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IN THE
COURT OF APPEALS OF INDIANA

SCOTTRADE, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 64A04-0709-CV-531
	)	
GREG RENTSCHLER,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable David L. Chidester, Judge
Cause No. 64D04-0706-SC-3143

February 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Greg Rentschler filed a claim against Scottrade, Inc., alleging he suffered a financial loss because of errors by Scottrade in handling his brokerage account. Scottrade appeals from the trial court's entry of default judgment against it, raising the issue of whether the trial court erred in denying its motion to set aside the default judgment. Concluding that Scottrade demonstrated excusable neglect and made a prima facie showing of a meritorious defense, we reverse.

Facts and Procedural History

Rentschler completed and electronically signed a brokerage account application with Scottrade on November 11, 2006. The application contained the following language immediately before the signature line:

> By signing this agreement I acknowledge that I have received, read and agree to abide by the terms of the accompanying Brokerage Account Agreement which contains a pre-dispute arbitration clause at paragraph 29.

Appellant's Appendix at Tab 6, page 4.[1] Paragraph 29 provides:

> You agree to arbitrate any controversy between you and us (including any of our officers, directors, employees, or agents) arising out of or relating in any way to our relationship, your Account, any Account that you may cause to be opened with us in the future, or any service provided by us, including but not limited to: (a) transactions of any kind made on your behalf, through or with us; or (b) the performance, construction, breach of this Agreement or any other agreement between you and us.

Id. at page 5. Rentschler's application was accepted on November 13, 2006.

On June 13, 2007, Rentschler requested that Scottrade buy 2000 shares of stock in Force Protection. He requested several transactions with respect to this stock throughout the

day. Eventually he discovered a discrepancy and contacted Scottrade. He was informed that because an error was made in the initial buy, the purchase was cancelled. On June 14, 2007, Rentschler filed a notice of claim in Porter Superior Court alleging he had lost $3,539.61 because of Scottrade's error. A hearing was set for August 3, 2007.

On August 3, 2007, Rentschler appeared in court and Scottrade failed to appear. The trial court entered a default judgment against Scottrade in the amount of $3,539.61. On August 21, 2007, Scottrade filed a motion to set aside the default judgment, alleging that Scottrade had, in error, calendared the hearing for August 8, 2007, instead of August 3, 2007, and had made arrangements to be in court on August 8. The motion further alleged a meritorious defense to Rentschler's claim, namely the arbitration provision of the brokerage account agreement. The trial court denied the motion to set aside on August 22, 2007. Scottrade now appeals.

Discussion and Decision

I. Standard of Review[2]

A trial court's refusal to set aside a default judgment is entitled to deference and will be reviewed for an abuse of discretion. Allstate Ins. Co. v. Watson, 747 N.E.2d 545, 547 (Ind. 2001). Although the trial court must use its discretion to do that which is just in light of the unique facts of each case, it must do so in light of the disfavor in which default judgments are held. Id. Any doubt as to the propriety of a default judgment must be resolved in favor

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[1] Indiana Appellate Rule 51 requires that "[a]ll pages of the Appendix shall be numbered at the bottom consecutively." Scottrade's Appendix is not assembled in this manner.

[2] Rentschler has not filed an appellate brief. We therefore may reverse the trial court's decision if Scottrade makes a prima facie showing of error. Allender v. Fields, 800 N.E.2d 584, 585 (Ind. Ct. App. 2003). "Prima facie" means "at first sight." Id.

of the defaulted party. Id. We strongly prefer to dispose of cases on their merits. Nwannunu v. Weichman & Assocs., P.C., 770 N.E.2d 871, 879 (Ind. Ct. App. 2002).

II. Motion to Set Aside Default Judgment

Once entered, a default judgment may be set aside because of mistake, surprise, or excusable neglect. Ind. Trial Rule 60(B)(1). A party seeking to set aside a default judgment must not only establish the grounds for relief pursuant to Trial Rule 60(B) but must also make a prima facie showing of a meritorious defense. Id.; Nwannunu, 770 N.E.2d at 879. A meritorious defense is one showing that, if the case was retried on the merits, a different result would probably be reached. Baxter v. State, 734 N.E.2d 642, 646 (Ind. Ct. App. 2000).

Scottrade's motion to set aside alleges that it mis-calendared the hearing on Rentschler's claim, arranging to attend a hearing on August 8, rather than the actual hearing date of August 3. Scottrade cites Walker v. Kelley, 819 N.E.2d 832 (Ind. Ct. App. 2004), in support of its contention that a mistake in noting the date of a hearing constitutes excusable neglect.[3]

In Walker, a father filed a petition to modify custody of and support for his two sons, and a hearing was scheduled for December 4, 2003, at 9:00 a.m. The mother was served with the order containing the hearing date but failed to appear in court on that day. The trial court held an abbreviated hearing and issued an order awarding custody to father and ordering mother to pay support. When mother learned of the order, she retained counsel and filed a

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[3] Scottrade also cites Whittaker v. Dail, 584 N.E.2d 1084 (Ind. 1992) and Whelchel v. Cmty. Hosps. of Indiana, Inc., 629 N.E.2d 900 (Ind. Ct. App. 1994), trans. denied, in support of its argument. In both of those cases, however, a breakdown in communication was alleged as the cause of a party's failure to appear, warranting the setting aside of a default judgment. Whittaker, 584 N.E.2d at 1087; Whelchel, 629 N.E.2d at

petition to set aside default judgment on December 12, 2003. She alleged that she had misread the order and mistakenly believed the hearing had been set for December 9, 2003. The trial court denied her motion to set aside, but granted mother's subsequent motion to correct error and vacated the order awarding custody of the children to father pending a new hearing. Father appealed, contending the trial court erred when it granted mother's motion to correct error. We noted that our standard of review was that for rulings on motions to correct error, but because the effect of the trial court's grant of mother's motion to correct error was to set aside the default judgment, the context and circumstances under which the default judgment was entered were relevant. We affirmed, noting that there was evidence to show that mother was not acting with the intent to delay the custody hearing, that she had made arrangements to attend the hearing but unfortunately based her plans on the wrong date, and promptly sought to remedy the situation once she learned of her mistake. Id. at 837. We did not affirm in Walker based solely on the allegation of a mistake in calendaring the hearing; we also noted the important public policy considerations at work in a custody case. Setting aside the default judgment required father to do nothing more than he was already prepared to do, that is, participate in a full hearing regarding the children's best interests; allowing the default judgment to stand would result in mother losing custody of her children because of an oversight. Id. at 837-38.

Walker was decided in a different procedural context than we are confronted with here, but we were still in essence reviewing whether the trial court correctly denied mother's petition to set aside the default judgment. That is, in determining whether the trial court

903. Scottrade has not alleged a breakdown in communication as a reason for its failure to appear in this case.

abused its discretion in granting the motion to correct error, we had to determine whether the trial court had abused its discretion in denying the petition to set aside in the first instance. Here, as in Walker, there was some confusion on the part of the defaulted party as to the actual date of the hearing. Scottrade alleges in its motion to set aside that it had made arrangements to attend a hearing on August 8, rather than August 3. Also here, as in Walker, the defaulted party took prompt action seeking to remedy the situation. Scottrade hired an attorney, who entered an appearance and filed the motion to set aside within three weeks of the default judgment being granted. Although there is no compelling public policy reason here for setting aside the default judgment as there was in Walker, Indiana generally disfavors default judgments and any doubts about the propriety of a default judgment should be resolved in favor of the defaulted party. See Allstate Ins. Co., 747 N.E.2d at 547. Given our relaxed standard of review because Rentschler failed to submit a brief, we hold that Scottrade has demonstrated excusable neglect.

Scottrade's motion also notes its defense to Rentschler's claim: that the contract between the parties includes an arbitration provision. As Scottrade notes, Indiana recognizes a strong policy favoring the enforcement of arbitration agreements. Harlow v. Parkevich, 868 N.E.2d 822, 826 (Ind. Ct. App. 2007). A party seeking to compel arbitration must satisfy a two-pronged burden of proof: the existence of an enforceable agreement to arbitrate the dispute and that the dispute is the type of claim the parties agreed to arbitrate. Norwood Promotional Prods., Inc. v. Roller, 867 N.E.2d 619, 623 (Ind. Ct. App. 2007), trans. denied. If the court is satisfied that parties contracted to submit their dispute to arbitration, the court is required to compel arbitration. Id.; see also Ind. Code § 34-57-2-3(a). By attaching the

Brokerage Account Agreement between Scottrade and Rentschler to its motion to set aside, Scottrade has demonstrated the existence of an agreement to arbitrate the kind of claim Rentschler makes. Scottrade has thus made a prima facie showing of a meritorious defense to Rentschler's claim. Accordingly, the trial court abused its discretion in denying Scottrade's motion to set aside the default judgment.

Conclusion

Scottrade demonstrated excusable neglect and made a prima facie showing of a meritorious defense supporting its motion to set aside the default judgment against it. The trial court abused its discretion in denying the motion to set aside. Therefore, the judgment of the trial court is reversed.

Reversed.

FRIEDLANDER, J., and MATHIAS, J., concur.