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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1021

Filed: 17 May 2016

Swain County, No. 14-CVD-140

AFORTUNADO RODRIGUEZ, Plaintiff,

v.

KAREN BECKWITH, Defendant.

Appeal by plaintiff from order entered 27 May 2015 by Judge Kristina L. Earwood in Swain County District Court. Heard in the Court of Appeals 24 February 2016.

Roberts & Stevens, P.A., by Ann-Patton Hornthal and Wyatt S. Stevens, for plaintiff-appellant.

The Law Office of Luke D. Hyde, by Luke D. Hyde, for defendant-appellee.

DIETZ, Judge.

Plaintiff Afortunado Rodriguez appeals the entry of a default judgment against him on various counterclaims asserted by Defendant Karen Beckwith. Beckwith filed her counterclaims on 25 August 2014. On 7 November 2014, well past the 30-day deadline to respond, Rodriguez replied to those counterclaims. Ten days later, on 17 November 2014, Beckwith moved for default judgment based on Rodriguez's failure

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to timely file his reply. The trial court granted that motion and entered a default judgment against Rodriguez.

As explained below, our precedent compels us to reverse. A trial court may not enter a default judgment against a party who already has appeared and filed an answer or other responsive pleading. In rare cases, it may be appropriate for a trial court to sanction a litigant who filed an untimely pleading by striking that pleading—which might later result in a default judgment. But there is no indication in the record that such a severe sanction would be warranted in this case and, in any event, the trial court did not impose that type of sanction here; instead, the court simply entered a default judgment against a party who had appeared and filed a responsive pleading. That is error as a matter of law, and we therefore reverse the trial court’s entry of default judgment and remand for further proceedings.

Facts and Procedural History

On 19 June 2014, Afortunado Rodriguez filed a complaint against Karen Beckwith alleging nuisance and interference with an easement. Beckwith filed an answer and various counterclaims on 25 August 2014, including claims for breach of contract, unfair and deceptive trade practices, unjust enrichment, and interference with private property rights. Beckwith also sought a permanent injunction to enjoin Rodriguez’s “operation of a short term rental property business.” Rodriguez missed the 30-day deadline to reply to Beckwith’s answer and counterclaim under Rule 12(a)

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but filed an untimely reply to those claims on 7 November 2014, well after the 30-day deadline to respond.

On 17 November 2014, ten days after Rodriguez filed his reply, Beckwith moved for a default judgment based on Rodriguez's failure to timely reply. Beckwith again moved for default judgment on 5 March 2015. That same day, the trial court "granted default judgment on all counterclaims prayed for in the answer and counterclaim."

On 13 March 2015, Rodriguez moved to set aside the entry of default judgment. The trial court denied that motion, and Rodriguez timely appealed.

Analysis

Rodriguez appeals from the trial court's entry of a default judgment against him on all of Beckwith's counterclaims. We first address our jurisdiction to hear this appeal, and then turn to the merits of Rodriguez's argument.

I. Appellate Jurisdiction

We first address our jurisdiction to hear Rodriguez's appeal. "Ordinarily, this Court hears appeals only after entry of a final judgment that leaves nothing further to be done in the trial court." *State v. Oakes*, __ N.C. App. __, 771 S.E.2d 832, 834 (2015). Here, the trial court's entry of default judgment on all of Beckwith's counterclaims is interlocutory, and leaves more to be done below, because Rodriguez's own claims in the complaint are still pending before the trial court. But Rodriguez

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argues that the trial court's order affects substantial rights and is therefore immediately appealable under N.C. Gen. Stat. § 7A-27(b)(3)(a). We agree.

Beckwith's fourth enumerated counterclaim is styled as a "Motion for Permanent Injunctive Relief from [Rodriguez's] Operation of a Short Term Rental Property Business." The trial court entered a default judgment on that claim and, as a result, barred Rodriguez from operating his business. We have held that an order enjoining the operation of a business affects substantial rights. *Town of Knightdale v. Vaughn*, 95 N.C. App. 649, 651, 383 S.E.2d 460, 461 (1989). Accordingly, the entry of the default judgment in this case is immediately appealable.

II. Default Judgment

Rodriguez challenges the trial court's default judgment on the ground that it is error, as a matter of law, to enter a default judgment against a defendant who filed an answer or other responsive pleading before the opposing party first sought entry of default or a default judgment. We agree.

"A trial court's decision to enter a default judgment, like entry of default, is reviewable for abuse of discretion." *Bodie Island Beach Club Ass'n, Inc. v. Wray*, 215 N.C. App. 283, 290, 716 S.E.2d 67, 74 (2011). Likewise, "[t]he decision whether to set aside a default judgment . . . is left to the sound discretion of the trial judge, and will not be overturned on appeal absent a clear showing of abuse of discretion." *Advanced Wall Sys., Inc. v. Highlande Builders, LLC*, 167 N.C. App. 630, 633, 605 S.E.2d 728,

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731 (2004). But, importantly, a trial court “by definition abuses its discretion when it makes an error of law.” *Cinoman v. Univ. of N.C.*, 234 N.C. App. 481, 484, 764 S.E.2d 619, 622 (2014).

This Court repeatedly has held that once a party against whom a default judgment is sought has filed a responsive pleading, a trial court may not enter a default judgment against that party, even if the party’s pleading was untimely. *See, e.g., Monteith v. Kovas*, 162 N.C. App. 545, 546, 594 S.E.2d 787, 787 (2004); *Moore v. Sullivan*, 123 N.C. App. 647, 649, 473 S.E.2d 659, 660 (1996). Here, Rodriguez filed his reply to the counterclaims not only before the trial court ruled on the motion for default judgment, but also before Beckwith even raised the default issue with the court. Under well-settled case law, the trial court abused its discretion as a matter of law by entering a default judgment against a party who already had appeared and filed a responsive pleading in the case. We therefore reverse the trial court’s judgment.

We note that our holding in this case and others like it does not deprive the trial court of authority to sanction a litigant for filing an untimely pleading. “Trial courts have inherent authority to impose sanctions for willful failure to comply with the rules of court,” including the North Carolina Rules of Civil Procedure. *See Few v. Hammack Enters., Inc.*, 132 N.C. App. 291, 298, 511 S.E.2d 665, 670 (1999); *see also Foy v. Hunter*, 106 N.C. App. 614, 618, 418 S.E.2d 299, 302 (1992). Thus, while the

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trial court cannot enter a default judgment against a party who has filed a responsive pleading, in appropriate circumstances, with appropriate findings, a trial court could strike an untimely pleading as a sanction, which might then result in entry of a default judgment at some future date. *See N.C. Nat. Bank v. Virginia Carolina Builders*, 307 N.C. 563, 568, 299 S.E.2d 629, 632 (1983). But that is not what happened here, and nothing in this record suggests striking Rodriguez's reply would be an appropriate sanction for the late filing. Accordingly, we reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

Conclusion

We reverse the trial court's judgment and remand for further proceedings.

REVERSED AND REMANDED.

Judges CALABRIA and DILLON concur.

Report per Rule 30(e).