

**IN THE COURT OF APPEALS 12/29/95**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00781 COA**

**REBECCA ANDREWS, INDIVIDUALLY AND REBECCA ANDREWS AS THE MOTHER  
AND NATURAL GUARDIAN OF ROBIN RICKARD AND BRIAN RICKARD**

**APPELLANT**

**v.**

**LISA HOPPER WHITE**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOHN LESLIE HATCHER

COURT FROM WHICH APPEALED: BOLIVAR COUNTY CIRCUIT COURT - SECOND  
JUDICIAL DISTRICT

ATTORNEY FOR APPELLANT:

GARY L. BATES

ATTORNEY FOR APPELLEE:

JEFFREY A. LEVINGSTON

NATURE OF THE CASE: CIVIL- NEGLIGENT ENTRUSTMENT

TRIAL COURT DISPOSITION: ORDER TO SET ASIDE ENTRY OF DEFAULT JUDGMENT

BEFORE THOMAS, P.J., BARBER, AND DIAZ, JJ.

BARBER, J., FOR THE COURT:

On May 3, 1994, the trial court entered a default judgment in favor of the plaintiff- appellant, Rebecca Andrews and against defendant- appellee, Lisa White. On May 31, 1994, White filed a motion to vacate the default judgment. On August 3, 1994 the trial court granted the motion and set aside the default judgment. Andrews appeals to this Court seeking a reversal of the order abrogating the default judgment. Andrews asserts in her appeal that the trial court abused its discretion by setting aside the default judgments previously granted in her favor and against the appellee in the sums of \$235,000.00, \$35,000.00 and \$25,000.00. We find no error in trial court's ruling, and therefore affirm.

## STATEMENT OF FACTS

This case was initially filed in the County Court of the Second Judicial District of Bolivar County, Mississippi. The complaint named as defendants William C. Hopper and Lisa Hopper. Summons were returned unexecuted and on December 15, 1993 alias summons were issued for the above-named defendants. Apparently, no such person as Lisa Hopper exists. Subsequently on December 17, 1993, Lisa White, the present appellee was served by process. The complaint brought by Andrew, individually and in her representative capacity, sought damages from William C. Hopper and Lisa (Hopper) White jointly and severally in the amount of \$500,000.00. The alleged damages resulted from an automobile collision which Andrews claimed was caused by the negligence of William C. Hopper and Lisa (Hopper) White. There appears in the complaint no reference to the term "negligent entrustment".

Upon being served with the alias summons, Lisa White, who has never been known as Lisa Hopper, telephoned Andrews' attorney. White advised him that she was not present at the time and place of the accident and had nothing to do with it. According to White, Andrews' attorney informed her at this time that she would be dismissed as a party defendant to the suit. On or about March 10, 1994, an order was entered on the docket of the County Court of the Second Judicial District of Bolivar County transferring the cause to the Circuit Court of the Second Judicial District of Bolivar County. On or about April 22, 1994, a judgment by default was entered by the Circuit Court in favor of Andrews and against defendants, William C. Hopper and Lisa Hopper.

Subsequently, the Circuit Court Clerk issued a writ of garnishment on the judgment against Lisa Hopper. The garnishment was served on Cleveland Glass Company, the employer of Lisa White, on or about May 20, 1994. On May 31, 1994, White, after obtaining counsel, filed a motion to set aside default judgment pursuant to Rules 55 and 60 of the Mississippi Rules of Civil Procedure. The motion set forth that the defendant had a meritorious defense to the complaint filed against her, that she was not present at the time of the alleged accident, that she advised Andrews' attorney of such and was told by him that she would be dismissed as a party to the suit. White also stated in the motion that she was completely unaware that a default judgment had been entered against her until her employer had been served with a writ of garnishment against her. A hearing on the motion to set aside default judgment was held on August 3, 1994. On August 2, 1994 a response to the motion was filed by Andrews. The hearing was attended by counsel for White, but was not attended by counsel for Andrews. On August 3, 1994 the circuit court entered its order setting aside the default judgment and dismissing the garnishment.

## ANALYSIS OF LAW

The sole issue before this Court is whether the lower court abused its discretion by setting aside the default judgment entered in favor of Andrews. "Default judgments are never favored and relief should be granted when there is a showing within the rules." *Chassaniol v. Bank of Kilmichael*, 626 So. 2d 127, 135 (Miss. 1993). The decision to grant or set aside a default judgment is "addressed to the sound discretion of the trial court." *Williams v. Kilgore*, 618 So. 2d 51, 55 (Miss. 1992). "This discretion must be exercised in accordance with the rules set forth in M.R.C.P. 55(c) and 60 (b)." *Id.* "Absent an abuse of discretion, we will not disturb the rulings of the trial court on a default judgment." *Id.* In determining whether the trial court has abused its discretion, we consider three factors:

1. Whether the defendant has good cause for default.
2. Whether the defendant in fact has a colorable defense to the merits of the claim, and
3. The nature and extent of prejudice which may be suffered by the plaintiff if the default is set aside.

*Id.*

We find that in this case the defendant had cause for default. The party designated on the complaint was Lisa Hopper. Lisa White states that she has never been known as Lisa Hopper. Furthermore, White states that upon receiving service of the complaint, she telephoned counsel for Andrews and explained to him that she was in no way involved and knew nothing of the events giving rise to Andrews' cause of action. White claims that during this conversation, she was assured by counsel for Andrews that she would be dismissed as a party defendant in this cause. Counsel for Andrews claims that this statement was qualified by his requirement that she provide him with an affidavit to that effect. This scenario certainly gives rise to a reasonable conclusion by the trial court that the defendant was either confused or misinformed as to what was required of her in this cause. We further find that, from statements contained in the affidavit given by Lisa White subsequent to the entry of the default judgment, she did have a colorable defense to the merits of the claim. In her affidavit, White claims that the car driven by Hopper did not belong to her; it belonged to Hopper. Therefore, she did not entrust the vehicle to him. White stated that the vehicle driven by Hopper at the time of the accident was in her name. This, however, was only because "it was collateral on a loan which I had taken out for him since he could not get it himself due to bad credit. The title was to be transferred back to him as soon as the loan was paid off. I never even drove the car. . . ." This assertion by White, combined with the fact that the complaint did not mention negligent entrustment and White was not at all involved in the accident, weighs favorably for the defendant, White.

Finally, Andrews has failed to show that she would suffer any prejudice if the judgment were set aside.

Given the above analysis, we cannot find that the trial court abused its discretion in setting aside the default judgment.

**THE JUDGMENT OF THE SECOND JUDICIAL DISTRICT OF THE BOLIVAR COUNTY**

**CIRCUIT COURT IS AFFIRMED. COSTS ARE ASSESSED AGAINST THE APPELLANT.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., COLEMAN, DIAZ, KING, McMILLIN,  
PAYNE, AND SOUTHWICK, JJ., CONCUR.**