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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001542-MR
AND
NO. 2016-CA-001609-MR

HP HOTEL MANAGEMENT, INC.; AND
CAMPBELL FAYETTE LLC, D/B/A
THE CAMPBELL HOUSE — APPELLANTS

v.

APPEALS FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 15-CI-03987

LELA LAYNE — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, J. LAMBERT, AND NICKELL, JUDGES.

LAMBERT, J., JUDGE: HP Hotel Management, Inc., and Campbell Fayette LLC d/b/a The Campbell House have appealed from the orders of the Fayette Circuit

Court denying their motions to set aside the default judgment entered in favor of Lela Layne in her personal injury suit. We reverse and remand.

Campbell Fayette is a foreign limited liability company that does business as The Campbell House. The Campbell House is a hotel located on South Broadway in Lexington, Kentucky. HP Hotel Management is a foreign corporation doing business in Fayette County, Kentucky, and is a hotel management company that oversees operations of The Campbell House. Layne was a guest of The Campbell House on October 31, 2014, when she was injured in a trip and fall in the entranceway of the establishment.

On October 30, 2015, Layne filed a complaint in the Fayette Circuit Court seeking damages for personal injuries she sustained in the fall. She alleged that her fall was "due to an inadequately and/or un-marked step and inadequate lighting along the path of the hotel entranceway" and that the defendants failed to maintain the premises in a reasonably safe condition or warn her of the unsafe condition. She requested service of process upon the defendants' registered agents, CT Corporation System for Campbell Fayette and CSC Lawyer's Incorporating Service Company for HP Hotel Management, through the Kentucky Secretary of State as the statutory agent.

The circuit clerk's office sent the civil summons to the Secretary of State via certified mail. By memorandum dated November 16, 2015, the Summons

Division of the Office of the Secretary of State indicated that it had been served with a summons and other documents for CSC Lawyer's Incorporating Service Company (the registered agent for HP Hotel Management), that it had sent a copy of the summons and documents to that entity via certified mail, return receipt requested, on November 3, 2015, and that the United States Postal Service provided a scanned image of the return receipt received on November 9, 2015, and signed by Linda A. Smith confirming receipt of the summons.[1] In a separate memorandum dated December 21, 2015, the Summons Division indicated that it had also served Campbell Fayette by sending a copy of the summons and documents via certified mail, return receipt requested, on November 5, 2015. However, the office never received the postal return receipt card or the undelivered letter.

Almost nine months later, on June 24, 2016, Layne filed a motion for default judgment pursuant to Kentucky Rules of Civil Procedure (CR) 55.01 against both defendants. Because neither defendant had answered her complaint after having been served by the Office of the Secretary of State via their registered agents, Layne asserted that she was entitled to a judgment by default and a determination of damages to which she was entitled. She did not serve either

[1] The certified mail green card for HP Hotel Management was returned to the clerk's office on November 5, 2015, showing it was received by Brian Howard on November 3, 2015.

defendant with the motion, and the court held a hearing on July 22, 2016.[2] On August 22, 2016, Layne filed a motion for a hearing on damages and noticed the motion to be heard on September 2, 2016. Unlike with the motion for default judgment, Layne served both defendants via the Office of the Secretary of State through their registered agents with a copy of this motion.[3] At the conclusion of the hearing, the court found that Layne was entitled to $75,000.00 in damages as she requested.

On September 16, 2016, the court entered a default judgment, finding that both defendants had been duly served with the complaint and had failed to defend against it. The court awarded Layne $35,458.92 for past medical expenses; $2,229.00 for future medical expenses; $3,500.00 in lost wages; and $33,812.08 for pain and suffering.

After the judgment was entered, the court received a notification from the Summons Division dated September 12, 2016, that Campbell Fayette had been served on August 30, 2016, with the motion for a hearing and that it had been delivered on September 7, 2016. It was signed for by Christian Bast.

[2] The recording of this hearing was not certified as part of the video record on appeal, although the defendants designated it to be included.

[3] The clerk's office received the certified mail green cards from HP Hotel Management on August 26, 2016 (signed by Brian Howard on August 25, 2016) and from Campbell Fayette on August 29, 2016 (signed by Walter [last name illegible] from the Department of Revenue on August 26, 2015).

On September 26, 2016, HP Hotel Management filed a CR 59.05 motion for relief from the default judgment. In support, HP Hotel Management stated that it was not properly served with process because the person served with the complaint and summons in August 2016 (Brian Howard) was not an employee or a registered agent of HP Hotel Management; it was improperly served through the Secretary of State rather than through its registered agent; neither HP Hotel Management nor its registered agent received timely, written notice of Layne's motions for a default judgment and for a damages hearing; and Layne's motion for a default judgment was filed and granted before HP Hotel Management was served with process, thereby violating CR 12.01 and CR 55.01. HP Hotel Management reminded the court that default judgments are disfavored by Kentucky law when no prejudice would result otherwise. HP Hotel Management also stated that its current registered agent authorized to receive and accept service of process in Kentucky was Corporation Service Company, as reflected in a Statement of Change of Registered Agent dated October 27, 2015.

HP Hotel Management went on to argue that Layne had improperly served her summons and complaint on it via the Secretary of State rather than its registered agent, citing Kentucky Revised Statutes (KRS) 14A.4-040, which under subsection (1) provides that "[a]n entity's or foreign entity's registered agent shall be its agent for service of process, notice, or demand required or permitted by law

to be served on the entity or foreign entity." Layne had improperly served her summons and complaint on HP Hotel Management by serving it through the Secretary of State rather than its registered agent. The Secretary of State mailed the motion for a damages hearing to its registered agent on September 1, 2016, and HP Hotel Management found out about the lawsuit when it was served with that motion, after the September 2, 2016, hearing on the motion. HP Hotel Management again argued that it had been improperly served through the Secretary of State rather than through its registered agent. HP Hotel Management argued that Layne would not be prejudiced by setting aside the default judgment as HP Hotel Management had not substantially delayed the litigation, stating that it entered an appearance 31 days after being served. HP Hotel Management also argued that it would be presenting a meritorious defense in arguing that Layne's fall was caused by her own contributory negligence because she was using her phone at the time she fell. Because it had established good cause through a valid excuse for its failure to answer, the absence of prejudice to Layne, and a meritorious defense, HP Hotel Management argued that the circuit court should vacate the default judgment and that the case should be decided on the merits.

On September 30, 2016, the court heard arguments from counsel for HP Hotel Management on its motion for CR 59.05 relief. HP Hotel Management argued that there were issues with service because the complaint was not served on

the registered agent and that service was not effectuated until August 26, 2016. Layne explained that the August 26, 2016, service was of the motion for a damages hearing. The court permitted Layne to file a response and redocketed the hearing for a later date.

The court held a second hearing on October 7, 2016. Layne filed a written response during the hearing. In her written response, Layne argued that HP Hotel Management had been properly served through the Secretary of State, pursuant to Kentucky's long-arm statute, KRS 454.210, who would then serve the registered agents for both defendants. She argued that actual notice of a lawsuit is not a prerequisite for personal jurisdiction when service is effectuated through the Secretary of State pursuant to that statute. She also argued that she would be prejudiced if the default judgment were to be vacated based on the amount of medical bills she had accrued. During the hearing, the parties discussed the registered agent issue and how and when the summons and complaint were served. While HP Hotel Management conceded that it remained in default because it had not yet filed an answer to Layne's complaint, it said it had only been in default for no longer than twenty-one days and that it was ready to defend against the lawsuit. Layne continued to argue that actual notice was not required. The court discussed the fact that it had questioned at the prior hearing why the defendants had not responded to the complaint, which was the reason it directed Layne to re-serve the

defendants with notice of the damages hearing to permit them to appear and ask for more time to answer the complaint. That did not happen, and neither defendant appeared at the damages hearing, leading to the entry of the default judgment after hearing testimony on damages. The court did not believe HP Hotel Management's pleadings were entirely accurate and did not find a sufficient basis to vacate the default judgment. Accordingly, the court orally denied HP Hotel Management's motion at the conclusion of the parties' arguments.

Campbell Fayette, in a separate motion filed October 10, 2016, moved for relief from the default judgment pursuant to CR 59.05 and CR 60.02, also stating that it had never received the summons or complaint and, therefore, it had never received actual notice of the lawsuit. Campbell Fayette indicated that it was the former owner of The Campbell House, having sold it on October 16, 2015. It did not become aware of the lawsuit until the date it filed its motion for relief. It also pointed out that the memorandum from the Office of the Secretary of State provided that it had not received the postal return receipt card or the undelivered letter, which contained the summons and complaint. Because the property had been sold two weeks before the complaint was filed, Campbell Fayette suggested that the complaint might instead have been received by the new owner of The Campbell House. Campbell Fayette went on to argue that there was no prejudice to the other parties because it had just become aware of the lawsuit and that it was

prepared to present a meritorious defense against Layne's claims. Layne also objected to Campbell Fayette's motion, arguing that it had received sufficient notice of her complaint. Pursuant to KRS 454.210, the summons was deemed to have been served upon the date of the memorandum from the Secretary of State that it had not received the postal return receipt card or the undelivered letter. She argued that possible receipt of the summons and complaint by the new owner of the property was not good cause to set aside a default judgment.

The court heard arguments on Campbell Fayette's motion for relief on October 14, 2016. Campbell Fayette argued that although service was done through the Secretary of State, it did not receive notice of the lawsuit. Counsel for Campbell Fayette found out about Layne's lawsuit from counsel for HP Hotel Management at a hearing in a separate suit at the end of September. Counsel contacted the insurance company to notify it, and she was retained October 7, 2016, at a time she was out of the office. Counsel stated she filed the motion for relief on the day she spoke with her client. Layne continued to argue that lack of actual notice, by itself, did not constitute excusable neglect and that Campbell Fayette failed to produce evidence to demonstrate the fault for this was attributable to Layne, the Office of the Secretary of State, or the United States Postal Service. By statute, Campbell Fayette was deemed to have notice. The court, as with HP

Hotel Management's motion, found that service was proper and denied Campbell Fayette's motion for relief.

On October 25, 2016, the circuit court denied HP Hotel Management's and Campbell Fayette's respective motions for relief by separate orders. On October 14, 2016, prior to the entry of the final and appealable order denying its motion for CR 59.05 relief, HP Hotel Management filed a notice of appeal from the September 16, 2016, default judgment, which it stated was affirmed on October 7, 2016.[4] Campbell Fayette filed a separate notice of appeal on October 27, 2016, from the October 25, 2016, order denying its motion for relief. These consolidated appeals now follow.[5]

On appeal, Campbell Fayette and HP Hotel Management (collectively, "the appellants") continue to argue that they are entitled to relief from the default judgment pursuant to CR 55.02 and CR 60.02 and that it was an abuse of discretion for the circuit court to deny their motions below. In *First*

[4] The record does not contain an order entered October 7, 2016, which was the date of the hearing on HP Hotel Management's motion.

[5] After the appeals were filed, and on motion by Campbell Fayette, this Court realigned the parties to reflect that Campbell Fayette was a co-appellant in appeal No. 2016-CA-001542-MR rather than an appellee and permitted the substitution of counsel to reflect that the attorneys representing Campbell Fayette would also be representing HP Hotel Management in the appeal. Pursuant to a contractual agreement between Campbell Fayette and HP Hotel Management, Campbell Fayette had assumed the defense of HP Hotel Management in this matter. The two appeals were later consolidated for all purposes pursuant to the Prehearing Conference Order.

Horizon Home Loan Corp. v. Barbanel, 290 S.W.3d 686, 688 (Ky. App. 2009), this Court set forth the applicable standard of review in such appeals:

> A trial court has broad discretion when it comes to default judgments, and we will not disturb a default judgment unless the trial court abused that broad discretion. *S.R. Blanton Development, Inc. v. Investors Realty and Management Co., Inc.*, 819 S.W.2d 727, 730 (Ky. App. 1991). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007).

CR 60.02 provides that a court may grant a party relief from a final judgment upon one of several listed grounds, including mistake, newly discovered evidence, perjury, fraud, a void judgment, or for "any other reason of an extraordinary nature justifying relief." CR. 60.02(f). Under that subsection, "a judgment may be set aside for a reason of an extraordinary nature justifying relief from the operation of the judgment. However, because of the desirability of according finality to judgments, this clause must be invoked only with extreme caution, and only under most unusual circumstances." *Cawood v. Cawood*, 329 S.W.2d 569, 571 (Ky. 1959). The rule provides that a CR 60.02(f) motion "shall be made within a reasonable time[.]"

CR 55.02 provides that "[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02." We agree with the appellants that default judgments are not favored in Kentucky. *See Childress v.*

Childress, 335 S.W.2d 351, 354 (Ky. 1960) ("Since every cause of action should be tried upon the merits, the rendering of judgments by default ought to be withheld where seasonable objection is made unless a persuasive reason to the contrary is submitted."); *Dressler v. Barlow*, 729 S.W.2d 464, 465 (Ky. App. 1987) ("[D]efault judgments are not looked upon with favor as it is the policy of the law to have every case decided on its merits.").

The appellants have set forth two arguments to establish that there was good cause for the circuit court to vacate the default judgments entered against them. First, they rely upon the holding of the former Court of Appeals in *Educator & Executive Insurers, Inc. v. Moore*, 505 S.W.2d 176, 177 (Ky. 1974):

> In *Fortney v. Mahan*, Ky., 302 S.W.2d 842 (1957), this court said, 'On motion, the court is empowered to relieve a party from a final judgment under certain extraordinary circumstances and upon such terms as it deems just. 60.02 addresses itself to the sound discretion of the trial court. . . . Two of the factors to be considered by the trial court in exercising its discretion are whether the movant had a fair opportunity to present his claim at the trial on the merits and whether the granting of the relief sought would be inequitable to the other parties.'

The appellants argue that they did not have a "fair opportunity" to present their defenses to Layne's lawsuit because they did not receive actual notice of the action until after the default judgment had been entered. They point out that Layne sought service on both defendants through the Office of the Secretary of State rather than through the foreign companies' registered agents. Campbell Fayette

never received the summons or complaint and learned of Layne's suit only after the default judgment was entered. And while the record indicates that HP Hotel Management received the summons on August 26, 2016, it was signed for by a person who was not an employee or a registered agent. Once they learned of the existence of the lawsuit and the default judgment, both appellants filed motions to set the judgment aside.

In response, Layne points out that both defendants, as foreign entities doing business in Kentucky, were served under Kentucky's long-arm statute, KRS 454.210, through the Office of the Secretary of State. That statute provides, in relevant part, as follows:

> (3) (a) When personal jurisdiction is authorized by this section, service of process may be made on such person, or any agent of such person, in any county in this Commonwealth, where he may be found, or on the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of such person.
>
> (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons either by:
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> > 1. Sending by certified mail two (2) true copies to the Secretary of State and shall also mail with the summons two (2) attested copies of plaintiff's complaint; or
> >
> > 2. Transmitting an electronically attested copy of the complaint and summons to the

> Secretary of State via the Kentucky Court of Justice electronic filing system.
>
> (c) The Secretary of State shall, within seven (7) days of receipt thereof in his office, mail a copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The clerk shall make the usual return to the court, and in addition the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.

Layne states, correctly, that actual notice of the lawsuit is not required to effectuate service as long as it is done in compliance with the applicable statute. *See Cox v. Rueff Lighting Co.*, 589 S.W.2d 606, 607 (Ky. App. 1979). However, the Court in *Cox* went on to state that "[a]ccepting that in personam jurisdiction can be acquired without actual notice to a defendant does not a fortiori create a rule that a showing of no actual notice may not constitute good cause sufficient to warrant the setting aside of a default judgment. The facts and circumstances of each individual case should be weighed." *Id.*

With the above arguments in mind, we shall turn to the appellants' second argument addressing the three-factor analysis used to determine whether good cause has been shown to set aside a default judgment. In *Barbanel*, 290 S.W.3d at 688-89, this Court explained the analysis as follows:

> According to CR 55.02, if a defaulting party demonstrates good cause, a trial court may set aside a default judgment providing said good cause meets the requirements set forth in CR 60.02. To show good cause, and thereby justify vacating a default judgment, the defaulting party must: (1) provide the trial court with a valid excuse for the default; (2) demonstrate a meritorious defense; and (3) show the absence of prejudice to the non-defaulting party. *Perry v. Central Bank & Trust Co.*, 812 S.W.2d 166, 170 (Ky. App. 1991), *citing* 7 W. Bertelsman and K. Philipps, Kentucky Practice, CR 55.02, comment 2 (4th ed. 1984). "All three elements must be present to set aside a default judgment." *S.R. Blanton Development, Inc.* at 729. [Footnote omitted.]

See also PNC Bank, N.A. v. Citizens Bank of Northern Kentucky, Inc., 139 S.W.3d 527 (Ky. App. 2003). The appellants argue that they have demonstrated all three factors, while Layne argues that they failed to establish a valid excuse for the default.

At the outset, we agree with the appellants that they have successfully established the second and third factors.[6] In *Thompson v. American Home Assur. Co.*, 95 F.3d 429, 433-34 (6th Cir. 1996), the Sixth Circuit Court of Appeals described the prejudice element:

> [F]or the setting aside of a default judgment to be considered prejudicial, it must result in more than delay. Rather, the delay must result in tangible harm such as loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.

[6] Layne did not respond to these arguments in her appellate brief.

Layne's argument below that she would be prejudiced because of the amount of medical bills incurred is immaterial as to whether she would suffer any prejudice. And the appellants have identified a defense to Layne's suit based upon the incident reports indicating that she had been walking and texting on her mobile phone when she fell and that there were witnesses who saw this.

At issue is the first prong; namely, whether the appellants had a valid excuse for the default. The appellants cite to three federal cases in support of their argument that their failure to receive notice was not culpable conduct but, rather, amounted to excusable neglect. In a decision not selected for publication, the Sixth Circuit Court of Appeals stated:

> In the context of a Rule 55(c) motion, it is not absolutely necessary that the neglect or oversight offered as reason for the delay in filing a responsive pleading be excusable. Instead, for a defendant's actions to constitute culpable conduct, the defendant must display either an intent to thwart judicial proceedings or a reckless disregard for the effect of its conduct on those proceedings, rather than negligent conduct.

Krowtoh II LLC v. ExCelsius Intern. Ltd, 330 Fed. Appx. 530, 536 (6th Cir. 2009) (internal citations and quotation marks omitted). The appellants contend that because they did not have actual knowledge of Layne's lawsuit until after the default judgment had been entered, their conduct could not be described as culpable.

Even if their conduct could be construed as culpable, the appellants argue that they are still entitled to have the default judgment set aside based upon the other two factors. In *Shepard Claims Service, Inc. v. William Darrah & Assoc.*, 796 F.2d 190, 194 (6th Cir. 1986), the Sixth Circuit Court of Appeals stated:

> All three factors must be considered in ruling on a motion to set aside entry of default. However, when the first two factors militate in favor of setting aside the entry, it is an abuse of discretion for a district court to deny a Rule 55(c) motion in the absence of a willful failure of the moving party to appear and plead.

In *Berthelsen v. Kane*, 907 F.2d 617, 622 (6th Cir. 1990), the Sixth Circuit Court of Appeals set aside a default judgment, despite its conclusion that the defendant's behavior was culpable related to service of process, and held that "the defendant's culpability is only one of three factors which the court must consider when determining whether good cause exists to set aside the entry of default." Finally, the Court in *Krowtoh II* relied upon its holding in *Shepard Claims Serv., Inc.*, *supra*, and observed that under the Federal Rules, it would be an abuse of discretion to deny a Rule 55(c) motion absent a willful failure to appear when the moving party has established a meritorious defense and no prejudice would result to the plaintiff. *Krowtoh II*, 330 Fed. Appx. at 535. Accordingly, the appellants contend that the circuit court abused its discretion in failing to set aside the default judgment.

In her response, Layne continues to argue that lack of actual notice, by itself, does not demonstrate excusable neglect. Layne relies on *Cox v. Rueff Lighting Co.*, *supra*, to support her position. Layne also appears to rely upon the reasoning of this Court's unpublished opinion in *Bradford White Corp. v. Kentucky Farm Bureau Mut. Ins. Co.*, 2013-CA-001549-MR, 2014 WL 3722240, at *2 (Ky. App. July 25, 2014):[7]

> Bradford White only argues that its lack of actual notice demonstrated excusable neglect, which, in turn, should have warranted setting the default judgment aside. In this vein, Bradford White relies heavily upon the following quote from *Cox v. Rueff Lighting Co.*, 589 S.W.2d 606, 607 (Ky. App. 1979):
>
> > Accepting that in personam jurisdiction can be acquired without actual notice to a defendant does not a fortiori create a rule that a showing of no actual notice may not constitute good cause sufficient to warrant the setting aside of a default judgment. The facts and circumstances of each individual case should be weighed. We think that in a case such as the instant one which is a simple one-on-one action for debt, a trial judge would be hard pressed to refuse to set aside a default judgment if he were truly convinced that the movant had no actual notice in fact and was possessed of an arguably meritorious defense.

[7] We cite this case pursuant to CR 76.28(4)(c): "Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after January 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court."

> The problem with Bradford White's argument, however, is it assumes that lack of actual notice, by itself, demonstrates excusable neglect. It does not. To the contrary, the dispositive inquiry is *why* there was no actual notice. In *Cox*, for example, the defendant ultimately did not have a default judgment set aside because, even assuming that he did not have actual notice of the lawsuit filed against him, evidence nevertheless supported that his lack of actual notice had resulted from his "fail[ure] to take available steps which could have protected his interests[.]" *Id*. at 607. There, the defendant had ignored what had at least amounted to inquiry notice about the lawsuit.

Finally, Layne argues that the appellants have not overcome the rebuttable presumption that the mailed notices had been received, citing *Goodin v. General Acc. Fire & Life Assur. Corp.*, 450 S.W.2d 252, 255 (Ky. 1970) ("[P]roof of mailing from the office of the insurer is sufficient to sustain a finding that the notice was effective without proof that such notice was received by the insured and even though the insured denies receipt of the communication" if the insurance contract contains this standard provision related to cancellation notices.).

Considering the circumstances of this case, we hold that the circuit court abused its discretion in denying the appellants' motions to set aside the default judgment. Neither appellant acted culpably with regard to service of the summons and complaint, and both acted almost immediately upon learning of the entry of the default judgment. There are certainly problems evident with regard to service in this action. Layne did not attempt to serve the appellants either through

their respective registered agent or through the Secretary of State pursuant to the long-arm statute pursuant to KRS 454.210; rather, she sought service of the registered agents through the Secretary of State. The only return related to Campbell Fayette stated that the Office of the Secretary of State had not received the postal return receipt card or the undelivered letter, and HP Hotel Management did not receive notice until late August of 2016, but the summons was signed for by a person who was not an employee or registered agent of the company. In addition, the circuit court questioned the lack of response from either appellant during the hearing on the motion for default judgment. This Court is well aware that under the long-arm statute, actual notice is not required. But recognizing that default judgments are not favored and under these specific circumstances in which the appellants have established actual lack of notice, late notice, or problems with service, coupled with the lack of prejudice and the existence of a meritorious defense, we must hold that the circuit court abused its discretion in failing to set aside the default judgment. The appellants should have been afforded the opportunity to defend against Layne's claims on the merits.

For the foregoing reasons, the orders of the Fayette Circuit Court denying the motions to set aside the default judgment are reversed, the default judgment is set aside, and this matter is remanded for litigation on the merits.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

Jane C. Higgins
Sarah E. Noble
Lexington, Kentucky

BRIEF FOR APPELLEE:

Brandis Bradley
Pikeville, Kentucky