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2016 IL App (3d) 140619-U

Order filed January 29, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT  
A.D., 2016

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ERIE INSURANCE EXCHANGE,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellee,	)	Putnam County, Illinois,
	)	
v.	)	
	)	
LISA RESURRECCION,	)	Appeal No. 3-14-0619
	)	Circuit No. 12-CH-15
Defendant,	)	
	)	
and	)	
	)	
STEVE TALIANI,	)	Honorable Scott Shore,
	)	Honorable Thomas A. Keith,
Defendant-Appellant.	)	Judges, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice O'Brien and Justice Holdridge concurred in the judgment.

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**ORDER**

¶ 1       *Held:* The trial court properly entered a default judgment against a defendant in a declaratory action after defendant failed to file a timely appearance or responsive pleading.

¶ 2 In 2012, Plaintiff-Appellee filed a declaratory action against Steven Taliani and others. Steven Taliani did not file an appearance or responsive pleading for more than one year after the declaratory action was filed. The trial court allowed Plaintiff-Appellee’s request for default judgment against Steven Taliani. We affirm.

¶ 3 BACKGROUND

¶ 4 On March 8, 2012, Steven Taliani (Taliani) filed a personal injury lawsuit against defendants Lisa Resurreccion (Resurreccion), Robert Resurreccion, Robert Cofoid and Dysar-Cofoid Funeral Home. In part, the personal injury complaint alleged Resurreccion and others intentionally inflicted emotional distress upon Taliani by interfering with Taliani’s opportunity to view his son’s remains at the funeral home.

¶ 5 Erie Insurance Exchange (Erie) initiated a declaratory action to determine whether Erie had a duty to defend Resurreccion and provide coverage based on her homeowner’s policy. On June 20, 2012, Taliani was personally served with notice of Erie’s declaratory action.<sup>1</sup> On October 4, 2012, Erie filed an amended complaint in the declaratory action and provided Taliani with proper notice of the amended pleading. On December 2, 2013, Erie filed a motion for default judgment against Taliani based on his failure to file an answer or responsive pleading.

¶ 6 On December 16, 2013, Taliani filed a petition for writ of *habeas corpus ad testificandum*. Thereafter, on January 21, 2014, Taliani filed a motion that requested an extension of time to file his appearance or answer to Erie’s 2012 declaratory action.

¶ 7 On January 23, 2014, the trial court granted Erie’s motion for default judgment against Taliani in the declaratory action. The court’s order stated that “Steven Taliani, is in default for failing to appear, answer, or otherwise plead.”

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<sup>1</sup> Throughout these proceedings, Taliani was incarcerated with the Illinois Department of Corrections.

¶ 8 On January 30, 2014, the court approved Taliani’s affidavit to sue or defend as a poor person. On February 14, 2014, Taliani filed a motion for involuntary dismissal and a motion to stay the declaratory action.

¶ 9 The court entered an order allowing Erie to respond to Taliani’s 2014 motion for involuntary dismissal and motion for stay by March 13, 2014. Thereafter, Erie filed a motion to strike Taliani’s pleadings on March 17, 2014.

¶ 10 On March 24, 2014, Taliani filed a notice of appearance and motion for substitution of Judge Shore. One week later, on March 31, 2014, Taliani filed his response to plaintiff’s motion to strike.

¶ 11 The court granted Erie’s motion to strike Taliani’s pleadings on April 17, 2014. On that date, the court found that the motion to strike was appropriate since Taliani “never filed an appearance or answer to plaintiff’s amended complaint and filed his motion to stay and 'motion for involuntary dismissal' while already in default.” Taliani subsequently filed an answer to Erie’s amended complaint for declaratory judgment on May 23, 2014.

¶ 12 On June 5, 2014, the court conducted an evidentiary hearing where Erie provided the court with a factual basis for the default judgment addressed by the court on January 23, 2014. After finding that a factual basis for the default judgment existed, the court formally entered a default judgment against Taliani on June 5, 2014.

¶ 13 On June 23, 2014, Taliani filed a motion to vacate the default judgment dated June 5, 2014, which the trial court denied on July 17, 2014. On August 11, 2014, Taliani filed his notice of appeal.

¶ 14 Two months later, Resurreccion signed a waiver of Erie’s coverage. The waiver dated October 16, 2014, stated Resurreccion withdrew any claims for coverage under her homeowner's policy issued by Erie.

¶ 15 ANALYSIS

¶ 16 On appeal, Taliani challenges the trial court’s decision to enter a default judgment against him in the declaratory action. Taliani argues that the answer he filed on May 23, 2014, in response to the 2012 amended complaint for declaratory judgment, should have precluded the entry of the order finalizing the default judgment on June 5, 2014.

¶ 17 On October 4, 2012, Erie filed an amended complaint in the declaratory action and provided Taliani with proper notice of the amended pleading. After more than one year, Erie filed a motion for default judgment on December 2, 2013. The record shows Taliani did not file an appearance or answer prior to December 2, 2013.

¶ 18 A trial court may enter a default judgment against a named defendant that failed to file a timely appearance or responsive pleading. 735 ILCS 5/2-1301(d) (West 2012). However, Taliani argues that he should be allowed procedural leniency concerning the untimely nature of his *pro se* pleadings.

¶ 19 In Illinois, a *pro se* litigant is not entitled to more lenient treatment than an attorney, and parties choosing to represent themselves without a lawyer must comply with the same rules, procedures and standards required of licensed attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. Having been personally served with notice of Erie’s amended complaint in 2012, Taliani had ample time to file an appearance and answer the amended complaint long before Erie requested the default judgment more than a year later. Therefore, we affirm the trial court's decision entering a default judgment against Taliani in the declaratory action.

¶ 20 Based on this holding, we elect not to address Erie’s argument that the issue raised in the declaratory action is now moot. We note that where the insurer and insured have agreed that there is no coverage, the case law suggests the issue of coverage may not be entirely extinguished under all circumstances. See *Reagor v. Travelers Insurance Co.*, 92 Ill. App. 3d 99, 102-103 (1980). Therefore, after reaching the merits and without resolving the issue of mootness, we affirm the trial court order granting default judgment.

¶ 21 CONCLUSION

¶ 22 The Putnam County circuit court’s ruling entering default judgment against Taliani is affirmed.

¶ 23 Affirmed.