

2015 IL App (1st) 143877-U
No. 1-14-3877
September 22, 2015

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

UNGARETTI & HARRIS, LLP,)	Appeal from the Circuit Court
)	Of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 11 CH 19700
)	
PETER BURDI,)	The Honorable
)	Rodolfo Garcia,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Hyman and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court abused its discretion when it denied the defendant's timely motion to vacate a judgment entered at the conclusion of a trial at which the defendant failed to appear.
- ¶ 2 Ungaretti & Harris, LLP (U&H), sued Peter Burdi for failing to pay U&H for its legal services. When Burdi did not appear in court on the date set for trial, the trial court entered a judgment in favor of U&H. Burdi filed a timely motion to vacate the judgment. The trial

court denied the motion and Burdi now appeals. We find that the trial court abused its discretion, and therefore we reverse the judgment and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4

In 2011, U&H filed a complaint against Burdi and Discount Realty Services, Ltd. (DRS), alleging that Burdi and DRS hired U&H to represent them, and then failed to pay U&H for its services. On August 30, 2011, U&H filed a motion for a default judgment against Burdi, because Burdi had not filed an answer to the complaint. Burdi filed his answer in September 2011, and U&H withdrew the motion for a default judgment.

¶ 5

U&H filed a motion to compel Burdi to produce documents because Burdi had not responded to the request for documents. In an order dated September 19, 2012, the court granted the motion to compel. The court later set the case for trial to be held on December 4, 2013. The trial court granted Burdi's request for a continuance, resetting the trial to January 21, 2014. On January 8, 2014, due to the illness of Burdi's attorney, the trial court struck the trial dates and continued the case to January 23, 2014, for the submission of pre-trial materials. The court set a new trial date of March 20, 2014.

¶ 6

On March 20, 2014, Burdi appeared by substitute counsel, seeking yet another continuance. The trial court granted the continuance, but ordered Burdi to pay \$1,087.50 to U&H as a sanction for the failure to give U&H and the court timely notice of his inability to go to trial on March 20, 2014. Burdi's attorney subsequently withdrew due to his illness.

¶ 7 On August 20, 2014, the trial court entered an order in which it granted John Klytta leave to file an appearance on behalf of Burdi. The court in the same order set the matter for trial on October 7, 2014. Klytta did not file an appearance.

¶ 8 On October 7, 2014, U&H appeared, but Burdi did not appear in person or by counsel. The court held the trial and heard testimony about the services U&H provided. The court entered a judgment against Burdi for \$91,494.21 plus prejudgment interest of \$15,340.50.

¶ 9 Burdi, through attorney Neal Goldberg, filed a motion to vacate the judgment on November 6, 2014. Burdi alleged that he did not know the court set the case for trial on October 7, 2014, and he did not know that Klytta had not filed an appearance. Burdi also alleged, "Had Burdi been aware that the case was set for trial, he would have appeared to defend against this lawsuit." The motion to vacate includes no other allegations to suggest that Burdi could have presented a meritorious defense.

¶ 10 At the hearing on the motion to vacate, Goldberg said that some documents related to the case did not appear in the court's file. The trial court said, "[W]e don't keep the file here. I'll tell you that. I don't look at the file." Goldberg said that Klytta never informed Burdi about the order setting October 7, 2014, as the date for trial. According to Goldberg, Burdi "never was able to get a hold of Mr. Klytta." The trial court said, "You're stuck with who you ask to appear in court, and if he wants any relief, his relief is not here. It is against whoever he blames for the situation he finds himself in now." The trial court denied the motion to vacate the judgment. Burdi now appeals.

¶ 11

ANALYSIS

¶ 12

Section 2-1301 of the Code of Civil Procedure gives the trial court the power to set aside a final judgment upon any reasonable terms and conditions. 735 ILCS 5/2-1301(e) (West 2014); *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001). The moving party bears the burden of establishing sufficient grounds to vacate the judgment. *Mann*, 324 Ill. App. 3d at 377. "The overriding consideration is simply whether or not substantial justice is being done between the litigants and whether it is reasonable, under the circumstances, to compel the other party to go to trial on the merits." *In re Haley D.*, 2011 IL 110886, ¶ 57. The appellate court should not reverse the trial court's decision on a motion to vacate unless the trial court abused its discretion. *Mann*, 324 Ill. App. 3d at 377; *Haley D.*, 2011 IL 110886, ¶ 69.

¶ 13

Burdi's motion to vacate included no evidence or allegations to show that Burdi had a meritorious defense to U&H's claim. He also failed to appear, without excuse, in court on the date set for trial. See *Tiller v. Semonis*, 263 Ill. App. 3d 653, 657 (1994). However, "under section 2-1301(e), which governs before final judgment has been entered or within 30 days thereafter, the litigant need not necessarily show the existence of a meritorious defense and a reasonable excuse for not having timely asserted such defense." *Haley D.*, 2011 IL 110886, ¶ 57. In *Haley D.*, our supreme court emphasized that "[t]he law prefers that controversies be determined according to the substantive rights of the parties." *Haley D.*, 2011 IL 110886, ¶ 69.

¶ 14 Burdi and his attorneys never egregiously abused legal process or showed contempt for the court. We find that, under the principles stated in *Haley D.*, the trial court abused its discretion when it denied the timely section 2-1301 motion to vacate the judgment.

¶ 15 CONCLUSION

¶ 16 Because Burdi filed a timely motion to vacate the judgment, we find that the trial court abused its discretion when it denied the motion. Accordingly, we reverse the trial court's judgment and remand for further proceedings on the complaint.

¶ 17 Reversed and remanded.