SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0322-23

N.A.R., INC., assignee of
MERRICK BANK,

Plaintiff-Respondent,

v.

DEBORAH A. RITTER,

Defendant-Appellant.

Submitted June 5, 2024 – Decided June 24, 2024

Before Judges Currier and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. DC-001748-18.

Kim Law Firm LLC, attorneys for appellant (Yongmoon Kim and Mark H. Jensen, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this debt collection action, defendant Deborah A. Ritter appeals from an August 22, 2023 order denying her motion to vacate a final default judgment and a wage execution entered in favor of plaintiff N.A.R., Inc. We affirm.

I.

We glean the salient facts from the record. On February 13, 2018, plaintiff filed a complaint in the Special Civil Part against defendant seeking to collect on the balance owed plus interest on a defaulted Merrick Bank credit account in her name. Plaintiff purchased the rights to the defaulted account from Merrick Bank.

In accordance with Rule 6:2-3(d), the clerk of the court sent a summons and complaint to defendant at her apartment in Paterson by regular and certified mail. The regular mail was not returned to the court as undeliverable, and the certified mail was "unclaimed." Defendant did not file an answer or otherwise contest the relief sought.

Plaintiff sought a default judgment, which the court entered on July 9, 2018 in the total amount of $1,725.46, including post-judgment interest. On August 14, 2019, the court entered a writ of execution against defendant's wages to allow plaintiff to collect on the default judgment.

Almost five years after the default judgment was entered and four years after the wage execution was issued, defendant filed a motion to vacate the judgment and wage execution under Rule 4:50-1(d) and (f). Defendant argued the default judgment was void based on lack of service and that plaintiff had no legal right to collect or enforce the debt because it was not a licensed consumer lender or sales finance company pursuant to the New Jersey Consumer Finance Licensing Act (NJCFLA), N.J.S.A. 17:11C-1 to -49.

In her moving certification, defendant asserts she did not know she was being sued until her wages were garnished. However, she does not set forth when her wages were first garnished or how much money was collected through the wage execution.

Defendant asserted in her certification she was never served with the summons or complaint. Defendant certified, in 2018, she was "living in the same apartment" as she does now, and her building consisted of "about fifty (50) units." Defendant stated "the outside door of the building is kept locked at all times," and in 2018, "the building was having an ongoing problem with [the] mail delivery." In addition, defendant certified the "lockbox on the locked outside door was constantly getting vandalized and destroyed," and postal workers "could not enter the building." Defendant stated her mail was "stolen

or lost" because mail would be left "in a pile on the floor in the common area," and other tenants' mail got "opened, trashed, and stolen." Defendant certified that she "would sometimes go several days without getting any mail."

Defendant also certified her attorneys have explained to her that "when N.A.R. sued [her] and tried to take money from [her] N.A.R. was suing [her] illegally and without a New Jersey license." Defendant stated she "did not know that N.A.R. had to be licensed by the [NJCFLA]." Defendant claimed plaintiff had no legal right to collect the consumer debt because plaintiff failed to obtain the required licensure under the NJCFLA.

In an August 22, 2023 order and accompanying written statement of reasons, the trial court denied defendant's unopposed motion. The judge concluded the motion was not filed within a reasonable time after entry of the default judgment. The trial court determined service of the summons and complaint was effective under Rule 6:2-3(d) because "[d]efendant does not state that the regular mail was returned," and the postal service did not return the mail to the court with any indication that it was not served. In addition, the trial court concluded the allegation that plaintiff was not licensed under the NJCFLA was not an extraordinary circumstance which warranted vacating the default judgment.

This appeal followed.

II.

On appeal, defendant contends the trial court erred in denying her motion and she is entitled to relief under Rule 4:50-1(d) and (f). We are not persuaded.

"We review a motion under Rule 4:50-1 to vacate final judgment under an abuse of discretion standard." 257-261 20th Ave. Realty, LLC v. Roberto, 477 N.J. Super. 339, 366 (App. Div. 2023), petition for certif. granted, 256 N.J. 535 (2024) (citing U.S. Bank Nat'l. Ass'n v. Guillaume, 209 N.J. 449, 467 (2012)). "Although the ordinary abuse of discretion standard defies precise definition, it arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (internal quotation marks omitted). "[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." Ibid.

"The decision whether to vacate a judgment . . . is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The trial court's determination under [Rule

4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Guillaume, 209 N.J. at 467.

Under Rule 4:50-1, a party may seek to vacate a default judgment by demonstrating: "(d) the judgment or order is void; or (f) any other reason justifying relief from the operation of the judgment or order." Motions pursuant to Rule 4:50-1(d) and (f) "shall be made within a reasonable time, . . . after the judgment, order or proceeding was entered or taken." R. 4:50-2.

The trial court properly considered the length of time between entry of the default judgment and the filing of a motion to vacate in determining whether to grant relief. Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 541 (App. Div. 2003). "The rule[s are] designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Guillaume, 209 N.J. at 467 (internal quotation marks omitted). "We have explained that a reasonable time is determined based upon the totality of the circumstances . . . ." Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 296 (App. Div. 2021). The judge "has the discretion to consider the circumstances of each case." Ibid.

Applying well-established principles to this matter, we are satisfied the trial court did not abuse its discretion in concluding defendant's motion was not

filed within a reasonable time after entry of the default judgment and wage execution. Defendant's motion to vacate was filed almost five years after the default judgment was entered and four years after the wage execution was issued. Defendant posits she did not become aware of the litigation until her wages were garnished but provides no information as to what date the garnishment began after its August 14, 2019 issuance.

Defendant proffers no explanation for not filing the motion until 2023, many years after the entry of default judgment and wage execution. Thus, defendant has not presented any factual predicate to establish the delay in filing the motion was reasonable. See Garza v. Paone, 44 N.J. Super. 553, 558 (App. Div. 1957) (concluding the defendant's nearly four-year delay in filing motion to vacate was not reasonable); Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011) (stating a "reasonable time . . . in some circumstances[] may be less than one year from entry of the order in question"). We affirm the trial court's denial of defendant's motion.

III.

Although defendant's application was untimely and denial is substantiated solely on that basis, we also affirm the trial court's substantive denial as set forth in the statement of reasons accompanying the order. We begin with

acknowledging defendant does not dispute incurring the obligation, her default in making payments, or the amount due.

Defendant contends the judgment is void and must be vacated pursuant to Rule 4:50-1(d) because she was not served with the summons and complaint. We discern no error in the trial court's conclusion that service was properly effectuated by mail pursuant to Rule 6:2-3(d), which governs service in Special Civil Part matters. The clerk of the court is directed to simultaneously serve by certified and ordinary mail under Rule 6:2-3(d) with effective service defined as follows:

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> (4) Effective Service. Consistent with due process of law, service by mail pursuant to this rule shall have the same effect as personal service, and the simultaneous mailing shall constitute effective service unless the mail is returned to the court by the postal service with a marking indicating it has not been delivered, such as "Moved, Left No Address," "Attempted—Addressee Not Known," "No Such Number/Street," "Insufficient Address," "Not Deliverable as Addressed—Unable to Forward," or the court has other reason to believe that service was not effected. However, if the certified mail is returned to the court marked "unclaimed" or "refused," service is effective provided that the ordinary mail has not been returned. Process served by mail may be addressed to a post office box. Service shall be effective when forwarded by the postal service to an address outside the county in which the action is instituted. Where process is addressed to the defendant

> at a place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the defendant to whom process was mailed.
>
> [R. 6:2-3(d)(4) (emphasis added).]

Service on defendant was proper since it was in accordance with Rule 6:2-3(d)(4). Defendant acknowledged that she resided at the address where the regular and certified mail was sent. The certified mail containing the summons and complaint was marked "unclaimed" and "unable to forward." Rule 6:2-3(d)(4) provides that if the certified mailing is returned to the court marked "unclaimed"—as was the case here—service will be deemed effective if the ordinary mail was not returned.

Defendant does not assert the regular mail was returned to the court marked as "undeliverable." Instead, defendant only posits generalized assertions that she had problems with her mail delivery and complained to the post office on unspecified dates. No corroborating proofs were submitted. Defendant's non-specific and unsupported allegations are insufficient to dispute service under the court rules. We conclude the trial court did not abuse its discretion in finding service was accomplished under Rule 6:2-3(d)(4). Thus, the judgment is not void based on lack of service pursuant to Rule 4:50-1(d).

Nor do we find the trial court abused its discretion in denying defendant's motion under Rule 4:50-1(f). Because we find service on defendant was properly accomplished under Rule 6:2-3(d), we reject defendant's arguments that the manner of service constitutes exceptional circumstances warranting relief. We also reject defendant's argument that because plaintiff was not properly licensed under the NJCFLA, exceptional circumstances existed to warrant vacating the default judgment.

Relief under subsection (f) of Rule 4:50-1 is available only when "truly exceptional circumstances are present," because of the "importance that we attach to the finality of judgments." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). Not only must the movant "demonstrate the circumstances are exceptional" but also "enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999). Rule 4:50-1(f) has been described as a catch-all provision, and in "'exceptional cases its boundaries are as expansive as the need to achieve equity and justice.'" DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 270 (2009) (quoting Ct. Inv. Co. v. Perillo, 48 N.J. 334, 341 (1966)).

We reject defendant's newly minted argument that Jefferson's alleged lack of licensure under the NJCFLA is the "exact sort of exceptional circumstance this [c]ourt has ruled necessitates the vacating of a default judgment pursuant to R[ule] 4:50-1(f)." The NJCFLA does not provide a mechanism for action and enforcement to anyone other than the Commissioner of Banking and Insurance. See N.J.S.A. 17:11C-18; see also Francavilla v. Absolute Resols. VI, LLC, 478 N.J. Super. 171, 180 (App. Div. 2024) ("The [Maryland Consumer Debt Collection Act] also contains a private right of action, while [the NJCFLA] does not."). Instead, the Legislature determined a "consumer lender" who violated the licensing provision of the NJCFLA would "be guilty of a crime of the fourth degree," N.J.S.A. 17:11C-33, and authorized the Commissioner of Banking and Insurance to punish those who violate any provision of the NJCFLA by, for example, refusing to issue a license or imposing penalties in accordance with the NJCFLA, N.J.S.A. 17:11C-18.

Thus, the lack of licensure under the NJCFLA is not a meritorious defense to plaintiff's collection suit. Defendant's reliance on LVNV Funding, LLC v. DeAngelo, 464 N.J. Super. 103 (App. Div. 2020) is misplaced. DeAngelo is distinguishable from this matter because it deals with the Fair Debt Collection Practices Act, which does provide a private right of action.

Any arguments not addressed are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.