

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 98-CA-00625-COA**

AMERICAN 3-CI

APPELLANT

v.

SHERRY FARROW

APPELLEE

DATE OF JUDGMENT: 03/06/1998
TRIAL JUDGE: HON. HENRY LAFAYETTE LACKEY
COURT FROM WHICH APPEALED: MARSHALL COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT: EDWARD J. CURRIE, JR.
WILLIAM W. MCKINLEY, JR.
ATTORNEY FOR APPELLEE: D. REID WAMBLE
NATURE OF THE CASE: CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION: DEFAULT JUDGMENT IN FAVOR OF APPELLEE
DISPOSITION: AFFIRMED - 02/23/99
MOTION FOR REHEARING FILED: 3/5/99
CERTIORARI FILED:
MANDATE ISSUED:

BEFORE McMILLIN, P.J., DIAZ, AND KING, JJ.

DIAZ, J., FOR THE COURT:

¶1. The Marshall County Circuit Court entered a default judgment in the amount of \$50,000 against the appellant, American 3-CI. On appeal, American 3-CI argues that the default judgment is void due to the lack of evidence contained in the record and that the trial court abused its discretion in failing to set aside the default judgment. Finding these arguments without merit, we affirm.

FACTS

¶2. On May 8, 1996, Sherry Farrow was traveling north on Highway 7 in Marshall County when Mauplin L. Bradford, who was driving his vehicle in the course and scope of his employment with American 3-CI ("American"), struck Farrow's car, causing physical injuries to Farrow and damage to her vehicle. AIG Claim Services, Inc. ("AIG") was the insurance carrier for American. Farrow and AIG attempted to settle the dispute; however, settlement could not be reached. On July 8, 1997, Farrow filed suit against American. On July 11, 1997, counsel for Farrow faxed a copy of the summons and complaint to Iris Basham, claim specialist for AIG. A cover letter was attached which stated that unless the case was settled, that American

would be served with process the following week. When AIG failed to respond, Farrow served process upon Lynn Ray, American's Regional Transportation Manager. Ray in turn contacted Janice Crane, Human Resources Manager for American, and informed her that he would fax a copy of the summons and complaint to her. However, due to an unknown reason, Crane never received the fax. She was then called out of town on a business matter, and when she returned to the office three days later, she had forgotten about her conversation with Ray. According to Crane, she had spoken with Basham at AIG and was under the impression that Basham was handling the matter on American's behalf. As a result, no answer was filed on behalf of American.

¶3. On September 2, 1997, Farrow filed an application for entry of default. A docket entry of default was entered that same day. Farrow then filed her motion for default judgment and writ of inquiry against American on September 5, 1997. On September 8, 1997, a hearing was held and proof was heard in this matter. The Circuit Court of Marshall County thereafter entered a default judgment against American in the amount of \$50,000, together with interest and costs at the rate of 8% per annum. American then moved the court to set aside the default judgment; however, on March 10, 1998, the trial court overruled American's motion. It is from this ruling that American now brings forth its appeal.

DISCUSSION

¶4. American argues that the lack of evidence contained in the record renders the default judgment void and that the trial court erred in refusing to set it aside. American claims that because there was no record of the September 8, 1997 hearing, the final judgment of default was invalid.

¶5. Rule 55(b) of the Mississippi Rules of Civil Procedure provides in part:

[i]f in order to enable the court to enter judgment or to carry it into effect it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing with or without a jury, in the court's discretion, or order such references as it deems necessary and proper.

M.R.C.P. 55(b). The rule does not mention nor does it require that the hearing to determine the amount of damages be of record.

¶6. In its order overruling American's motion to set aside the default judgment, the trial court stated as follows:

Defendant failed to answer, appear or plead to the Complaint and upon Motion of Plaintiff this matter came on to be heard before the Court for Default Judgment on September 8, 1997. Upon Writ of Inquiry a hearing was held and after proof heard the Court granted Plaintiff judgment in the amount of fifty thousand dollars (\$50,000.00).

The record is thus clear that a hearing was held on September 8, 1997, to determine the extent of the damage award. Where motions are involved and evidence has been presented in the trial court, but there is no transcript filed with this Court, a presumption arises that the evidence was sufficient to sustain the trial court's order. *Wade v. Wade*, 419 So. 2d 584, 585 (Miss. 1982). Therefore, we will presume that the proof presented in the September 8, 1997 hearing was sufficient to sustain the trial court's default judgment order. Because we have declined to agree with American that the default judgment was void, *see* M.R.C.P. 60(b)(4), we likewise decline to find that the trial judge abused his discretion in failing to set aside the

default judgment. Accordingly, American's assignments of error are dismissed as lacking in merit.

¶7. THE JUDGMENT OF THE MARSHALL COUNTY CIRCUIT COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS OF THIS APPEAL ARE ASSESSED AGAINST THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, IRVING, KING, LEE, PAYNE, AND SOUTHWICK, JJ., CONCUR.