

SUPREME COURT OF ALABAMA

Kingvision Pay-Per-View, Ltd. v. Ayers

886 So. 2d 45 (Ala. 2003) · No. 1012384 · Decided November 21, 2003

SUMMARY

The Alabama Supreme Court affirmed the denial of Kingvision Pay-Per-View, Ltd.'s Rule 60(b)(4) motion to vacate a default judgment. Although service of process on Kingvision was insufficient, the court held that Kingvision failed to overcome the presumption that its attorney was authorized to file pleadings, which waived the service-of-process defense under Rule 12(h)(1).

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Johnstone, Justice; Houston; See; Lyons; Brown; Harwood; Woodall; Stuart
JURISDICTION	Alabama
DECIDED	November 21, 2003
DOCKET	1012384
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kingvision appealed the denial of its Alabama Rule of Civil Procedure 60(b)(4) motion to vacate a default judgment as void for insufficient service of process and lack of personal jurisdiction.
STANDARD OF REVIEW	De novo review applies to a ruling on a Rule 60(b)(4) motion to vacate a judgment as void; if the judgment is valid, it must stand, and if void, it must be set aside.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kingvision Pay-Per-View, Ltd. v. Lester Ayers

TOPICS

- default judgment
- service of process
- personal jurisdiction
- motion for reconsideration
- appellate procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- default judgments
- service of process
- personal jurisdiction

QUESTIONS PRESENTED

1. Whether Kingvision overcame the presumption that an attorney appearing for a party was authorized to act on the party's behalf.
2. Whether the filing of pleadings that omitted an objection to insufficient service of process waived that defense under Alabama Rule of Civil Procedure 12(h)(1).
3. Whether the default judgment was void for insufficient service of process or lack of personal jurisdiction.
4. Whether Kingvision was entitled to relief under Rule 60(b) based on the asserted meritorious defense and the Kirtland three-factor analysis.

HOLDINGS

1. An attorney's appearance on behalf of a party is presumed authorized, and the party challenging the attorney's authority bears the burden of proving the lack of authority, including when a defaulted defendant claims that it did not authorize the attorney to appear or waive service objections.
2. A defendant waives the defense of insufficient service of process when it files a Rule 12 motion, responsive pleading, or amendment without asserting that defense.
3. The default judgment was not void because Kingvision waived its objection to insufficient service of process, and its personal-jurisdiction challenge was based solely on that waived service objection.
4. A conclusory affidavit statement concerning the scope of a principal's contemplated attorney representation is inadmissible when the witness fails to establish personal knowledge and fails to introduce the documents or communications underlying the conclusion.

KEY QUOTATIONS

“The dispositive issue is whether Kingvision overcame the presumption that Nelms was authorized to file the Rule 12(b) motion, answer, and amended answer that failed to assert the insufficiency of the service of process on Kingvision.” (51)

“Because Kingvision waived the insufficiency of the service of process on it, the default judgment was not void for the plaintiff's failure to effect proper service of process on Kingvision.” (57)

“Because the default judgment was not void, Kingvision was not entitled to relief pursuant to its Rule 60(b) motion as presented.” (58)

FACTUAL BACKGROUND

Ayers served the summons and complaint by certified mail on Salomon & Mittelberg, attorneys employed by Kingvision to pursue separate anti-piracy claims, rather than on Kingvision or its registered agent. Attorneys acting for Kingvision then filed a Rule 12(b) motion, an answer, and an amended answer without asserting insufficient service of process. Kingvision later failed to appear for trial, resulting in a default and a \$65,000 default judgment. In support of its Rule 60(b) motion, Kingvision offered a vice president's affidavit stating that it had not contemplated Salomon & Mittelberg's representation in a state-court lawsuit, but the affidavit supplied no competent factual foundation or supporting communications.

PROCEDURAL HISTORY

Ayers sued Kingvision in the Jefferson County Circuit Court. Kingvision's attorneys filed a Rule 12(b) motion, an answer, and an amended answer, none of which asserted insufficiency of service of process. After Kingvision failed to appear for trial, the circuit court entered a default and later a \$65,000 default judgment. The circuit court denied Kingvision's Rule 60(b) motion, and the Supreme Court of Alabama affirmed on a different rationale.

DISPOSITION

affirmed

CASES CITED

- Russell Coal Co. v. Smith, 845 So. 2d 781, 783 (Ala. 2002)
- Northbrook Indem. Co. v. Westgate, Ltd., 769 So. 2d 890, 893 (Ala. 2000)
- Insurance Mgmt. & Admin., Inc. v. Palomar Ins. Corp., 590 So. 2d 209, 212-13 (Ala. 1991)
- Smith v. Equifax Servs., Inc., 537 So. 2d 463, 465 (Ala. 1988)
- Liberty Nat'l Life Ins. Co. v. University of Alabama Health Servs. Found., 881 So. 2d 1013, 1020 (Ala. 2003)
- Horizons 2000, Inc. v. Smith, 620 So. 2d 606, 607 (Ala. 1993)
- Northington v. Dairyland Ins. Co., 445 So. 2d 283, 285 (Ala. 1984)
- Automotive Acceptance Corp. v. Powell, 45 Ala. App. 596, 601, 234 So. 2d 593, 597 (1970)
- Singleton v. Allen, 431 So. 2d 547, 549 (Ala. Civ. App. 1983)
- Colvin v. Colvin, 628 So. 2d 802, 803 (Ala. Civ. App. 1993)
- Lonning v. Lonning, 199 N.W.2d 60, 62 (Iowa 1972)
- Pallilla v. Galilee Baptist Church, 215 Ala. 667, 112 So. 134, 135 (1927)
- Kemp v. Donovan, 208 Ala. 289, 94 So. 168, 169 (1922)
- Image Auto, Inc. v. Mike Kelley Enterprises, Inc., 823 So. 2d 655, 657-58 (Ala. 2001)
- Bennett v. Circus U.S.A., 108 F.R.D. 142, 149 (N.D. Ind. 1985)
- McBrayer v. Hokes Bluff Auto Parts, 685 So. 2d 763 (Ala. Civ. App. 1996)
- Cooper v. Watts, 280 Ala. 236, 191 So. 2d 519, 522-23 (1966)
- Ex parte Rice, 265 Ala. 454, 92 So. 2d 16 (1957)
- Garrett v. Reid, 244 Ala. 254, 256, 13 So. 2d 97 (1943)
- Frahn v. Greyling Realization Corp., 239 Ala. 580, 583, 195 So. 758, 761 (1940)
- Haygood v. Wesfam Restaurants, Inc., 675 So. 2d 1312, 1314 (Ala. Civ. App. 1996)
- Rothenberger v. Cast Prods., Inc., 716 So. 2d 1220, 1224 (Ala. 1998)
- Ex parte Volkswagenwerk Aktiengesellschaft, 443 So. 2d 880 (Ala. 1983)
- Kirtland v. Fort Morgan Authority Sewer Service, Inc., 524 So. 2d 600 (Ala. 1988)
- Raine v. First Western Bank, 362 So. 2d 846, 848 (Ala. 1978)
- Powell v. Central Bank of the South, 510 So. 2d 171, 172 (Ala. 1987)

- Nolan v. Nolan, 429 So. 2d 596 (Ala. Civ. App. 1982)

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