

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

United Bank & Trust

Court of Appeals No. WD-05-074

Appellee

Trial Court No. 05-CV-331

v.

Jacob Kaufman, d/b/a
Kaufman Concrete

DECISION AND JUDGMENT ENTRY

Appellant

Decided: May 12, 2006

* * * * *

C. Philip Baither III, for appellee.

Albert L. Potter II, for appellant.

* * * * *

SKOW, J.

{¶ 1} Appellant, Jacob Kaufman, d/b/a Kaufman Concrete, appeals from a default judgment entered by the Wood County Court of Common Pleas in favor of appellee, United Bank & Trust. For the reasons that follow, we affirm the judgment of the trial court.

{¶ 2} On May 9, 2005, United Bank & Trust filed a complaint alleging that it had been damaged by Kaufman's failure to comply with the terms of a commercial security agreement. Kaufman accepted service on the complaint on or about May 12, 2005.

{¶ 3} On June 20, 2005, Kaufman filed a motion for the extension of time to file his answer to the complaint. That same day, United Bank & Trust filed a motion for default judgment. On June 28, 2005, the trial court denied Kaufman's motion.

{¶ 4} Approximately one month later, on July 27, 2005, Kaufman filed a motion for leave to file his answer. In an affidavit attached to this motion, Kaufman stated that he had never been a defendant in a civil action and was not aware that he was required to file an answer within 28 days after receiving the complaint. He further stated that he had never done business with United Bank & Trust and could not understand why he was required to do anything to defend himself. In addition, he stated that he had failed to timely receive a letter from his (then future) attorney advising him of the upcoming answer date.

{¶ 5} On August 31, 2005, the trial court issued an order denying Kaufman's motion on the grounds that Kaufman had failed to establish "excusable neglect." Also that day, the trial court issued an order and judgment entry granting default judgment in favor of United Bank & Trust and against Kaufman. Kaufman timely appealed this judgment entry, presenting the following as his sole assignment of error:

{¶ 6} I. "THE DENIAL BY THE TRIAL COURT IN NOT PERMITTING THE APPELLANT TO ANSWER THE COMPLAINT CONSTITUTED AN ABUSE OF DISCRETION."

{¶ 7} Kaufman argues that the trial court abused its discretion both when it denied his motion for an extension of time to answer the complaint and when it denied his motion for leave to file an answer. We are guided in our examination of these issues by Civ.R. 6(B), which relevantly provides: "When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect * * *." Because both of Kaufman's motions were filed after the expiration of the 28-day answer period, only Civ.R. 6(B)(2), and not Civ.R. 6(B)(1), is applicable herein.

{¶ 8} A motion filed pursuant to Civ.R. 6(B)(2) "is addressed to the sound discretion of the trial court and will not be disturbed upon appeal absent a showing of abuse of discretion." *Marion Production Credit Assn. v. Cochran* (1988), 40 Ohio St.3d 265, 271, citing *Miller v. Lint* (1980), 62 Ohio St.2d 209, 214; *Evans v. Chapman* (1986), 28 Ohio St.3d 132, 135; see also, *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs.* (1995), 72 Ohio St.3d 464, 465; *Duffy v. Nourse Family of Dealerships --*

Chillicothe, Inc., 4th Dist. No. 05CA2846, 2006-Ohio-2057, at ¶ 10. An abuse of discretion suggests more than an error of law or judgment, and implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219; *Lindenschmidt* at 465; *Duffy* at ¶ 10.

{¶ 9} In order for the trial court to properly grant a motion for an extension of time pursuant to Civ.R. 6(B)(2), there must be some showing of excusable neglect. *Miller* at 214. Whether neglect was excusable or inexcusable depends upon the surrounding facts and circumstances. *Marion Production*, supra, at 27.

{¶ 10} We begin by considering Kaufman's motion for extension of time, filed on June 20, 2005. Notably, it was filed without any showing of excusable neglect. Therefore, the trial court had no choice but to deny the motion and, in doing so, clearly did not commit error. See Civ.R. 6(B)(2); *Miller*, supra, at 214.

{¶ 11} Next, we consider the later-filed motion for leave to file an answer, wherein Kaufman stated, by way of an attached affidavit, that he had never been a defendant in a civil action; that he was unaware of why he was being sued; that he was unaware that he was required to do anything to defend himself; and that he had failed to receive a letter from his (then prospective) attorney advising him of the upcoming answer date.

{¶ 12} As recognized by the trial court, ignorance of legal requirements or inexperience with legal matters does not constitute excusable neglect. See *Buckeye Supply Co. v. Northeast Drilling Co.* (1985), 24 Ohio App.3d 134, 137; *Suburban Builders Supply Co. v. Lachman* (Jan. 4, 1996), 8th Dist. No. 68880.

{¶ 13} The trial court noted in its August 31, 2005 order that the summons on complaint specifically stated Kaufman's obligation to serve an answer within 28 days. In addition, the trial court found that the language of the complaint told a "straightforward story," and that Kaufman's claim that he lacked understanding as to why he was required to defend himself was not credible.

{¶ 14} Applying the law to the facts of this case, we find that the trial court properly considered all of the surrounding facts and circumstances, and properly concluded, on the basis of those facts and circumstances, that Kaufman failed to establish excusable neglect. There was no abuse of discretion on the part of the trial court. (We note, however, that had the decision been converse, it likely would have been affirmed, also.) Accordingly, Kaufman's assignment of error is found not well-taken.

{¶ 15} The judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Wood County.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

JUDGE

William J. Skow, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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