

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001492-MR

ARTHUR DOUGLAS HONEYCUTT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS B. WINE, JUDGE
ACTION NO. 02-CI-000450

ANNA LOVELESS

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, JOHNSON, AND PAISLEY, JUDGES.

DYCHE, JUDGE. Arthur D. Honeycutt appeals from an order of the Jefferson Circuit Court denying his motion to set aside a default judgment entered against him for failing to file an answer to a complaint in this action. After a review of the record and the arguments of the parties, we affirm.

This litigation was the latest act in a controversy between Honeycutt and appellee, Anna Loveless, over the estate

of Leathean Frazier, who was an aunt of both parties. Various legal documents were at issue at various times in this process, including wills, powers of attorney, and at least one deed.

The present action was initiated by Loveless to "recover money and land taken by the Appellant from the elderly Mrs. Frazier prior to her demise." After the filing of this action (and "in response" to the filing, appellee argues), Honeycutt petitioned the Jefferson District Court for the admission to probate of a will which eventually turned out to be rejected (a rank "forgery," Loveless claims). We will go no further in detailing the charges and countercharges leveled at each party below, and in the briefs to this court.

In any event, no answer was filed to the present complaint, despite Honeycutt being represented by counsel at all stages of this, and other proceedings. After the Jefferson Circuit Court granted Loveless's motion for default, Honeycutt moved for the judgment to be set aside, claiming that the failure was attributable to the inaction of counsel. The court heard arguments on the motion, and denied the relief. This appeal followed.

Kentucky Rule of Civil Procedure (CR) 55.02 provides that, "For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02." Honeycutt argues that his attorney's failure to prepare and file an answer to the

complaint falls under CR 60.02(a), "mistake, inadvertence, surprise or excusable neglect." The trial court apparently believed that Honeycutt and his attorney were engaged in a continuing scheme of deception and untruthfulness in the present and related litigation. We find no error or abuse of discretion in the refusal to set aside the default judgment. Honeycutt makes no compelling argument; he is "stuck with" his choice of counsel and the course of conduct pursued by the both of them in these actions.

The judgment of the Jefferson Circuit Court is affirmed.

PAISLEY, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

David B. Mour
R. Kenneth Kinderman
Borowitz & Goldsmith, PLC
Louisville, Kentucky

BRIEF FOR APPELLEE:

Steven B. Taylor
Slyn & Taylor, PLLC
Louisville, Kentucky

J. Andrew White
Louisville, Kentucky