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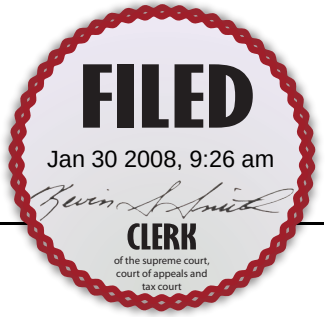

IN THE
COURT OF APPEALS OF INDIANA

THAD C. HANDFORD, d/b/a HANDFORD CONRETE COMPANY,	)	
Appellant-Defendant,	)	
vs.	)	No. 55A04-0708-CV-444
CHARLES LAWRENCE,	)	
Appellee-Plaintiff,	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane Spencer Craney, Judge
Cause No. 55D03-0608-SC-1528

January 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Thad Handford d/b/a Handford Concrete Company ("Handford") appeals the small claims court's denial of his motion to set aside default judgment. We reverse.

Issue

Handford raises one issue on appeal, which is whether the small claims court erred in denying his motion to set aside default judgment.

Facts

Charles Lawrence filed a small claims action against Handford on August 18, 2006. On September 11, 2006, the certified mailing of the notice of claim that had been sent to Handford was returned to the clerk as "unclaimed." App. p. 2. At a September 29, 2006 hearing, the small claims judge entered a $1500 default judgment against Handford. An order to appear was issued for Handford and service of that order was made on Handford by certified mailing October 2, 2006.

Counsel for Handford appeared on February 20, 2007, and filed a motion to set aside the default judgment. The small claims court held a hearing on July 13, 2007. Counsel for Handford argued that service was not proper, and the small claims court did not have personal jurisdiction over Handford at the time it issued the default judgment. The small claims court disagreed and denied the motion to set aside. This appeal followed.

Analysis

We review the denial of a motion to set aside a default judgment for an abuse of discretion. Shane v. Home Depot USA, Inc., 869 N.E.2d 1232, 1234 (Ind. Ct. App.

2007). We keep in mind that default judgments are generally not favored in Indiana, and "[a]ny doubt of the propriety of a default judgment should be resolved in favor of the defaulted party." Id. (citations omitted).

Lawrence did not file an appellee's brief. We do not need to undertake the burden of developing an argument for Lawrence. See Fowler v. Perry, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). When an appellee fails to file a brief, we have long applied a less stringent standard of review with respect to the showing of reversible error. Id. We may reverse the trial court if the appellant is able to establish prima facie error, which is error at first sight, on first appearance, or on the face of it. Id.

At the hearing on the motion to set aside, Handford argued that the small claims court did not have personal jurisdiction over him. The existence of personal jurisdiction over a defendant is a question of law that we review de novo. Thomison v. IK Indy, Inc., 858 N.E.2d 1052, 1055 (Ind. Ct. App. 2006) (citations omitted). Handford argued that the attempt at properly serving him failed. The small claims rules provide that service may be had by sending a copy of the notice of claim by certified mail with return receipt requested, by delivering a copy to defendant personally, or by leaving a copy at the defendant's dwelling, or by any other manner provided in Indiana Trial Rules 4.1 through 4.16. Ind. Small Claims Rule 3(A).

The chronological case summary ("CCS") indicates that service was attempted via certified mail to Handford, but that the return receipt indicated the mailing was "unclaimed." App. p. 2. There is nothing in the CCS or the record before this court to indicate the notice of the claim was left at the address or that Handford was served by

another method outlined in the rules. Essentially, Handford contended then and now on appeal that because the notice and summons were returned "unclaimed" that service was not effected, and the default judgment was void and should be set aside in accordance with Trial Rule 60(B)(6). Yet, the small claims court concluded that proper notice could be assumed because of a later successful mailing. "Certified mail was sent to the same address as the Motion to Appear that he failed to appear on, which was picked up by Bergeta Handford, so the address on the case where we had notice was the same as the case where he didn't bother to pick up the unclaimed. . . . I consider that notice." Tr. p. 3. The small claims court reasoned that because a later notice to appear was signed for at the same address, that the first mailing should be considered adequate notice. We disagree.

Here, the certified mailing sent to Handford was returned as unclaimed. There is nothing in the CCS or the record before this court to indicate Handford was properly served or had notice of the claim prior to the entry of the default judgment. "Unclaimed service is insufficient to establish a reasonable probability that the defendant received adequate notice and to confer personal jurisdiction." King v. United Leasing, Inc., 765 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). The trial court does not have personal jurisdiction over a party if service of process inadequate, and any default judgment rendered without personal jurisdiction is void. Id.

The record does not demonstrate that the small claims court had personal jurisdiction over Handford at the time it issued the $1500 default judgment. As such, the default judgment is void. Under Trial Rule 60(B)(6), Handford's motion to set aside the default should have been granted.

Conclusion

The small claims court erred when it denied Handford's motion to set aside the default judgment. We reverse.

Reversed.

SHARPNACK, J., and VAIDIK, J., concur.