

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000796-MR

TRUE GOSPEL CHURCH MINISTRIES, INC.;
DAVID HENDERSON; SHIRLEY COOK; AND
CARTHEL HENDERSON

APPELLANTS

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JOHN L. ATKINS, JUDGE
ACTION NO. 10-CI-00127

CHURCH OF GOD IN CHRIST;
KENTUCKY FIRST JURISDICTION, INC.; AND
BISHOP DWIGHT L. HAYGOOD, SR.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, KELLER, AND STUMBO, JUDGES.

KELLER, JUDGE: The trial court granted the Appellees' motion for default judgment because the Appellants failed to respond to the Appellees' complaint.

On appeal, the Appellants argue that the trial court abused its discretion in granting

the default judgment because they offered good cause for their failure to file an answer, and they had a meritorious defense. The Appellees argue to the contrary. Having reviewed the record, we affirm.

FACTS

The parties do not significantly dispute the underlying facts; although, they do dispute what inferences to draw from those facts. Because the trial court disposed of this matter by default judgment, we take the facts from the Appellees' complaint; the parties' various motions, responses, and replies; and from the parties' briefs herein.

In the early to mid-1980's, Cloesey Henderson (Cloesey) established the True Gospel Church of God in Christ (the True Gospel Church). During Cloesey's tenure as pastor of the True Gospel Church, it was affiliated with a national religious body, the Church of God in Christ (the National Church) and was part of the National Church's Kentucky First Jurisdiction, Inc. (the Kentucky First Jurisdiction). We note that there is a dispute regarding the nature of that affiliation. The Appellants claim that the affiliation was informal and non-binding because it had never been formalized. The Appellees claim that the affiliation, even if not technically formalized, was nonetheless formal and binding.

In 1986 and 1987, the True Gospel Church obtained two parcels of real property on which the True Gospel Church constructed a house of worship. In 2008, Cloesey died and was survived by his widow, Carthel Henderson (Carthel); a son, David Henderson (David); and a daughter, Shirley Cook (Shirley).

Following Cloesey's death, the jurisdictional bishop of the National Church, Bishop Dwight L. Haygood, Sr. (Bishop Haygood), appointed a replacement pastor for the True Gospel Church. David, Shirley, and Carthel, were dissatisfied with Bishop Haygood's appointee and, with support from the majority, if not all, of the members of the True Gospel Church, they formed the True Gospel Church Ministries, Inc. (the True Gospel Ministries). David, Shirley, and Carthel, as representatives of the True Gospel Church then transferred the real property the church had acquired to the True Gospel Ministries. The True Gospel Ministries then affiliated itself with the Church of God in Christ International (the International Church).

On January 27, 2010, the Kentucky First Jurisdiction and Bishop Haygood filed suit against the True Gospel Ministries, David, Shirley, and Carthel. In their complaint, the Kentucky First Jurisdiction and Bishop Haygood alleged that: (1) the real property belongs to the National Church, and the True Gospel Church only held that property in trust for the National Church; (2) David, Shirley, and Carthel unlawfully transferred title to the real property from the True Gospel Church to the True Gospel Ministries; and (3) the True Gospel Church had no right to sever its ties with the National Church without first obtaining permission from the governing body of the National Church. Based on these allegations, the Kentucky First Jurisdiction and Bishop Haygood sought rescission of the transfer of the real property from the True Gospel Church to the True Gospel Ministries.

On April 28, 2010, Bishop Gold of the International Church, filed a letter and a number of documents that he designated as a "response" to the complaint. Ostensibly, Bishop Gold was responding on behalf of the True Gospel Ministries. However, because Bishop Gold is not an attorney, neither the court nor the parties have treated this correspondence as an answer to the complaint filed by Kentucky First Jurisdiction and Bishop Haygood.

On October 6, 2010, the Kentucky First Jurisdiction and Bishop Haygood filed a motion for default judgment and/or for summary judgment. They argued that default judgment was appropriate because none of the defendants named in the complaint had filed an answer. In terms of summary judgment, they argued there were no issues of material fact regarding the National Church's ownership of the real property. The court scheduled the motion for a hearing on October 20, 2010.

Based on the docket sheet from October 20, 2010, it appears that David advised the court that Donald H. Morehead (Morehead) had been retained to represent the True Gospel Ministries and, possibly, the other defendants.¹ The court indicated that David should have attorney Morehead formally enter an appearance and file an answer. Attorney Morehead entered an appearance on behalf of the True Gospel Ministries only, and he filed a response on behalf of the True Gospel Ministries to the motion for default and/or summary judgment.

¹ Neither party designated any recording of that hearing for inclusion in the record; therefore, it is unclear exactly what was discussed.

However, attorney Morehead did not file an answer on behalf of any of the defendants.

On the December 1, 2010, docket sheet, the judge indicated that he would hold a hearing on the motion for default and/or summary judgment on January 12, 2011. It appears from the docket sheet on January 12, 2011, that attorney Morehead failed to appear. The judge indicated that he would re-set the hearing once he heard from attorney Morehead. On February 11, 2011, counsel for the Kentucky First Jurisdiction and Bishop Haygood wrote to the court indicating that he had attempted to contact attorney Morehead but had been unable to do so. The court responded that it was disappointed that attorney Morehead had not responded, and it scheduled the motion for default and/or summary judgment for a hearing on February 23, 2011.

On the February 23, 2011, docket sheet, the court noted that it would take the motion under advisement. On March 3, 2011, the court entered a memorandum opinion stating that it was granting the motion for default judgment. In doing so, the court noted that: no one had entered an appearance or filed an answer on behalf of David, Shirley, or Carthel; and despite an order to do so, counsel for the True Gospel Ministries had not filed an answer on its behalf.

On March 18, 2011, attorney Kenneth W. Humphries (Humphries) filed an entry of appearance on behalf of all of the defendants. Four days later, attorney Humphries filed a motion for leave to file an answer, and the day after that, he filed a motion to alter, amend, or vacate. On April 5, 2011, the court

entered a default judgment in favor of the Kentucky First Jurisdiction and Bishop Haygood. Three days later, attorney Humphries filed a memo in support of the motion to alter, amend, or vacate. On March 27, 2011, the court denied the motion for leave to file an answer and the motion to alter, amend, or vacate. It is from this order that the Appellants appeal.

STANDARD OF REVIEW

Our standard of review on an appeal regarding the granting of a default judgment is whether the trial court abused its discretion. *Greathouse v. Am. Nat'l Bank & Trust Co.*, 796 S.W.2d 868, 870 (Ky. App. 1990). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair or unsupported by sound legal principles. *First Horizon Home Loan Corp. v. Barbanel*, 290 S.W.3d 686, 688 (Ky. App. 2009).

ANALYSIS

The Appellants argue that the court abused its discretion when it granted the Appellees' motion for default judgment because the responsibility for not filing an answer properly belongs to attorney Morehead, not to them. Additionally, the Appellants argue that legitimate factual disputes exist between the parties, which should be addressed by a trier of fact, not disposed of summarily. Because we discern no abuse of discretion in the court's default judgment, we need not address the latter argument.

Kentucky Rule of Civil Procedure (CR) 55.01 provides that a court may grant a default judgment against a party that fails to "plead or otherwise

defend" itself. There is no dispute that the True Gospel Ministries, David, Shirley, and Carthel failed to plead in response to the Appellees' complaint. Therefore, the court had the authority to grant a default judgment. Furthermore, we agree with the Appellees that, given the procedural history of this case, the court's default judgment was not arbitrary, unfair, or unreasonable.

In reaching the preceding conclusion, we note that the Appellants' assignment of all of the blame to attorney Morehead is somewhat of an overstatement. At the October 2010 hearing, the court correctly advised David that he could not represent the True Gospel Ministries. Pursuant to the court's direction, attorney Morehead entered an appearance on behalf of the True Gospel Ministries. However, we note that no one entered an appearance on behalf of David, Shirley, or Carthel. Furthermore, we note that nothing in the record indicates that the court advised David that he, Shirley, and Carthel could not represent themselves.² Thus, while attorney Morehead might be at fault for failing to file an answer on behalf of the True Gospel Ministries, he cannot be at fault for failing to file an answer on behalf of David, Shirley, and Carthel because he did not represent them.

The Appellants also argue that they had attempted to contact attorney Morehead but were unable to do so. In his affidavit supporting the motion to alter, amend, or vacate, David states that his "attempts to contact attorney Donald

² We note that David states in his affidavit that attorney Morehead did not tell him, Shirley, or Carthel that they could represent themselves. However, none of these Appellees states that they were advised that they could not represent themselves.

Morehead have been unsuccessful. This dates back to March 15, 2011, which was approximately the last time I had any communication with Mr. Morehead." We note that March 15, 2011, was nearly two weeks after the court entered its opinion regarding default judgment, and only three days before attorney Humphries entered an appearance on behalf of all of the Appellants. Based on that affidavit, attorney Morehead's failure to communicate with the Appellants was short-lived. That short-lived failure to communicate does not support the Appellants' argument that the court's default judgment was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

Having determined that the court did not abuse its discretion in granting the default judgment, we next address whether the court should have granted the Appellants' motion to alter, amend, or vacate. Pursuant to CR 55.02, a court may set aside a default judgment "[f]or good cause shown." In order to show good cause, "the moving party must show '(1) a valid excuse for the default; (2) a meritorious defense to the claim; and (3) absence of prejudice to the non-defaulting party.'" *PNC Bank, N.A. v. Citizens Bank of Northern Kentucky, Inc.*, 139 S.W.3d 527, 531 (Ky. App. 2003) (footnotes omitted). The Appellants cannot meet the first criterion.

As noted above, the Appellants argue that it is not their fault that attorney Morehead failed to file an answer. As set forth above, that argument is not persuasive. Moreover, "[c]arelessness by a party or his attorney is not reason enough to set an entry aside." *S.R. Blanton Development, Inc. v. Investors Realty*

and Management Co., Inc., 819 S.W.2d 727, 729 (Ky. App. 1991). Because the Appellants have offered no excuse other than attorney Morehead's lack of diligence, we discern no error in the court's denial of their motion to alter, amend, or vacate. Furthermore, because all three of the *S.R. Blanton Development* elements "must be present to set aside a default judgment," we need not address the other two. *Id.*

Finally, because the court did not dismiss the Appellees' claim on summary judgment, we need not address the Appellants' argument that substantial issues of material fact exist.

CONCLUSION

For the foregoing reasons, we affirm the trial court's default judgment.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Kenneth W. Humphries
Hopkinsville, Kentucky

BRIEF FOR APPELLEES:

Byron E. Leet
Dwight L. Haygood, Jr.
Anne R. MacLean
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