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NO. CAAP-13-0000060

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

INTEGRATED HEALTH RESOURCES, LLC dba
LEEWARD INTEGRATED HEALTH SERVICES,
Plaintiff-Appellee,
v.
GENEVIEVE WALKER, Defendant-Appellant

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIVIL CASE NO. 1RC12-1-608)

MEMORANDUM OPINION

(By: Nakamura, C.J., Foley and Fujise, JJ.)

Defendant-Appellant Genevieve Marie Walker (**Walker**) appeals pro se from the January 8, 2013 Judgment entered in the District Court of the First Circuit¹ (**district court**) in favor of Plaintiff-Appellee Integrated Health Resources, LLC, dba Leeward Integrated Health Services (**Integrated Health**).

We construe Walker's points of error as contentions that the district court erred in:

(1) overlooking issues of law regarding the proper standard for vacating default judgment based on lack of personal jurisdiction;

(2) entering default judgment because an answer and counterclaim had been timely filed;

(3) entering default judgment because default judgments are disfavored and any doubt should be resolved in favor of the

¹ The Honorable Shirley M. Kawamura presided.

party seeking relief from entry of default so that, in the interests of justice, there can be a trial on the merits;

(4) entering default judgment in violation of Hawai'i Rules of Civil Procedure (**HRCF**) 54(c) because Walker was deprived of notice of the scope of the claim and a meaningful opportunity to defend against it;

(5) entering default judgment because it was void for affecting life, liberty, or property rights and due process; and

(6) entering default judgment without providing her with reasonable accommodations.

I. BACKGROUND

Walker was admitted to Integrated Health's nursing facility located in Waianae, Hawai'i on April 8, 2011. Upon admission, Walker's daughter and attorney-in-fact Michelle Walker-Cook (**Walker-Cook**) signed an agreement as the "responsible party" for Walker, promising to pay for the charges assessed by the facility. In a letter dated October 19, 2011, Integrated Health sent Walker an invoice for its services rendered between May 8, 2011 and June 15, 2011, totaling \$8,518.50.

On January 31, 2012, Integrated Health filed a complaint in district court seeking from Walker "[p]rincipal in the amount of \$8,518.50, interest of \$526.69, and service fees of \$40.00 pursuant to contract for services rendered." The district court entered an order striking the Return of Service, stating "Name of [the] person receiving 'substitute' service must be stated."

On February 21, 2012, Walker filed her "Answer and Counterclaim" (**Answer** and **Counterclaim**). On February 28, 2012, Walker-Cook filed an "Answer and Counterclaim," for which the district court immediately entered an order striking the pleading because "Defendant is Genevieve Walker. If another person other than an attorney is representing her, [that person] must show proof that circuit court has approved that person as guardian of the person." On March 15, 2012, Walker filed a notice of appeal from the order striking Walker-Cook's Answer and Counterclaim in case no. CAAP-12-0000172. On May 31, 2012, this court dismissed the appeal for lack of appellate jurisdiction.

On March 5, 2012, Integrated Health filed a Return of Service, indicating that substitute service was made to "Charles Cook, adult grandson of Genevieve Walker."²

On March 16, 2012, Integrated Health filed a motion to dismiss Walker's Counterclaim (**Motion to Dismiss**). In response, Walker filed a "Notice of Opposition to [Integrated Health's] Motion to Dismiss Counterclaim via Motion to Strike and for Sanctions" in which she indicated that she would file a "formal opposition" by April 30, 2012. Walker did not file an opposition to the Motion to Dismiss or a motion to strike and for sanctions.

On April 5, 2012, the district court held a hearing on Integrated Health's Motion to Dismiss. Walker was not present at the hearing, and the district court dismissed Walker's counterclaim without prejudice. On May 2, 2012, the district court entered an order granting Integrated Health's Motion to Dismiss.

On September 26, 2012, Walker filed "Defendant's Renewed Request for Accommodations Under the Americans with Disabilities Act Pursuant to Title II, 42 U.S.C. § 12131 and §§ 504 and 701 of the Rehabilitation Act and Stay of the Proceedings Including the Status Conference of September 27, 2012 to Ensure Defendant's Right to a Fair Trial" (**Request for Accommodations**).³ In her Request for Accommodations, Walker stated,

To date, despite numerous requests by phone, in writing and by the formal request, [Walker] has sought [Americans with Disabilities Act of 1990 (ADA)] accommodations as she is bedridden, cannot leave her hospice, is profoundly deaf, almost totally blind, suffers from terminal illness including, but not limited to leukemia, acute stenosis, stroke syndrome, severe osteoporosis, etc. as memorialized in [Walker's] original Request for ADA Accommodations.

² Walker notes in her opening brief:

Charles Cook is not competent to accept serve [sic] on anyone's behalf including his own person because he is an identified SSI and SSDI recipient adult person with an organic brain disorder also known as schizophrenia who has a legal Guardian . . . appointed by a foreign court and a Petition for Permanent Guardianship is pending before the Circuit Court of the First District Family Division, Hawai'i.

³ The record does not contain evidence of an initial request for accommodations.

There is no response to Walker's Request for Accommodations in the record.

In a letter dated October 15, 2012, the Clerk of the Court for the district court informed Walker that case had "been scheduled by the court for status [on] Thursday, October 25, 2012 at 9:00 a.m. in the Ewa District Court[.]" Walker did not appear at the status conference.

On January 8, 2013, Integrated Health filed an ex parte motion for default judgment (**Motion for Default Judgment**) based on Walker's failure to appear at the "Answer Hearing" on October 25, 2012. The district court granted the motion and entered the Judgment against Walker on the same day.

On January 31, 2013, Walker filed a notice of appeal from the Judgment.

II. STANDARD OF REVIEW

Default Judgment

"Application of HRCPP Rule 55, which governs entry of default judgment, is reviewed for abuse of discretion." Gonsalves v. Nissan Motor Corp. in Hawaii, Ltd., 100 Hawai'i 149, 158, 58 P.3d 1196, 1205 (2002). The same standard applies to application of District Court Rules of Civil Procedure (**DCRCP**) Rule 55,⁴ which governs entry of default judgment in district court proceedings. See id. at 159, 58 P.3d at 1206.

III. DISCUSSION

Walker argues the Motion for Default Judgment is "void ab initio and should be vacated and the holding reversed." The Judgment states Walker "failed to plead or otherwise defend and a default was entered upon proof that [Walker] is indebted to [Integrated Health]."

"In order to determine whether the district court properly entered default against [a defendant] . . . it is

⁴ DCRCP Rule 55 provides, in pertinent part:

RULE 55. DEFAULT.

(a) **Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and the fact is made to appear by affidavit or otherwise, the clerk shall enter that party's default.

necessary to determine whether [the defendant] 'failed to plead or otherwise defend as provided by [the DCRCP.]'" First Hawaiian Bank v. Powers, 93 Hawai'i 174, 183, 998 P.2d 55, 64, (App. 2000) (quoting DCRCP Rule 55(a)). "Some courts have properly recognized that Rule 55(a)'s 'otherwise defend' language may not be extended to justify a dismissal once there has been an initial responsive pleading or an initial action that constitutes a defense." Id. at 185, 998 P.2d at 66 (quoting 10 Moore's Federal Practice § 55.10 [2][b] at 55-12.1 (3d ed. 1998)); see Gonsalves, 100 Hawai'i at 159, 58 P.3d at 1206.

On February 21, 2012, Walker filed her Answer and Counterclaim. On April 27, 2012, Integrated Health filed a motion to dismiss Walker's Counterclaim, to which Walker submitted a "Notice of Opposition to [Integrated Health's] Motion to Dismiss Counterclaim via Motion to Strike and for Sanctions." On April 27, 2012, Walker also submitted a "Notice of Filing of Motion for Reconsideration and for Sanctions." On September 26, 2012, Walker filed her Request for Accommodations.

This court has vacated default judgments where the defendant has filed an answer. See, e.g. Powers, 93 Hawai'i at 184-85, 998 P.2d at 65-66; Mahler v. Cty. of Hawaii Real Prop. Tax Div., No. 29711 at *5 (App. Dec. 17, 2009) (mem.). Here, Walker submitted an answer and other documents. Although Walker submitted notices of motions she intended to file without subsequently filing the motions, the district court was wrong to conclude that Walker "ha[d] failed to plead or otherwise defend" the lawsuit.

The district court's error is particularly pronounced because it informed Walker by letter dated October 15, 2012 that the hearing on October 25, 2012 was to be a status conference. However, in its Motion for Default Judgment, Integrated Health indicated that Walker failed to appear at the "Answer Hearing on October 25, 2012." The district court entered judgment against Walker because she "failed to plead or otherwise defend" the lawsuit based solely on her failure to appear at, premised on the information provided to Walker, a single status conference. Such an action by a defendant does not warrant a default judgment

against him or her, and it is clear that the district court abused its discretion. See Gonsalves, 100 Hawai'i at 158, 58 P.3d at 1205.

IV. CONCLUSION

Therefore, the Judgment entered on January 8, 2013 in the District Court of the First Circuit is vacated and this case is remanded for proceedings consistent with this Memorandum Opinion.⁵

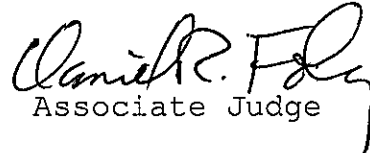
DATED: Honolulu, Hawai'i, May 16, 2016.

On the briefs:

Genevieve Marie Walker
Defendant-Appellant pro se.


Chief Judge

Jason M. Tani
Daniel M. Chen
(Rush Moore)
for Plaintiff-Appellee.


Associate Judge


Associate Judge

⁵ Because we vacate and remand this case, we decline to address the reasonable accommodations claim as it is now moot.