

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37852

DISCOVER BANK,)	2011 Unpublished Opinion No. 439
)	
Plaintiff-Respondent,)	Filed: April 15, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JAMES E. PARRISH and SHARON C.)	THIS IS AN UNPUBLISHED
PARRISH,)	OPINION AND SHALL NOT
)	BE CITED AS AUTHORITY
Defendants-Appellants.)	
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bingham County. Hon. Darren B. Simpson, District Judge.

Order denying motion to set aside default judgment, affirmed.

Dunn Law Offices, PLLC; Robin D. Dunn, Rigby, for appellants.

Blaser, Sorensen & Oleson; Stephen J. Blaser, Blackfoot, for respondent.

GUTIERREZ, Judge

James S. Parrish and Sharon C. Parrish appeal the district court’s order denying their motion to set aside a default judgment granted to Discover Bank. For the reasons set forth below, we affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Discover Bank brought an action for collection against James and Sharon Parrish (the “Parrishes”) to recover amounts owing on a credit card account. The summons and complaint were delivered to the Parrishes’ home in Rigby and served upon Lance Barber, who was residing in the home. The Parrishes did not file an answer, or otherwise defend against Discover Bank’s complaint. Consequently, the district court entered a default judgment against the Parrishes, awarding costs and attorney fees to Discover Bank.

The Parrishes brought a motion to set aside the default under Idaho Rules of Civil Procedure 55(c) and 60(b), arguing they were not properly served with the summons and

complaint. In defense to Discover Bank’s collection action, the Parrishes avowed that the entire credit card account at issue was obtained by means of fraud. Discover Bank filed an objection to the Parrishes’ motion to set aside the default, maintaining that service was proper because the summons and complaint were delivered to the Parrishes’ usual place of abode. The district court conducted a hearing and entered an order denying the Parrishes’ motion to set aside the default judgment. This appeal followed.

II.

STANDARD OF REVIEW

This Court reviews a denial of a motion to grant relief under I.R.C.P. 55(c) and 60(b) for an abuse of discretion. *Meyers v. Hansen*, 148 Idaho 283, 287, 221 P.3d 81, 85 (2009). “Where the trial court makes factual findings that are not clearly erroneous, applies correct criteria pursuant to I.R.C.P. 55(c) to those facts, and makes a logical conclusion, the court will have acted within its discretion.” *McGlooin v. Gwynn*, 140 Idaho 727, 729, 100 P.3d 621, 623 (2004); *McFarland v. Curtis*, 123 Idaho 931, 933, 854 P.2d 274, 276 (Ct. App. 1993). “Because judgments by default are not favored, a trial court should grant relief in doubtful cases in order to decide the case on the merits.” *Jonsson v. Oxborrow*, 141 Idaho 635, 638, 115 P.3d 726, 729 (2005).

III.

ANALYSIS

The district court denied the Parrishes’ motion to set aside the default, holding the Parrishes failed to show the judgment should be found void for improper service of process. The district court also concluded that even if the Parrishes had met the requirements of Rule 60(b)(4), they failed to set forth a valid defense to the collection action asserted against them.

A. Service of Process

The Parrishes argue that the default judgment should be set aside because they were not properly served with the summons and complaint. Under Rule 60(b)(4) of the Idaho Rules of Civil Procedure, a default judgment may be set aside when that judgment is found to be void. Generally, where a party has not been served with process or was improperly served with process, any judgment against such party is void. *Thiel v. Stradley*, 118 Idaho 86, 87, 794 P.2d 1142, 1143 (1990).

Idaho Rule of Civil Procedure 4(d)(2) sets forth the requirements for service upon individuals. That rule provides:

Upon an individual other than those specified in subdivision (3) of this rule, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

The Parrishes first argue that service of process upon Lance Barber was improper because Barber had no authority to accept service on their behalf. Discover Bank maintains that the Parrishes were properly served when copies of the summons and complaint were delivered to Lance Barber, given that he was a person residing at the Parrishes' usual place of abode and was over the age of eighteen. As proof of proper service, Discover Bank points to an affidavit of service in the record confirming that on July 14, 2009, a copy of the summons and complaint were delivered to the Parrishes' address in Rigby and served upon Barber. The Parrishes agree that Barber was residing at their Rigby address during this time and do not dispute that he is over eighteen.

The Parrishes further argue that they were not properly served because the Rigby address where service occurred is no longer their usual place of abode. The Parrishes affirmed in an affidavit that they now reside in Nevada. Yet, the Parrishes provided no evidence to establish that they lived in Nevada as of July 14, 2009, the date the summons and complaint were delivered to their Rigby address. The only evidence the Parrishes offered to show residence in Nevada was an affidavit submitted by Sharon Parrish, suggesting that the couple lived in Nevada as of April 7, 2010. The Parrishes did not present any facts to show that the Rigby address was not their usual place of abode as of the date the summons and complaint were delivered to their Rigby address. Thus, the district court was correct in determining that proper service of process occurred at the Parrishes' usual place of abode.

B. Defense of Fraud

The district court, in ruling on the motion to set aside the default, concluded that even if the Parrishes had met the requirements of Rule 60(b)(4), they failed to show a meritorious defense to the action raised against them. The court found that the claim that "they had not incurred the charges or expenses," without providing any facts to support the statement, was

insufficient as a defense to Discover Bank's collection action. The Idaho Supreme Court has held:

When moving to set aside a default judgment, the moving party must not only meet the requirements of I.R.C.P. 60(b) but must also plead facts which, if established, would constitute a defense to the action. It would be an idle exercise for the court to set aside a default if there is in fact no real justiciable controversy. The defense matters must be detailed.

Meyers v. Hansen, 148 Idaho 283, 289, 221 P.3d 81, 87 (2009); *Idaho State Police ex rel. Russell v. Real Property Situated in the County of Cassia*, 144 Idaho 60, 62, 156 P.3d 561, 563 (2007). A party may not rely on an ordinary pleading to prove a meritorious defense because “[o]nce a default has been entered, the pleading of a defensive matter must go beyond the mere notice requirements that would be sufficient if pled before default.” *Id.* at 63, 156 P.3d at 564.

On appeal, the Parrishes argue that the district court erred when it denied their motion to set aside the default, contending their assertion of fraud amounts to “good cause.” Idaho Rule of Civil Procedure 55(c) permits the court to set aside a default for good cause shown. One of the requirements of good cause is the showing of a meritorious defense. *Idaho State Police ex rel. Russell*, 144 Idaho at 62, 156 P.3d at 563. The Parrishes continue to assert on appeal that their credit card was obtained by means of fraud. As added support for their argument, the Parrishes point to Discover Bank's affidavit acknowledging that the Parrishes telephoned Discover Bank to assert fraudulent activity on their credit card. While Discover Bank's affidavit reveals that the Parrishes questioned the validity and use of their credit card with Discover Bank, it does not provide evidence to support the existence of actual fraud. To bring a meritorious defense of fraud, a party must state the circumstances constituting fraud with particularity. I.R.C.P. 9(b). The Parrishes fail to raise a valid defense of fraud in a general sense, let alone with particularity.

C. Attorney Fees

The Parrishes seek attorney fees in the district court in the event of remand and on appeal pursuant to I.C. § 12-120. Discover Bank requests attorney fees under I.C. §§ 12-120 and 12-121 on appeal. The attorney fee provisions of I.C. § 12-120(1) govern on appeal as well as in the trial court. As the prevailing party on appeal, Discover Bank is entitled to an award of attorney fees under this provision. Consequently, we need not consider Discover Bank's claim for attorney fees on appeal under I.C. § 12-121.

IV.
CONCLUSION

The order of the district court denying the Parrishes' motion for relief from default judgment under I.R.C.P. 55(c) and 60(b) is affirmed. Costs and attorney fees on appeal are awarded to Discover Bank.

Chief Judge GRATTON and Judge MELANSON **CONCUR.**