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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-162

Filed 21 May 2025

Buncombe County, No. 22 CVS 1510

EPIC-NRG, LLC, Plaintiff,

v.

NICHOLAS JAMES RAGLE; CHAPS DEVELOPMENT, LLC; and RAGLE SUSTAINABLE TECHNOLOGY SALES AGENCY LLC, Defendants.

Appeal by Defendants from order entered 20 November 2023 by Judge Jacqueline D. Grant in Buncombe County Superior Court. Heard in the Court of Appeals 11 June 2024.

The Sutton Firm, PA, by Attorney John R. Sutton, Jr., for the plaintiff-appellant.

McGuire, Wood & Bissette, PA, by Attorney Matthew S. Roberson, for the defendants-appellees.

STADING, Judge.

This matter arises out of a contract dispute between EPIC-NRG, LLC (“Plaintiff”) and Nicholas James Ragle; Chaps Development, LLC; and Ragle Sustainable Technology Sales Agency, LLC (collectively, “Defendants”). After a default judgment was entered against Defendants, and subsequently enrolled in

South Carolina, Defendants sought relief in North Carolina pursuant to N.C. Gen. Stat. § 1A-1, Rule 60 (2023). Relief was granted, and the judgment was set aside for insufficient service of process. Plaintiff appeals.

I. Background

On 2 July 2019, Plaintiff entered into a good faith account agreement with Defendants Ragle and Chaps Development, LLC. That same day, Plaintiff entered a “Cross-Collateralization and Cooperation Agreement” with all three Defendants, binding them to the terms of both contracts. The contracts required Plaintiff to pay an arrangement fee of \$60,000.00, which Plaintiff paid on 5 July 2019. Upon signing the good faith account agreement and paying the \$60,000.00 arrangement fee, Defendants were required to establish “a ‘Good Faith Account’ in the amount of \$10,000,000.00 . . . through Chase Bank.”

On 28 April 2022, Plaintiff filed a complaint alleging Defendants failed to produce the required amount after multiple demands for performance and instead provided Plaintiff with fraudulently manufactured bank statements and articles of incorporation. On 29 April 2022, copies of the summons and complaint were delivered by a private process server, Ms. Welborn, to Defendants. Neither Defendant Ragle nor the corporate Defendants filed an answer or otherwise responded to the complaint.

On 6 June 2022, Plaintiff moved for entry of default due to Defendants’ failure to respond. In support of Plaintiff’s motion, an affidavit was submitted attesting that

Defendants “were all served by a process server on the 29th day of April 2022,” and had not responded to the complaint. On 20 July 2022, Plaintiff moved for default judgment, and the matter was set for hearing before the trial court. Then, on 5 August 2022, the trial court entered default judgment against Defendants—awarding Plaintiff \$60,0000.00 in compensatory damages, “trebled pursuant to N.C. [Gen. Stat.] § 75-1.1, et. seq. for a total [j]udgment” of \$180,000.00. It also awarded Plaintiff \$3,500.00 in attorneys’ fees and costs. The trial court found in its judgment that “personal service was had on each of the [D]efendants” on 29 April 2022.

After the trial court’s entry of judgment against Defendants, Plaintiff learned that Defendant Ragle relocated to South Carolina. There, Plaintiff filed a “Petition for Filing Foreign Judgment” on 1 December 2022. Defendants were served with the notice of the foreign judgment filing on 8 December 2022. Defendant Ragle contested the filing of the foreign judgment, claiming improper service of process of the 28 April 2022 suit in North Carolina.

Upon concluding that the service of process issue is “not subject to collateral attack in South Carolina,” and that “Defendants have failed to present sufficient evidence to defeat the presumption of valid service in North Carolina,” the South Carolina court entered an order enrolling foreign judgment on 7 April 2023. Defendants moved for reconsideration in South Carolina and subsequently moved for relief from the judgment in North Carolina pursuant to N.C. Gen. Stat. § 1A-1, R. 60. The Rule 60 motion, supported by the affidavits of Defendant Ragle and Erin Ragle,

asserted the trial court lacked personal jurisdiction over Defendants to enter the default judgment against them because service of process was invalid. Plaintiff moved to “Dismiss/Deny Defendants’ Motion for Relief from Judgment,” and moved for sanctions under N.C. Gen. Stat. § 1A-1, R. 11. The trial court then held a hearing on the pending motions.

On 20 November 2023, the trial court concluded that although Defendants received a copy of the 28 April 2022 complaint and summons, the trial court improperly exercised personal jurisdiction over them because Plaintiff’s method of service of process violated N.C. Gen. Stat. § 1A-1, R. 4. The trial court therefore granted Defendant’s Rule 60 motion, which requested relief from the default judgment entered on 5 August 2022. The trial court concluded it “did not have personal jurisdiction over [] Defendants” because the service by the private processor server was “ineffective and invalid” and set aside the default judgment. Plaintiff appealed the trial court’s decision.

II. Analysis

Plaintiff submits three issues for our consideration: (1) whether the trial court abused its discretion by granting Defendants’ Rule 60 motion for relief from judgment since Findings of Fact Nos. 3 and 12 are not supported by competent evidence; (2) whether Defendants waived the defenses of insufficiency of process, insufficiency of service of process, and lack of personal jurisdiction; and (3) whether the trial court erred by not considering if Defendants should be equitably estopped from asserting

the defenses of personal jurisdiction, insufficiency of process, and insufficiency of service of process.

A. Rule 60(b)(4) Relief

Plaintiff first argues the trial court abused its discretion by setting aside the default judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(4) (“Relief from judgment or order.”). Plaintiff maintains this decision was improper since Findings of Fact Nos. 3 and 12 are not supported by competent evidence. We disagree.

“N.C. Gen. Stat. § 1A-1, Rule 55(d) . . . provides that a default judgment may be set aside in accordance with N.C. Gen. Stat. § 1A-1, Rule 60(b).” *Connette v. Jones*, 196 N.C. App. 351, 352, 674 S.E.2d 751, 752 (2009). “Rule 60(b)(4) allows the court to relieve a party from a judgment if ‘the judgment is void.’” *Wenbin Chen v. Yaling Zou*, 244 N.C. App. 14, 16, 780 S.E.2d 571, 572 (2015) (quoting N.C. Gen. Stat. § 1A-1, R. 60(b)(4)). “If a judgment or an order is rendered without an essential element such as jurisdiction or proper service of process, it is void.” *Cnty. of Wayne ex rel. Williams v. Whitley*, 72 N.C. App. 155, 157, 323 S.E.2d 458, 461 (1984).

“The decision whether to set aside a default judgment under Rule 60(b) is left to the sound discretion of the trial judge, and will not be overturned on appeal absent a clear showing of abuse of discretion.” *Judd v. Tilghman Med. Assocs., LLC*, 272 N.C. App. 520, 526, 847 S.E.2d 45, 49 (2020) (citation omitted). “Under an abuse of discretion standard, this Court reviews the trial court ‘to determine whether a decision is manifestly unsupported by reason, or so arbitrary that it could not have

been the result of a reasoned decision.” *Se. Caissons, LLC v. Choate Constr. Co.*, 247 N.C. App. 104, 108–09, 784 S.E.2d 650, 653 (2016) (citation omitted).

“Findings of fact made by the trial court upon a motion to set aside a judgment by default are binding on appeal if supported by any competent evidence.” *Kirby v. Asheville Contracting Co.*, 11 N.C. App. 128, 132, 180 S.E.2d 407, 410 (1971); *see also Gentry v. Hill*, 57 N.C. App. 151, 154, 290 S.E.2d 777, 779 (1982) (“Upon hearing of a Rule 60 motion, the findings of fact by the trial court are conclusive on appeal if supported by any competent evidence.”). “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *Forehand v. Forehand*, 238 N.C. App. 270, 273, 767 S.E.2d 125, 128 (2014) (citation omitted).

Plaintiff maintains that Finding of Fact No. 3 is not supported by competent evidence since Defendants failed to provide an affidavit or other sworn testimony indicating that Ms. Welborn was not properly appointed as a process server. Finding of Fact No. 3 provides:

Ms. Welborn was not appointed to serve process by the Buncombe County Clerk of Superior Court under Rule 4(h) of the North Carolina Rules of civil procedure.

“In North Carolina, private process service is not always authorized under law. The proper person for service . . . is the sheriff of the county where service is to be attempted or some other person duly authorized by law to serve summons.” *Locklear v. Cummings*, 262 N.C. App. 588, 597, 822 S.E.2d 587, 593 (2018) (quotation marks omitted); *see also* N.C. Gen. Stat. § 1A-1, R. 4(a). “Legal ability to serve process by

private process server is limited by statute . . . to scenarios where the sheriff is unable to fulfill the duties of a process server.” *Locklear*, 262 N.C. App. at 597, 822 S.E.2d at 593; *see also* N.C. Gen. Stat. § 1A-1, R. 4(h), (h1). “[I]f service is unexecuted by the sheriff under Rule 4(a), the clerk of the issuing court can appoint ‘some suitable person’ to execute service under Rule 4(h).” *Locklear*, 262 N.C. App. at 598, 822 S.E.2d at 593 (quoting N.C. Gen. Stat. § 1A-1, R. 4(h)).

Here, the record lacks any indication that Ms. Welborn was duly appointed in accordance with N.C. Gen. Stat. § 1A-1, R. 4(h). Indeed, Ms. Welborn’s affidavit merely states that she is “a duly authorized person to serve Summons in the State of North Carolina and ha[s] been serving papers, subpoenas and Summons . . . since 1994.” Although Ms. Welborn “filed the statutorily required affidavit, a self-serving affidavit alone does not confer duly authorized by law status on the affiant.” *Locklear*, 262 N.C. App. at 597, 822 S.E.2d at 593 (quotation marks omitted). Moreover, the record is absent of any indication that “the sheriff was unable to deliver service so that the services of a process server would be needed.” *Id.* at 598, 822 S.E.2d at 593. Thus, a reasonable mind could conclude that such an appointment by the clerk of superior court never occurred. *Forehand*, 238 N.C. App. at 273, 767 S.E.2d at 128.

Plaintiff further maintains Finding of Fact No. 12 is not supported by competent evidence since it “misstates the basis for relief in [D]efendants’ Rule 60 Motion.” Finding of Fact No. 12 states:

On April 12, 2023, Defendants filed the Motion for Relief from Judgment under Rule 60 on grounds that Defendants were not properly served and the Judgment by default was void because the Court never obtained personal jurisdiction. Defendants filed the Affidavits of Nicholas James Ragle and Erin Marie Ragle in support of the Defendants' motion.

In Defendants' Rule 60 motion, they asserted relief should be accorded since "none of the [D]efendants were actually served." As a result, Defendants argued the trial court "never obtained personal jurisdiction as to these [D]efendants, and . . . the judgment is void." Further, Defendants' Rule 60 motion alleged that Plaintiff failed to effectuate proper service since none of the Defendants ever received the requisite documents. In support of their Rule 60 motion, Defendants submitted the affidavits of Nicholas and Erin Ragle, confirming that neither were served on the day Plaintiff alleged it effectuated service. In their memorandum of law in support of the Rule 60 motion, Defendants argued that even if they received the requisite documents, service was improper since Ms. Welborn lacked statutory authorization under Rule 4(h). We are unable to discern how this specific finding of fact deviates from what Defendants requested in their Rule 60 motion. Accordingly, we hold Finding of Fact No. 12 is supported by competent evidence.

Since Findings of Fact Nos. 3 and 12 are supported by competent evidence, we hold that the trial court did not abuse its discretion by granting Defendants' Rule 60(b)(4) motion. Plaintiff's assignment of error is overruled.

B. Waiver

Next, Plaintiff contends “Defendants waived the defenses of lack of personal jurisdiction, insufficiency of process and insufficiency of service of process by their failure to raise these defenses when they were served.” More specifically, Plaintiff argues that N.C. Gen. Stat. § 1A-1, Rule 12(h)(1) required Defendants to assert those defenses after receiving “the complaint and summons on 29 April 2022.” A careful review of the record leaves us unpersuaded, and we therefore overrule Plaintiff’s argument of waiver.

We review “whether making a general appearance after the entry of a judgment is a general appearance in the underlying action that waives objections to personal jurisdiction and the sufficiency of service of process . . . de novo.” *Slattery v. Appy City, LLC*, 385 N.C. 726, 729, 898 S.E.2d 700, 704 (2024) (citations omitted). “[P]ersonal jurisdiction is ‘a court’s authority to require an individual to appear in the forum and defend an action brought against the individual in that forum.’” *Id.* (citations omitted). “Our General Statutes specifically permit a court to assert personal jurisdiction over a defendant ‘[w]ho makes a general appearance in an action’ even ‘without serving a summons upon [them].” *Id.* at 729, 898 S.E.2d at 704–05 (first alteration in original) (citing N.C. Gen. Stat. § 1-75.7(1) (2021)). A general appearance is one where “the defendant ‘invokes the judgment of the court in any manner on any question other than that of [personal] jurisdiction . . . and ‘requests

[the court’s] affirmative intervention.” *Slattery*, 385 N.C. at 729, 898 S.E.2d at 704–05 (citations omitted and alterations in original).

We note that Plaintiff’s argument assumes it effectuated proper service of process. But we have already determined above that Plaintiff failed to execute the first step of its selected service of process method and failed to effectuate proper service of process upon Defendants. *See Locklear*, 262 N.C. App. at 597, 822 S.E.2d at 593 (“Although [the] Plaintiff’s process server filed the statutorily required affidavit, a self-serving affidavit alone does not confer ‘duly authorized by law’ status on the affiant.”); *see also Slattery*, 385 N.C. at 730, 898 S.E.2d at 704 (A court may exercise personal jurisdiction over a defendant by proper service of process or “through a defendant’s general (or ‘voluntary’) appearance or consent.”). Thus, where proper service of process was not had on Defendants, we now turn to whether Defendants made a general appearance upon seeking relief from a judgment void *ab initio*.

The *Slattery* Court held, “lack of personal jurisdiction renders a court’s actions voidable rather than void, and it is incumbent upon the defendant to preserve her objections by raising them at the first available opportunity.” 385 N.C. at 731, 898 S.E.2d at 705. The Court added, “if a defendant moves to invalidate the court’s judgment for lack of personal jurisdiction at her first appearance . . . the issue is preserved for review. . . . [T]he trial court may, in its discretion, set aside the void judgment.” *Id.* (citing N.C. Gen. Stat. §1A-1, R. 60(b)(4)). But *Slattery* is

distinguishable from the instant appeal. There, the defendant failed to appear after being served process through certified mail. *Slattery*, 385 N.C. at 727, 898 S.E.2d at 703. The defendant made their first appearance only after the plaintiff sought to enforce the resulting default judgment and subsequent summary judgment against them. *Id.* The defendant's first appearance was made by filing a motion to claim exempt property. *Id.* at 732, 898 S.E.2d at 706. The defendant failed, however, to "simultaneously object . . . to the Business Court's personal jurisdiction." *Id.* The Court reasoned "[b]ecause [the] defendant moved to claim exempt property after judgment without raising her objection to the sufficiency of service of process, she made a general appearance in an action and waived her objections" *Id.* at 736, 898 S.E.2d at 709.

Unlike *Slattery*, Defendants' first appearance in North Carolina was the filing of their Rule 60(b)(4) motion. *Id.* at 731–32, 898 S.E.2d at 705–06. Defendants' response to the lawsuit came after Plaintiff sought to enforce the default judgment in South Carolina. In Defendants' motion contesting the enrollment of the judgment, they argued that it should be "declared void in the State of North Carolina due to lack of service." The South Carolina court denied Defendants' motion, prompting them to submit a Rule 60(b)(4) motion with the North Carolina superior court. Defendants argued that since Plaintiff failed to comply with the requirements of Rule 4, any resulting judgment against them is void. As a result, the trial court did not have personal jurisdiction over Defendants, and Defendants' motion to set aside the void

default judgment against them was not a general appearance subjecting them to the limitations of Rule 12. N.C. Gen. Stat. § 1A-1, R. 12(h); *see also Slattery*, 385 N.C. at 731, 898 S.E.2d at 705.

Defendants’ first appearance in this matter occurred after the entry of default and default judgment against them; relief from a void judgment is valid anytime. *See Nye, Mitchell, Jarvis & Bugg v. Oates*, 109 N.C. App. 289, 291–92, 426 S.E.2d 291, 293 (1993) (citations omitted) (“Because a judgment entered without personal jurisdiction over a party is void, Mrs. Oates’ [Rule 60(b)] motion was not untimely.”); *see also Van Engen v. Que Sci., Inc.*, 151 N.C. App. 683, 689, 567 S.E.2d 179, 184 (2002) (“The . . . orders in this case were entered without personal jurisdiction over the [Defendant], . . . and the orders were void *ab initio*.”); *see also In re A.B.D.*, 173 N.C. App. 77, 83–84, 88, 617 S.E.2d 707, 711–12, 714 (2005) (holding that a defendant does not waive challenges to personal jurisdiction such as inadequate service of process if they failed to make a general appearance, regardless of whether they had notice of the proceedings.); *see also Allred v. Tucci*, 85 N.C. App. 138, 141, 354 S.E.2d 291, 294 (1987) (“[W]ith respect to motions made pursuant to Rule 60(b)(4), . . . a void judgment is a legal nullity which may be attacked at any time.”). We hold that Defendants’ motion under Rule 60(b)(4) was not a general appearance and overrule Plaintiff’s argument of waiver as it lacks merit.

C. Equitable Estoppel

Lastly, Plaintiff contends the trial court erred by failing to consider whether Defendants should have been equitably estopped from raising the defenses of personal jurisdiction, insufficiency of process, and insufficiency of service of process. We disagree.

“Broadly speaking, ‘estoppel is a bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth.’” *Whitacre P’ship v. BioSignia, Inc.*, 358 N.C. 1, 13, 591 S.E.2d 870, 879 (2004) (citation omitted). “The doctrine of estoppel rests upon principles of equity and is designed to aid the law in the administration of justice when without its intervention injustice would result.” *Thompson v. Soles*, 299 N.C. 484, 486, 263 S.E.2d 599, 602 (1980). “Estoppel is not a single coherent doctrine, but a complex body of interrelated rules, including estoppel by record, estoppel by deed, collateral estoppel, equitable estoppel, promissory estoppel, and judicial estoppel.” *Whitacre P’ship*, 358 N.C. at 13, 591 S.E.2d at 879 (citation and quotation marks omitted).

The doctrine of equitable estoppel arises:

when any one, by his acts, representations, or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence *induces* another to believe certain facts exist, and such other rightfully *relies and acts on* such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.

State Highway Com. v. Thornton, 271 N.C. 227, 240, 156 S.E.2d 248, 258 (1967) (citation omitted). “In such a situation, the party whose words or conduct induced another’s detrimental reliance may be estopped to deny the truth of his earlier representations in the interests of fairness to the other party.” *Whitacre P’ship*, 358 N.C. at 17, 591 S.E.2d at 881. When “applying the doctrine, a court must consider the conduct of both parties to determine whether each has ‘conformed to strict standards of equity with regard to the matter at issue.’” *Id.* (citation omitted).

The “essential elements” of equitable estoppel consist of: “(1) conduct on the part of the party sought to be estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct will be acted on by the other party; and (3) knowledge, actual or constructive, of the real facts.” *Parker v. Thompson-Arthur Paving Co.*, 100 N.C. App. 367, 370, 396 S.E.2d 626, 628 (1990); *see also Bryant v. Adams*, 116 N.C. App. 448, 460, 448 S.E.2d 832, 838 (1994). Additionally, a party who asserts the defense of equitable estoppel “must have[:] (1) a lack of knowledge and the means of knowledge as to the real facts in question; and (2) relied upon the conduct of the party sought to be estopped to his prejudice.” *Parker*, 100 N.C. App. at 370, 396 S.E.2d at 628–29; *see also Bryant*, 116 N.C. App. at 460, 448 S.E.2d at 838. “The party invoking the equitable estoppel doctrine has the burden of proving facts necessary to establish the essential elements.” *State Farm Mut. Auto. Ins. Co. v. Atl. Indem. Co.*, 122 N.C. App. 67, 75–76, 468 S.E.2d 570, 575 (1996).

Plaintiff asserts that Defendants should have been equitably estopped from raising these affirmative defenses since: (1) Defendants “ignored the suit until the judgment attached to real property owned in South Carolina”; (2) Defendants “filed a motion falsely claiming they were completely unaware of the suit because it was never served”; (3) Plaintiff relied “on the service and [D]efendants’ conduct”; and (4) Defendants “encouraged such reliance.” Plaintiff maintains that Defendants’ conduct “lulled [it] into such a ‘false sense of security,’ and probably prevented [it] from discovering [its] error and effecting valid service within the statutory period.” *Storey v. Hailey*, 114 N.C. App. 173, 176, 441 S.E.2d 602, 604 (1994) (citation omitted).

However, *Storey* is distinguishable from the facts of the instant appeal. There, the defendant appointed an attorney “as his resident process agent to receive service” since he was not a resident of North Carolina. *Id.* at 175, 441 S.E.2d at 604. Thereafter, the defendant’s attorney “appeared as counsel of record” and “filed a motion for extension of time to plead,” which was granted. *Id.* Then, the defendant’s attorney “obtained a second extension of time for filing” by way of stipulation. *Id.* After the second extension, the defendant obtained new counsel and moved to dismiss, arguing “insufficiency of process, insufficiency of service of process, lack of personal jurisdiction, and the expiration of the statute of limitations.” *Id.* The trial court granted the defendant’s motion, dismissing the action “based on all grounds asserted” by the defendant. *Id.* at 176, 441 S.E.2d at 604.

On appeal, the *Storey* plaintiff alleged that the defendant should be “estopped from asserting the defenses of insufficiency of process, insufficiency of service of process, and lack of personal jurisdiction.” *Id.* The plaintiff maintained she was “lured into a false sense of security in that defendant’s initial trial counsel, regardless of his intent, manifestly lead [p]laintiff’s trial counsel to believe that there be no need to continue further process in existence” *Id.* This Court agreed with the plaintiff, determining she “was deprived of any opportunity to cure any defects in the process or in the service of process, because defendant’s counsel led plaintiff’s counsel to believe it was unnecessary to continue further process.” *Id.* at 77, 441 S.E.2d at 605. The Court noted “[t]he defendant’s conduct in securing extensions of time, through opposing counsel’s professional courtesy, to 54 days past the date when plaintiff could have procured endorsement of the original summons or issuance of an alias and pluries summons, acts to estop defendant from asserting these defenses.” *Id.* In closing, it added, “[a]ny other result would serve only to stifle professional courtesy among members of the bar during a time when legal etiquette and professionalism are becoming more rare.” *Id.*

Here, unlike *Storey*, Defendants took no action prior to filing their Rule 60 motion. There is no indication Defendants delayed the filing of their Rule 60 motion to tactically disadvantage Plaintiff from effectuating valid service. *See id.* Indeed, the record is absent of any indication that the parties communicated or engaged each other in any manner before the Rule 60 motion was filed. *See N.C. Dep’t of Envtl.*

Quality v. TRK Dev., LLC, 259 N.C. App. 597, 608, 816 S.E.2d 232, 239 (2018) (citation omitted) (“[M]ere silence will not operate to create an estoppel. In order to work an estoppel the silence must be under such circumstances that there are both a specific opportunity, and a real or apparent duty, to speak.”). Thus, Plaintiff cannot demonstrate that Defendants’ conduct “amounts to a false representation or concealment of material facts” *Parker*, 100 N.C. App. at 370, 396 S.E.2d at 628.

Moreover, “[w]hen a party is misled through his own lack of diligence and reasonable care, he may not then avail himself of the doctrine of equitable estoppel.” *N.C. Fed. Sav. & Loan Asso. v. Ray*, 95 N.C. App. 317, 323, 382 S.E.2d 851, 855 (1989); *see also N.C. Dep’t of Env’tl. Quality*, 259 N.C. App. at 608, 816 S.E.2d at 239–40 (citation omitted) (“[I]t is a well-established principle that ‘everyone is equally capable of determining the law, is presumed to know the law and . . . cannot be deceived by representations concerning the law or [be] permitted to say he or she has been misled.’”). Upon review of the order of the trial court, Plaintiff’s failure to effectuate valid service was due to its own lack of diligence and reasonable care. *See Locklear*, 262 N.C. App. at 598, 822 S.E.2d at 593. Accordingly, Plaintiff’s assignment of error is overruled.

III. Conclusion

For the above reasons, we hold the trial court did not abuse its discretion by granting Defendants’ relief from default judgment under Rule 60(b)(4). Contrary to Plaintiff’s urging, the trial court’s findings of fact were adequately supported by

competent evidence; the filing of the Rule 60(b)(4) motion by Defendants did not constitute waiver; and the trial court did not err in foregoing Plaintiff's defense of equitable estoppel.

AFFIRMED.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).