



Allied Products Corp. v. Thomas

2005 | Cited 0 times | Court of Civil Appeals of Alabama | December 23, 2005

Allied Products Corporation ("Allied Products") appeals from the denial of its motion for relief from a default judgment entered in favor of Eddie W. Thomas against "Bush Hog, a Division of Allied Products Corporation." We affirm.

On July 29, 2002, Thomas filed a workers' compensation complaint against "Bush-Hog, L.L.C., a Division of Crown Consolidated Industries" ("Bush Hog, L.L.C.--Crown"). Thomas's complaint alleged that he had been injured in an accident while working for Bush Hog, L.L.C.--Crown in September 1997. Thomas served process on Bush Hog, L.L.C.--Crown at 2501 Griffin Avenue in Selma, Alabama. On August 12, 2002, Bush Hog, L.L.C.--Crown filed a motion to dismiss along with the supporting affidavit of David Middlebrooks, the director of human resources for Bush Hog, L.L.C.--Crown. The affidavit stated that the "Bush Hog Division of Allied Products Corporation," not "Bush Hog, L.L.C., a Division of Crown Consolidated Industries," was Thomas's employer at the time of his accident in 1997. According to the affidavit, Allied Products sold the assets of the "Bush Hog Division of Allied Products Corporation" to Crown Consolidated Industries in March 2000 but Allied Products retained the liabilities of the "Bush Hog Division of Allied Products Corporation," including its liability for pending workers' compensation claims. The motion to dismiss therefore claimed that Bush Hog, L.L.C.--Crown was not the proper party in the action and should be dismissed. The motion alleged that the "Bush Hog Division of Allied Products Corporation" was Thomas's employer at the time of the accident, implying that that entity would be a proper defendant in Thomas's action. The trial court granted the motion to dismiss on September 23, 2002.

On September 30, 2002, Thomas filed a motion to amend his complaint to add the "Bush Hog Division of Allied Products Corporation" as a defendant. The trial court granted the motion and directed Thomas to perfect service. On December 11, 2002, Thomas served the "Bush Hog Division of Allied Products Corporation" "c/o David Middlebrooks" at the same address that he had served Bush Hog, L.L.C.--Crown. The "Bush Hog Division of Allied Products Corporation" did not answer or otherwise defend in the action. On February 20, 2004, the trial court entered a default judgment in favor of Thomas against "Bush Hog, a Division of Allied Products Corporation."

On January 5, 2005, Allied Products filed a motion to set aside the default judgment. In its motion, Allied Products alleged that the default judgment had been entered against it and that the default judgment was void because, Allied Products said, it had not been served with process. Allied Products characterized the service on the "Bush Hog Division of Allied Products Corporation" on December 11, 2002, as a failed attempt to serve Allied Products. Following a hearing, the trial court denied Allied Products' motion to set aside the default judgment.



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On appeal, Allied Products makes two arguments. First, Allied Products argues that, because it was not served, the default judgment should have been set aside as void for lack of jurisdiction. Second, Allied Products argues that, even if the default judgment is not void, the default judgment should have been set aside by the trial court under the analysis set out in *Kirtland v. Fort Morgan Authority Sewer Service, Inc.*, 524 So. 2d 600 (Ala. 1988).

However, we must affirm the trial court's denial of Allied Products' motion to set aside the default judgment without reaching either of Allied Products' arguments because Allied Products failed to introduce sufficient evidence to establish that it had standing to move the trial court to set aside the default judgment pursuant to Rule 60, Ala. R. Civ. P. Rule 60 (b) provides that "[o]n motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment" (Emphasis added.) In the case now before us, the evidence in the record on appeal does not reveal whether the "Bush Hog Division of Allied Products Corporation" is merely a trade name that refers to a part of Allied Products itself or whether it is an entity with a legal existence separate from Allied Products, i.e., a corporation or a limited liability company owned by Allied Products. If the "Bush Hog Division of Allied Products Corporation" is merely a trade name that refers to a part of Allied Products, Allied Products is the party against whom the judgment was entered, and it had standing to move the trial court to set aside the default judgment pursuant to Rule 60. However, if the "Bush Hog Division of Allied Products Corporation" is a separate entity owned by Allied Products, then Allied Products may or may not be the "legal representative" of the "Bush Hog Division of Allied Products Corporation" under Rule 60 depending upon facts that are not in evidence. See *Kem Mfg. Corp. v. Wilder*, 817 F.2d 1517, 1520 (11th Cir. 1987) ("The cases make clear that the term legal representative [in Rule 60(b), Fed. R. Civ. P.,] was intended to reach only those individuals who were in a position tantamount to that of a party or whose legal rights were otherwise so intimately bound up with the parties that their rights were directly affected by the final judgment.").¹ If the "Bush Hog Division of Allied Products Corporation" is a separate entity owned by Allied Products, and if Allied Products is its legal representative under Rule 60, then Allied Products had standing to move the trial court to set aside the default judgment. *Id.* On the other hand, if the "Bush Hog Division of Allied Products Corporation" is a separate entity owned by Allied Products, and if Allied Products is not its legal representative under Rule 60, then Allied Products did not have standing to move the trial court to set aside the default judgment. *Id.*

"This court cannot assume error, nor can it presume the existence of facts to which the record is silent. *Dais v. Davis*, 420 So. 2d 278 (Ala. Civ. App. 1982)." *Leeth v. Jim Walter Homes, Inc.*, 789 So. 2d 243, 247 (Ala. Civ. App. 2000) (quoting *Newman v. State*, 623 So. 2d 1171, 1172 (Ala. Civ. App. 1993)). Accordingly, because Allied Products did not introduce sufficient evidence to establish that it had standing to move the trial court to set aside the default judgment, we must affirm the denial of that motion. AFFIRMED.

Crawley, P.J., and Thompson, Pittman, and Bryan, JJ., concur.



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Murdock, J., dissents, with writing.

MURDOCK, Judge, dissenting.

The parties and the trial court all appear to have treated Allied Products Corporation as the appropriate party to contest the default judgment. I therefore respectfully dissent.

1. "[S]ince the Alabama Rules of Civil Procedure are modeled on the Federal Rules of Civil Procedure, federal decisions are highly persuasive when we are called upon to construe the Alabama Rules." Image Marketing, Inc. v. Florence Television, L.L.C., 884 So. 2d 822, 825 (Ala. 2003) (quoting City of Birmingham v. City of Fairfield, 396 So. 2d 692, 696 (Ala. 1981)).

