IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA

MICHAEL BENTO,

Appellant,

v.

JIM'S PLUMBING & IRRIGATION, INC.,

Appellee.
_____/

CASE NO. CVA1 07-23
County Court Case No. 06-CC-8055

Appeal from the County Court,
for Orange County,
C. Jeffery Arnold, County Judge.

Michael Bento, Pro Se,
for Appellant.

Christopher H. Morrison, Esquire,
for Appellee.

BEFORE POWELL, RODRIGUEZ, LUBET, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING TRIAL COURT

Appellant Michael Bento timely appeals the trial court's Order Denying Defendant's Motion to Vacate Final Judgment, entered on March 1, 2007. The final judgment awarded Appellee Jim's Plumbing & Irrigation, Inc., monetary damages, prejudgment interest, attorney's fees and costs. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A).

Appellant's motion to vacate final judgment is governed by Rule 1.540(b), Florida Rules of Civil Procedure, which provides in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . The motion shall be filed within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment . . . was entered or taken.

We find that Appellant diligently and timely filed his motion to vacate final judgment. For purposes of this appeal, we assume that Appellate recited a meritorious defense in his motion to vacate final judgment. The issue on appeal is whether the trial court entered the final judgment by mistake, inadvertence, or excusable neglect on the part of Appellant, the clerk, or the trial court. We answer this question in the negative and affirm.

Rule 1.540(b), Florida Rules of Civil Procedure, does not specify what circumstances constitute mistake, inadvertence, or excusable neglect. The court must consider the specific facts and circumstances of each case on an individual basis. See Edwards v. City of Ft. Walton Beach, 271 So. 2d 136, 137 (Fla. 1972). The duty to determine what circumstances are sufficient rests within the broad discretion of the trial court, not the appellate court. Farish v. Lum's, Inc., 267 So. 2d 325, 328 (Fla. 1972). The lower court's ruling on such a motion can only be reversed by a showing of gross abuse of discretion. See Chamberlin v. Mid-Century Ins. Co., 350 So. 2d 364 (Fla. 2d DCA 1977); Randle Eastern Ambulance Service, Inc. v. Vasta, 345 So. 2d 1084 (Fla. 3d DCA 1977).

At best, we can decipher from Appellant's lengthy, rambling, prolix briefs, the main thrust of his argument is two-fold: (1) the trial court committed a mistake or error in hearing a case not within its monetary jurisdiction and (2) the trial court or clerk made a mistake by not recognizing defendant's timely filed answer and, thus, the clerk's default was wrongfully entered.

The Court's Monetary Jurisdiction

Appellant, Appellee, and the trial court, all recognized that this case was filed in the Civil Division of the County Court, not the Small Claims Division, and proceeded accordingly. The jurisdiction of the Civil Division of the County Court, where the claim is for money damages, is up to $15,000, exclusive of attorney's fees, interest, and costs. It is the amount demanded in the claim or counter-claim which governs jurisdiction and, even if, the amount of damages actually proven at trial exceeds $15,000, the amount of the judgment cannot exceed $15,000. In the case at hand, the trial court entered judgment for monetary damages in the amount of $2,366, well below its jurisdictional limit.

The Clerk's Default

The case was filed under the Rules of Civil Procedure in the Civil Division of the County Court. Appellant was served with a summons and a copy of the complaint on July 3, 2006. Under Rule 1.140(a), Florida Rules of Civil Procedure, Appellant had twenty (20) days to file an answer or other responsive pleading. The clerk's default was not entered until July 25, 2006, some 23 days after Appellant was served.

Contrary to Appellant's argument, he did not file an answer or other responsive pleading with the clerk. In fact, Appellant did not file any legal paper with the clerk in those 23 days before default was entered. Rule 1.080(d) and (e), Florida Rules of Civil Procedure, requires that all papers be filed with the court, that is, filing with the clerk or the judge of the court where the action was commenced or transferred to. "Filing" means hand delivery, courier delivery, or mailing via the United States Postal Service with proper postage in a properly addressed envelope. Appellant asserts that he faxed a paper to the clerk on July 19, 2006, before the

requisite twenty (20) day period elapsed.[1] However, faxing a paper to the clerk is not authorized by law. Simply put, faxing is not the equivalent of filing a paper with the clerk. The clerk was correct in entering the default and there was no mistake on part of the trial court in considering the default.

We have considered Appellant's other arguments and find them to be without merit. Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's Order Denying Defendant's Motion to Vacate Final Judgment is **AFFIRMED**; Appellee's Motion for Attorney's Fees on Appeal is **GRANTED**, the assessment of which is **REMANDED** to the trial court; and this case is **REMANDED** to the trial court for further proceedings consistent with this opinion.

DONE and ORDERED at Orlando, Florida this _7____day _____October_____, 2009.

_____/s/_____
ROM W. POWELL
Senior Judge

_____/s/_____
JOSE R. RODRIGUEZ
Circuit Judge

_____/s/_____
MARC L. LUBET
Circuit Judge

[1] Curiously, we are unable to find a copy of the fax anywhere in the clerk's record on appeal, Appellant's brief, the appendix to Appellant's brief, or anywhere else. A copy of the fax would have shown the text, the date it was sent, and in most cases, a confirmation of the time it was received.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing order was furnished via U.S. mail on this 7 day of October, 2009, to the following: **Michael Bento**, 312 South Lawsona Blvd., Orlando, Florida 32801 and **Christopher H. Morrison, Esq.,** Pratt & Morrison, 1215 Louisiana Ave.,, Suite 200, Winter Park, Florida 32789.

/s/
Judicial Assistant