

DISTRICT COURT OF APPEAL OF FLORIDA

Hader v. American Builders & Contractors Co.

564 So. 2d 271 (Fla. Dist. Ct. App. 1990) · Decided July 25, 1990

SUMMARY

The court reverses an order refusing to set aside a default against the appellant. It holds that excusable neglect was shown because of confusion about legal representation and uncertainty regarding the deadline to respond to an amended complaint, and concludes that the procedure did not provide adequate notice of the potential default.

CASE DETAILS

COURT	District Court of Appeal of Florida
WRITING FOR THE COURT	Anstead; Letts; Dell
JURISDICTION	Florida
DECIDED	July 25, 1990
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order refusing to set aside a default entered against the appellant.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Hader v. American Builders & Contractors Co.

TOPICS

- default
- default judgment
- civil procedure
- construction law
- commercial litigation

PRACTICE AREAS

- civil procedure
- construction law
- commercial litigation

QUESTIONS PRESENTED

- Whether the appellant demonstrated excusable neglect sufficient to set aside the default.
- Whether the procedures used to notify the appellant of the amended complaint and the deadline to respond were legally sufficient to support the default.

HOLDINGS

1. The appellant demonstrated excusable neglect through his misunderstanding regarding legal representation and the uncertainty surrounding the deadline to answer the amended complaint; therefore, the default must be set aside.
2. A default cannot stand where the record provides no ascertainable date on which the defendant was placed on notice that a response to the amended complaint was due and that failure to respond would result in default.

KEY QUOTATIONS

“On this record there is simply no way to fix a date upon which appellant was on notice that he would be defaulted. This procedure was fundamentally flawed and the appellant is entitled to have the default set aside.” (272)

FACTUAL BACKGROUND

The appellant's codefendant and business partner was first served and gave the pleadings to an attorney, who filed a response for the codefendant but not the appellant. After the appellant was separately served, he believed the attorney had already responded for him. The plaintiff then obtained permission to file an amended complaint, but the order was not served on the appellant, did not specify the response period, and the appellant was not subsequently served with a summons stating a deadline to respond.

PROCEDURAL HISTORY

The appellant was served with the original pleadings and later mailed an amended complaint. His attorney filed a responsive pleading for the codefendant but not for him. The trial court refused to set aside the resulting default, and the appellant appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Set aside the default and proceed consistently with the court's determination that the default procedure was fundamentally flawed.

OPINION

PER CURIAM.

PER CURIAM. We reverse the order refusing to set aside the default. Excusable neglect was demonstrated not only in appellant's misunderstanding as to legal representation, but also in the uncertainty as to the time period in which he was to answer an amended complaint. All of the events below happened within a relative short period of time. Appellant's codefendant and

business partner was first served with process and gave the pleadings to appellant who, in turn, took the pleadings to an attorney.

The attorney, apparently acting only on the summons actually served, filed a responsive pleading on behalf of the codefendant but not the appellant. Subsequently appellant was served, but, apparently believing that the attorney had already filed a response for him, he did not take these pleadings (the same complaint previously served on his codefendant) to the attorney.

The plot thickens. No default was obtained for failure to respond to service of the original pleadings. Indeed, none could be, because before the time expired for appellant to respond, the plaintiff filed a motion to file an amended complaint.

The order granting the motion to amend shows no service on appellant, but only service on the plaintiff and the codefendant. In addition, the order states “The Defendants have_number of days” to respond to the amended complaint.

The blank for the number of days is just that, blank. So, not only was appellant not notified of the order granting the motion, he was not given any certain number of days to respond to the amended complaint. Neither was he subsequently served with a summons that notified him to respond within 20 days. Appellant was mailed a copy of the amended complaint.

The record is void as to when, if ever, appellant received the trial court’s order authorizing the filing of the amended complaint. On this record there is simply no way to fix a date upon which appellant was on notice that he would be defaulted. This procedure was fundamentally flawed and the appellant is entitled to have the default set aside. REVERSED AND REMANDED.

ANSTEAD, LETTS and DELL, JJ., concur.