

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Robert M. Hall,

Plaintiff and
Appellant

v.

John F. Hall, Deborah E. Hall, Leslie Hall, a/k/a Leslie Hall Butzer, and all unknown heirs, devisees, successors, and creditors of Myles Franklin Hall, Myles F. Hall, a/k/a Myles Hall, deceased, and all other persons unknown claiming any estate or interest in, or lien or encumbrance upon, the property described in the Complaint,

Defendants and
Appellees.

Williams County Civil No.: 53-2018-
CV-00744

Supreme Court No. 20190169

**SUPPLEMENTAL BRIEF OF APPELLEE ESTATE OF
JOHN F. HALL**

APPEAL FROM JUDGMENT OF JANUARY 16, 2019 AND ORDER OF
JANUARY 31, 2019 FOR CASE NO. 53-2018-CV-00744
COUNTY OF WILLIAMS, NORTHWEST JUDICIAL DISTRICT
THE HONORABLE BENJAMEN J. JOHNSON

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STATEMENT OF THE ISSUE

[1] Did the District Court abuse its discretion in vacating the Default Judgment entered against John F. Hall n/k/a The Estate of John F. Hall?

STATEMENT OF THE FACTS

[2] On or about May 17, 2018, Plaintiff, Robert M. Hall (hereinafter “Robert”) filed the instant lawsuit with the District Court. (Dkt. ID ## 1-10). Robert filed his Affidavit of Service on John F. Hall n/k/a The Estate of John F. Hall (hereinafter “John”), and co-Defendants Leslie Hall Butzer (hereinafter “Leslie”) and Deborah Hall (hereinafter “Deborah”). Robert filed Return Receipts of Service for Leslie and Deborah (Dkt. ID ## 9, 10), but not for John.

[3] Counsel for Robert filed his Affidavit for Publication and supporting documents on June 13, 2018 (Dkt. ID ## 20-29), stating that John could not be located. Robert’s counsel filed an Affidavit of Publication noting that “Public Notice” was published in the Williston Herald on June 19th and 26th, 2018, as well as July 3, 2018. (Dkt. ID # 59).

[4] On or about July 19, 2018, Robert made his Motion for Partial Default Judgment Against Defendant John F. Hall. (Dkt. ID ## 60-70). On August 20, 2018, the Court entered its Findings of Fact, Conclusions of Law and order for Judgment Against John F. Hall, as well as its Judgment. (Dkt. ID ## 72-73). A day later, on August 21, 2018, Robert filed his Notice of Entry of Judgment as to John F. Hall (Dkt. ID ## 72-73).

[5] On August 20, 2018, Leslie and Deborah filed their Motion for Summary Judgment and their brief in support. (Dkt. ID ## 83-86). Robert resisted said motion, however, the Court granted summary judgment in Leslie and Deborah's favor, finding that Robert's claims were res judicata. (Dkt. ID ## 94, 104). Robert filed his Motion for Reconsideration of the Court's Order Granting Motion for Summary Judgment, which was resisted by Leslie and Deborah, and ultimately denied by the Court. (Dkt. ID ## 97-103, 107-111).

[6] Robert made his own motion for summary judgment regarding Leslie and Deborah's counterclaims, and was granted partial summary judgment as to those counterclaims. (Dkt. ID ## 112-115, 120-124, 127-129). On May 31, 2019, Robert filed his Notice of Appeal with the North Dakota Supreme Court. (Dkt. ID ## 130-132).

[7] John F. Hall died on July 4, 2019. (Dkt. ID # 137). On August 14, 2019, Lynn Hall was appointed Personal Representative of the Estate of John F. Hall. (Dkt. ID # 138).

[8] On or about June 17, 2019, John was contacted by Deborah, his sister, and co-Defendant and told about the instant lawsuit. (Dkt. ID # 140, ¶ 4). This was the first time John was made aware of the case at bar. (Id. at ¶ 5). The next day, June 18, 2019, John contacted Deborah and Leslie's counsel regarding the lawsuit. (Id. at ¶ 6).

[9] While Robert's North Dakota attorneys were unable to locate John, Robert's other attorneys had, since 2013, been actively involved in

multiple lawsuits against John and were well aware of how to contact him. (Dkt. ID #141 at ¶ 4). These actions took place before and during the pendency of the case at bar, as well as before Robert Hall engaged in the previous quiet title action. (See Case No. 53-11-C-00120, Dkt. ID # 72, September 9, 2013). Upon information and belief, Robert had actual knowledge of John's address, or the ability to obtain his address. (Dkt. ID #141 at ¶ 5). Robert made no attempt to contact John's New York Counsel to ascertain his address. (Id. at ¶ 6). Robert could have also obtained John's address from his brother-in-law, Rodney Edwards. (Id. at ¶ 7). Robert did not attempt to contact John's New York counsel. (Id. at ¶ 8).

[10] John filed his Motion to Vacate Default Judgment and supporting documents on August 16, 2019. (Dkt. ID ## 134-142). Robert resisted the motion, however, on October 1, 2019, the District Court entered its Order Granting Motion to Vacate Default Judgment. (Dkt. ID # 155). In that Order, the District Court found that "[t]he motion to vacate was timely filed and justice requires a decision based upon the merits of the case." (Id. at ¶ 3).

STANDARD OF REVIEW

[11] "The decision to grant or deny a motion vacating a default judgment is within the discretion of the district court. *Overboe v. Brodshaug*, 2008 ND 112, ¶ 6, 751 N.W.2d 177. "Absent an abuse of discretion, we will not reverse a district court's decision to vacate a default judgment." *Id.* (citations omitted). "A [district] court abuses its discretion if it acts in an arbitrary,

capricious, or unreasonable manner, or if it misinterprets or misapplies the law.” *Id.* “A district court acts in an arbitrary, unreasonable, or unconscionable manner when its decision is not the product of a rational mental process by which the facts and law relied upon are stated and considered together for the purpose of achieving a reasoned and reasonable determination.” *Id.*

LAW AND ARGUMENT

I. The district court did not abuse its discretion by vacating the default judgment against John R. Hall.

[12] In *Overboe*, this Court noted that:

“This Court has emphasized that N.D.R.Civ.P. 60(b) is to be liberally construed and applied, and trial courts should be more lenient in granting motions to vacate default judgments than in vacating judgments in cases which have been tried on their merits....

This court has long encouraged trial courts to be more lenient when entertaining Rule 60(b) motions to vacate default judgments as distinguished from “litigated” judgments, that is, judgments entered after trial on the merits. While a trial court certainly has discretion to grant or deny a Rule 60(b) motion to vacate a default judgment, the range of that discretion is limited by three important considerations. First, Rule 60(b) is remedial in nature and should be liberally construed and applied. Second, decisions on the merits are preferable to those by default. Third, as a consequence of the first two considerations, where timely relief is sought from a default judgment and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the judgment so that cases may be decided on their merits.”

Overboe, 2008 ND 112, ¶ 8, 751 N.W.2d 177 (citing *Gepner v. Fujicolor Processing, Inc.*, 2001 ND 207, ¶¶ 13–14, 637 N.W.2d 681 (internal citations and quotations omitted); see also *Suburban Sales & Serv., Inc. v. District Court*

of Ramsey County, 290 N.W.2d 247, 252 (N.D.1980) (noting that no cases were discovered in which trial courts were held to have abused their discretion in vacating a judgment, but citing several occasions in which our trial courts abused their discretion in refusing to vacate a judgment under Rule 60(b)).”

[13] N.D.R.Civ.P. 60(b) provides that, on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; and; (6) any other reason that justifies relief. Additionally, “[a] motion under Rule 60(b) must be made within a reasonable time, and for reasons (1), (2), and (3) no more than a year after notice of entry of the judgment or order in the action or proceeding if the opposing party appeared, but not more than one year after a default judgment has been entered.” N.D.R.Civ.P. 60(c).

[14] In the instant case, the motion was made within one (1) year of the entry of the default judgment against John. Furthermore, when the motion was filed, it had already been established that John’s co-defendants had meritorious defenses; as they had been granted summary judgment on Robert’s claims. Additionally, at the time John’s motion to vacate was filed, the case was pending appeal to this Court.

[15] It has been noted that decisions on the merits are preferable to default judgments. In this case, the merits are still being decided for John’s co-

defendants. Robert is not prejudiced by having the default judgment vacated. Should Robert be successful on appeal, he is allowed to make his arguments against all of the defendants. Should he fail, it is readily apparent that he was never entitled to relief against John.

CONCLUSION

[16] The District Court did not abuse its discretion by finding that the motion to vacate was timely filed, and determined that justice requires a decision based upon the merits. The facts in this case, and the law governing the same, support such a determination. As such, the District Court's Order Granting Motion to Vacate Default Judgment should be AFFIRMED.

[17] Respectfully submitted December 20, 2019.

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CERTIFICATE OF COMPLIANCE

[18] The undersigned, as attorney for the Defendant/Appellee in the above matter, hereby certifies, in compliance with N.D.R.App.P. 32, that the above brief was prepared with proportionally spaced, 12-point font typeface, and the total number of pages of the above Brief totals 10 pages, inclusive.

Dated December 20, 2019.

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CERTIFICATE OF SERVICE

[19] I hereby certify that on December 20, 2019 I filed and served the foregoing document on the following by electronic mail transmission, pursuant to N.D.R.App.P. 25 and 31:

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