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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 24-282

Filed 17 December 2024

Cumberland County, No. 21 CVS 7251

ALICE BAREFOOT, Plaintiff,

v.

LAFAYETTE CEMETERY PARK CORPORATION AND HEATHER BOSHER,  
Defendants.

Appeal by defendants from judgment entered 13 March 2023 by Judge James  
Floyd Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of  
Appeals 25 September 2024.

*Culbertson & Associates, by K.E. Krispen Culbertson, for Defendants-  
Appellants.*

*Yarborough, Winters, & Neville, P.A., by J. Thomas Neville, for Plaintiff-  
Appellees.*

PER CURIAM.

Plaintiff brought this action against Defendant LaFayette Cemetery Park  
Corporation (“LaFayette”) and one of its officers/employees Defendant Heather  
Bosher when Defendants allegedly refused to honor an agreement to allow Plaintiff

to place her own mausoleum on lots she had purchased for the burial of her deceased husband. Plaintiff brought various claims against both Defendants.

Plaintiff obtained a default judgment against LaFayette, as LaFayette failed to answer the complaint. Plaintiff also obtained summary judgment against Defendant Boshier, based in part on requests for admissions to which Defendant Boshier failed to respond. Defendants moved that these judgments be set aside. The trial court denied Defendants' motion. Defendants appeal. For the reasoning below, we affirm.

### I. Background

Plaintiff essentially alleges as follows: Plaintiff Alice Barefoot and her husband (now deceased), Billy Barefoot, contracted with LaFayette, allowing them to place their own mausoleum on four lots they previously purchased for their burial for \$23,504.02. Defendant Boshier, on behalf of LaFayette, told Plaintiff and her husband that they would be allowed to use their own mausoleum.

Upon Billy's death, Plaintiff scheduled a funeral service for 25 March 2021. However, prior to the scheduled service, Defendants informed Plaintiff that she was required to sign two additional documents, namely the Disinterment Indemnification and Release document and the Family Disclosure document. Defendants denied Plaintiff access to Billy's body and prevented entombment and the funeral service from occurring.

After having a disagreement and after involvement of the police, Defendants informed Plaintiff that Lafayette would only agree to proceed with the scheduled service if Plaintiff agreed to do so with only one family member present. Plaintiff paid Defendants \$150.00 to release her deceased husband's body to her. Lafayette did not return any of the monies paid to them by Plaintiff. As a result, Plaintiff had her husband's body cremated at a funeral home. Plaintiff is seeking damages in the amount of \$39,108.47.

Plaintiff filed a lawsuit against Defendants, asserting numerous claims. Defendant Boshier answered, but Defendant LaFayette did not.

Approximately a year after the lawsuit began, Defendants' counsel withdrew from the case. Two days after Defendants' counsel withdrew, Plaintiff's counsel served Defendants with the first set of interrogatories, first set of requests for production of documents, and first set of requests for admissions. Defendants did not timely respond to the requests for admissions.

Plaintiff moved for default judgment against LaFayette and for summary judgment against Defendant Boshier. The trial court granted both motions.

Defendants filed a motion to set aside entry of default judgment, a motion to vacate summary judgment, and a motion to amend or withdraw admissions (to allow Defendants to respond to Plaintiff's discovery requests). The trial court denied all three motions, finding that Defendants had failed to demonstrate the existence of excusable neglect. Defendants appealed.

## II. Analysis

### A. Motions to Vacate Default Judgment and Vacate Summary Judgment

Defendants first contend that the trial court abused its discretion in denying the motion to vacate entry of default judgment against Defendant Lafayette Cemetery Park because Defendants showed excusable neglect and a meritorious defense. Defendants secondly contend that the trial court abused its discretion in denying the motion to vacate summary judgment against Defendant Boshier because Defendant showed both excusable neglect and a meritorious defense. Both issues pertain to a N.C.G.S. § 60(b) analysis and will be addressed simultaneously.

A motion for relief under Rule 60(b) falls under the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion. *See Briley v. Farabow*, 348 N.C. 537, 547 (1998).

“On 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 . . . excusable neglect[.]” N.C.G.S. § 60(b)(1). “To set aside a judgment on the grounds of excusable neglect under Rule 60(b), the moving party must show that the judgment rendered against him was due to his excusable neglect and that he has a meritorious defense.” *McInnis v. Hall*, 318 N.C. 421, 424 (1986) (citation omitted). Our Supreme Court has instructed that:

While there is no clear dividing line as to what falls within the confines of excusable neglect as grounds for the setting aside of a judgment, what constitutes excusable neglect

*Opinion of the Court*

depends upon what, under all the surrounding circumstances, may be reasonably expected of a party in paying proper attention to his case.

*Id.* at 425.

We have previously held that a “[f]ailure to retain counsel promptly or otherwise to maintain contact with the court should not be classified as excusable neglect of one’s own lawsuit.” *Standard Equip. Co., Inc. v. Albertson*, 35 N.C. App. 144, 147 (1978). Our Supreme Court has also stated that litigants are expected to pay “that attention which a man of ordinary prudence usually gives his important business, and failure to do so is not excusable.” *Jones v. Statesville Ice & Fuel Co.*, 259 N.C. 206, 209 (1963). “[T]he failure of a party to obtain an attorney does not constitute excusable neglect,” *Scoggins v. Jacobs*, 169 N.C. App. 411, 416 (2005), and a party generally cannot demonstrate excusable neglect by professing ignorance of the judicial process, *See In re Hall*, 89 N.C. App. 685, 688 (1988).

We hold that the trial court did not abuse its discretion in denying Defendants’ Rule 60(b) motion for relief from the judgments. Although Defendants’ counsel withdrew in the middle of the proceedings, Defendants were still put on notice of the hearing regarding the Motion to Dismiss and could have been present. Additionally, there is nothing in the record to show that Defendants took any reasonable measures to attempt to find new counsel in a timely manner.

B. Motion for Permission to Withdraw or Amend Admissions

Defendants contend that the trial court abused its discretion in denying

Defendant Boshers' motion for permission to withdraw or amend admissions because Defendants showed excusable neglect, and Plaintiff would not be prejudiced by Defendant being allowed to withdraw or amend admissions.

"Leave to amend should be granted when 'justice so requires,' or by written consent of the adverse party[.] . . . The granting or denial of a motion to amend is within the sound discretion of the trial judge, whose decision is reviewed under an abuse of discretion standard." *House Healers Restorations, Inc. v. Ball*, 112 N.C. App. 783, 785–86 (1993) (internal citation omitted). "If the trial court articulates a clear reason for denying the motion to amend, then our review ends. Acceptable reasons for which a motion to amend may be denied are (undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice, and futility of the amendment." *NationsBank of N.C., N.A. v. Baines*, 116 N.C. App. 263, 268 (1994) (internal citations omitted). "When the trial court states no reason for its ruling on a motion to amend, this Court may examine any apparent reasons for the ruling." *Delta Env't Consultants of N.C. v. Wyson & Miles Co.*, 132 N.C. App. 160, 165–66 (1999).

Rule 36(b) of the North Carolina Rules of Civil Procedure states that:

[The trial] court *may* permit withdrawal or amendment *when the presentation of the merits of the action will be subserved thereby* and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice him in maintaining his action or defense on the merits. Any admission made by a party under this rule is for the purpose of pending action only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

N.C.G.S. § 36(b) (emphasis added).

Here, the trial court allowed Defendant to fully present evidence and testify in regard to her motion to withdraw or amend. After hearing testimony, reviewing all pleadings, hearing arguments from both parties, and reviewing orders of the court, the trial court denied the motion to amend or withdraw admissions. Although the trial court does not explicitly articulate the reason for denial in its order, after reviewing the record it is evident that there is undue delay. “In deciding if there was undue delay, the trial court may consider the relative timing of the proposed amendment in relation to the progress of the lawsuit.” *Strickland v. Lawrence*, 176 N.C. App. 656, 667 (2006) (citation omitted). Defendants filed the motion to amend or withdraw admissions on 2 May 2023 after summary judgment and default judgment were granted on 13 March 2023 based, in part, on Defendants’ failure to respond to discovery. Therefore, we hold that the trial court did not abuse its discretion in denying Defendants’ motion to amend or withdraw.

### III. Conclusion

For the foregoing reasons, we hold the trial court did not abuse its discretion in denying Defendants’ motion to vacate default judgment, motion to vacate summary judgment, and motion to amend or withdraw admissions.

AFFIRMED.

Panel consisting of Chief Judge DILLON and Judges MURPHY and THOMPSON.

BAREFOOT V. LAFAYETTE CEMETERY PARK CORP.

*Opinion of the Court*

Report per Rule 30(e).