence, surprise, or excusable neglect[.]" N.C. Gen. Stat. § 1A-1, Rule 60(b)(1) (2021).

¶ 17 The parties cite no North Carolina cases that directly address the issue of excusable neglect in the context of untimely claims in class-action lawsuits. Nonetheless, we find instructive the following cases addressing excusable neglect.

¶ 18 The determination of what constitutes excusable neglect "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission[,]" such as "the danger of prejudice to the [other party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Lost Forest Dev., L.L.C. v. Comm'r of Labor*, 280 N.C.

App. 174, 2021-NCCOA-587, ¶ 29 (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 123 L. Ed. 2d. 74, 89–90 (1993)).

¶ 19 However, this "test for excusable neglect generally does not allow for attorney negligence." *Sellers v. FMC Corp.*, 216 N.C. App. 134, 141, 716 S.E.2d 661, 666 (2011) (citing *Pioneer*, 507 U.S. 380, 123 L. Ed. 2d. 74), *supersedeas and disc. review denied*, 366 N.C. 250, 731 S.E.2d 429 (2012). Indeed, as our Supreme Court reasoned, "[a]llowing an attorney's negligence to be a basis for providing [Rule 60(b)(1)] relief from orders would encourage such negligence and present a temptation for litigants to use the negligence as an excuse to avoid court-imposed rules and deadlines." *Briley v. Farabow*, 348 N.C. 537, 546, 501 S.E.2d 649, 655 (1998) (concluding that the plaintiffs' untimely designation of expert witnesses, approximately three months after the deadline, because of their counsel's mistaken belief that discovery had been delayed did not constitute excusable neglect).

¶ 20 Here, the evidence in the record demonstrates that the trial court did not abuse its discretion by denying Plaintiff's motion for relief from the court's 12 October 2020 final order. Plaintiff received multiple claims notices well before the deadline, and Plaintiff's counsel was aware that Plaintiff had not yet filed a claim as of 11 December 2020, nine days before the deadline. Nevertheless, out of "confusion" and miscommunication with counsel, Plaintiff filed its claim almost a month after the 20

December 2020 deadline had passed, and filed its Rule 60(b)(1) motion almost four months after the deadline. Additionally, the trial court entered an order preliminarily approving the Agreement on 21 July 2020, giving claimants months within which to submit their claims before the agreed-upon filing deadline of 20 December 2020. Because the parties negotiated the terms of the Agreement and set the deadlines themselves, there was evidence to support a determination by the trial court that Plaintiff did not have an adequate "reason for the delay," and that the filing of its claim was entirely "within [Plaintiff's] reasonable control[.]" *Lost Forest*, 280 N.C. App. 174, 2021-NCCOA-587, ¶ 29 (citation omitted).

¶ 21 Furthermore, at the hearing, the City argued that Plaintiff's failure to meet the claims submission deadline did not constitute excusable neglect because Plaintiff and its counsel "simply were not paying attention." Although Plaintiff's counsel asserted that Plaintiff's president misunderstood the email exchange, leading the president to believe that he "didn't need to do anything" further with regard to the lawsuit, the trial court nonetheless could have found the City's argument persuasive based on the lack of extenuating circumstances, the four-month delay in filing the Rule 60(b)(1) motion, and the multiple notices received. As such, the trial court may have determined that Plaintiff's late claim was the result of attorney negligence, which is insufficient to establish excusable neglect, *Sellers*, 216 N.C. App. at 141, 716

S.E.2d at 666, and the evidence in the record could sustain such a determination.

¶ 22 Because "there is evidence in the record sustaining findings which the trial court could have made to support [its] order" denying Plaintiff's Rule 60(b)(1) motion, *Gibson*, 144 N.C. App. at 128–29, 548 S.E.2d at 747, the trial court's denial of Plaintiff's motion was not "manifestly unsupported by reason" or "so arbitrary that it could not have been the result of a reasoned decision[,]" *Brown*, 158 N.C. App. at 732, 582 S.E.2d at 339 (citation omitted). Accordingly, we must affirm the trial court's order. Having so concluded, we need not address the remaining arguments on appeal.

Conclusion

¶ 23 For the foregoing reasons, we affirm the trial court's order denying Plaintiff's Rule 60(b)(1) motion for relief from the 12 October 2020 final order on the basis of excusable neglect.

AFFIRMED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).