

[Cite as *Peter M. Klein Co. v. Dawson*, 2011-Ohio-2812.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Peter M. Klein Company,	:	
	:	
Plaintiff-Appellant,	:	No. 10AP-1122
v.	:	(M.C. No. 2009 CVF 53000)
	:	
Karita Dawson,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 9, 2011

Plank Law Firm, LPA, and David Watkins, for appellant.

Dougherty, Hanneman & Snedaker, LLC, Joseph L. Piccin, and James A. Hanneman, for appellee.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Plaintiff-appellant, Peter M. Klein Company ("appellant"), appeals the judgment of the Franklin County Municipal Court, which granted the motion of defendant-appellee, Karita Dawson ("Dawson"), for relief from the default judgment granted to appellant. Having concluded that the trial court did not abuse its discretion by granting Dawson's motion, we affirm.

{¶2} On December 11, 2009, appellant filed a complaint against Dawson. In it, appellant alleged that the parties had entered into an oral contract for construction of improvements and renovations to Dawson's residence. Appellant did the work, which included adding a bedroom, remodeling the kitchen and garage, and making improvements to the landscaping. The total cost of the improvements was \$17,000, which included contractor's profit. The parties had agreed, however, that profit of \$5,000 would be deducted, and Dawson would owe only \$12,000 for the work. The work had been completed, but Dawson had not paid appellant the amount due. Appellant sought damages in the amount of \$12,000, plus attorney fees and costs.

{¶3} Dawson did not answer the complaint. On August 13, 2010, appellant moved for default judgment. On August 16, 2010, the trial court signed an entry granting default judgment against Dawson in the amount of \$12,000, plus interest.

{¶4} On September 2, 2010, Dawson moved for relief from the default judgment pursuant to Civ.R. 60(B). In her memorandum and affidavit, Dawson stated that she had been in a nine-year on-and-off relationship with Peter Klein ("Klein"), the owner of appellant. He had sued Dawson twice before and, each time, had dismissed the lawsuit after the parties reconciled their relationship. Although Dawson conceded that the work had been done on her home, she said that she informed Klein that he should not expect payment and that he did the work anyway. She contended that the work was a gift to her.

{¶5} According to Dawson, appellant initiated the lawsuit against her at a time when they were not together. They reconciled thereafter, and Klein informed Dawson that the lawsuit was going to be dismissed. After the parties split up again, appellant

moved for default judgment. Dawson's belief that Klein would not pursue the lawsuit against her, she contended, led to her failure to answer.

{¶6} The trial court held a hearing on Dawson's motion and heard testimony. The court issued a decision, which contained findings of fact and conclusions of law. The court found that Dawson and Klein had reconciled after the lawsuit was filed, and they became engaged in February 2010. Dawson's testimony "persuaded the court that because the couple was engaged she mistakenly believed that they would not continue to be adversaries in a lawsuit." Appellant sought default judgment only after Dawson obtained an ex parte civil protection order against Klein. The court concluded that appellant's eight-month delay in pursuing default judgment, at a time when Dawson and Klein were engaged, caused "Dawson to mistakenly believe that her fiancé would not proceed with a lawsuit against her." On these grounds, the court granted Dawson's motion to set aside the default judgment.

{¶7} Appellant appealed to this court and raises the following assignment of error:

THE TRIAL COURT ERRED IN GRANTING DEFENDANT,
KARITA DAWSON, RELIEF FROM JUDGMENT ON THE
BASIS OF OHIO RULE OF CIVIL PROCEDURE 60(B)(1).

{¶8} Civ.R. 60(B) governs motions seeking relief from final judgment. In order to prevail on a Civ.R. 60(B) motion, a movant must demonstrate the following: (1) the party has a meritorious defense or claim to present if the court grants relief; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time and, where the grounds for relief fall under Civ.R. 60(B)(1), (2) or (3), not more than one year after judgment. *GTE*

Automatic Elec., Inc. v. ARC Industries, Inc. (1976), 47 Ohio St.2d 146, paragraph two of the syllabus.

{¶9} The law favors disposition of cases by a trial on the merits, and courts should resolve doubt, if any, as to the establishment of a meritorious defense or a ground for relief in favor of the movant. *Coover Constr. Co., Inc. v. Johnson* (Aug. 24, 1982), 10th Dist. No. 82AP-305, citing *Colley v. Bazell* (1980), 64 Ohio St.2d 243. We will reverse a trial court's decision to grant or deny a motion for relief under Civ.R. 60(B) if the court abuses its discretion. *Ohio Neighborhood Fin., Inc. v. Massey*, 10th Dist. No. 10AP-1020, 2011-Ohio-2165, ¶6.

{¶10} Before this court, appellant concedes that Dawson has satisfied the first and third prongs of the showing required, i.e., she presented a meritorious defense and she filed her motion within a reasonable time. Appellant contends, however, that Dawson failed to show that she was entitled to relief pursuant to Civ.R. 60(B)(1) through (5). We disagree.

{¶11} Civ.R. 60(B)(1) allows relief from judgment if the movant shows mistake, inadvertence or excusable neglect. The court's discretion to determine whether excusable neglect exists "necessarily connotes a wide latitude of freedom of action * * * and a broad range of more or less tangible or quantifiable factors may enter into the trial court's determination. Simply put, two trial courts could reach opposite results on roughly similar facts and neither be guilty of an abuse of discretion." *McGee v. C&S Lounge* (1996), 108 Ohio App.3d 656, 661.

{¶12} Here, the trial court did not abuse its discretion by concluding that Dawson had established excusable neglect. The trial court heard testimony that showed

Dawson's belief that the lawsuit would be dismissed, a belief she held after the two reconciled and became engaged to be married. Dawson's belief was based, in part, on Klein's conduct in the past, when he had filed lawsuits against Dawson and then dismissed or settled once they reconciled. While Klein may dispute whether he gave any assurance to Dawson, the trial court had competent, credible evidence on which to make its findings. Dawson submitted an affidavit, the trial court held a hearing, and the court heard testimony from Dawson, Klein, and Dawson's friend, Debra Boedicker. Following the hearing, the court issued a written decision with detailed findings of fact and conclusions of law. The court did not abuse its discretion.

{¶13} Klein's contention that the court did not believe Dawson's claim that he committed fraud against her does not change the result. Even without a finding of fraud, the court had ample evidence on which to conclude that Dawson's neglect was excusable.

{¶14} For all these reasons, we overrule appellant's single assignment of error. We affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BRYANT, P.J., and TYACK, J., concur.
