COURT OF APPEALS OF VIRGINIA

Record No. 1032-25-1

GARY STARBUCK
v.
R.H., AN INFANT BY THEIR NEXT FRIEND AND PARENTS, ET AL.

Present: Chief Judge Decker, Judges Malveaux and Causey

Argued at Williamsburg, Virginia

Opinion Issued October 27, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY
Jan L. Brodie, Judge Designate

(Gary M. Starbuck, on briefs), *pro se*. Appellant submitting on brief.

W. Peyton Akers (Kassandra L. Hamilton; Stephen E. Campbell, Guardian ad litem for the minor children; Akers & Kovregina Law Group, PLLC; Waltrip & Campbell, P.C., on brief), for appellees.

MEMORANDUM OPINION BY
JUDGE MARY BENNETT MALVEAUX

Following a trial solely on damages, a jury found Gary M. Starbuck liable for compensatory and punitive damages against his former tenants, R.H. and H.H. (the "Hopson children"),[1] for various claims regarding harm caused to them by mold in their rental home. On appeal, Starbuck argues that the circuit court erred in granting default judgment against him because it did not grant

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

[1] The styling of this case as appealed from the circuit court indicated that the appellees include R.H. and H.H.'s parents, Domenic and Kara Hopson. As noted below, the original complaint named the entire Hopson family as plaintiffs against defendant Starbuck. The amended complaint, however, only included the Hopson children as plaintiffs against defendant Starbuck. We correct the styling of this case on appeal to include only the Hopson children, the sole appellees in this matter.

We also refer to the minor children by their initials to protect their privacy.

leave to file an amended complaint against him and also erred in denying his motion for reconsideration of the default judgment. We agree, because the circuit court lacked jurisdiction to adjudicate the claims set out in the amended complaint when the complaint was not specifically amended against Starbuck. Accordingly, we vacate the default judgment, reverse the circuit court's final judgment order, and remand the case.

BACKGROUND

On May 1, 2019, the Hopson family (Domenic, Kara, and their minor children H.H. and R.H.) sued their landlord, Starbuck, and property manager, Nachman Realty, LLC ("Nachman"), for harm caused by mold in their rental home. They asserted three claims specifically against Starbuck: violation of the Virginia Residential Landlord and Tenant Act ("VRLTA"); breach of contract; and negligence per se under Virginia's building code. Against both Starbuck and Nachman, they asserted three claims: negligence, gross negligence, and negligence under Code § 8.01-226.12, which addresses the duties of landlords and managing agents to remediate visible mold. The complaint requested monetary damages and attorney fees against both Starbuck and Nachman.

Starbuck, acting *pro se*, moved to dismiss the Hopsons' complaint "for insufficiently pleaded personal jurisdiction."[2]

Nachman filed a demurrer in relation to all three of the Hopsons' negligence claims against it and a plea in bar specifically to the negligence per se claim under Code § 8.01-226.12. The circuit court held a hearing on Nachman's demurrers and plea in bar, with Starbuck present.

[2] In his motion, Starbuck noted that the complaint alleged that the Circuit Court for Williamsburg/James City County had jurisdiction over this action because Starbuck and Nachman "breached their common law and contractual duties in Williamsburg, Virginia." He then asserted that the complaint was insufficient for the circuit court to "exercise its jurisdiction over a defendant" because Williamsburg is "a United States Postal Service Boundary" but "is not, in fact, either the County of James City, or the City of Williamsburg."

After hearing argument from counsel for the Hopsons and Nachman, the circuit court told Starbuck, "I don't think this directly involves you . . . you obviously have a right to be here. It could indirectly involve you." At the end of the hearing, the circuit court announced its ruling, sustaining Nachman's demurrer to the negligence and gross negligence claims and dismissing them with prejudice, but overruling Nachman's demurrer to the negligence per se claim.

The circuit court entered an order memorializing its rulings. The court further stated in the order,

> On Motion of the infant defendants, H.H. and R.H., they are granted leave to file an amended complaint against Nachman Realty, LLC within twenty-one (21) days from entry of this Order. Nachman Realty, LLC shall have twenty-one (21) days from service of the amended complaint to file its responsive pleadings.

The Hopson children subsequently filed an amended complaint against both Nachman and Starbuck on July 31, 2020. The amended complaint added new allegations in the factual background related to health risks associated with the presence of toxic mold. The complaint then asserted the same three counts specifically against Starbuck: violation of the VRLTA, breach of contract, and negligence per se under Virginia's building code. In addition, it included a new count specifically against Nachman: Nachman's own violation of the VRLTA. The complaint also included five counts against both Starbuck and Nachman: negligence, gross negligence, negligent repair, negligence per se under Code § 8.01-266.12, and actual and/or constructive fraud. While three of the claims were the same as those asserted against Starbuck and Nachman in the initial complaint, the negligent repair and fraud counts were new claims that were not included in the prior pleading. The amended complaint again asked for monetary damages and attorney fees against Starbuck and Nachman.

On January 29, 2021, counsel for the Hopson children sent Starbuck a copy of the amended complaint along with a letter that stated, "Upon the expiration of ten (10) days after the

notice provided herein and the statutory period with which you were to respond to the Amended Complaint, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested."

After receiving this letter, on February 9, 2021, Starbuck filed a renewed motion to dismiss. In the motion, he first raised a "general objection to the Plaintiff's unlawful demand for a responsive pleading" because "[t]he Order granting the Plaintiff's Leave to Amend their complaint does not include reference to Defendant Starbuck being of relevancy." He then renewed his motion to dismiss on the basis that the amended complaint did "not adequately plead this [c]ourt's jurisdiction."

On January 17, 2025,[3] the Hopson children moved for default judgment against Starbuck pursuant to Rule 3:19, based on his failure to timely respond to the amended complaint. In response, on March 7, 2025, Starbuck filed a "Memorandum Opposing Plaintiffs Motion for Judgment," where he again noted that the circuit court had specifically allowed for the filing of an amended complaint only against Nachman. He also argued that he had no duty to file a responsive pleading under Rules 3:8 or 3:19.

Following a hearing on the motion,[4] the circuit court found Starbuck in default, without "good cause . . . shown for accepting late responsive pleadings." The circuit court entered default judgment against him in an order dated March 13, 2025. Starbuck moved for reconsideration of the default judgment decision, which the court denied.

[3] The record indicates that during the period from February 2021 to January 2025, the Hopson children and Nachman engaged in discovery. Nachman also moved for summary judgment on certain counts of the amended complaint during this time, which the circuit court denied. While not apparent from the record, the Hopson children assert on brief that because the parties were awaiting the release of a Virginia Supreme Court decision in a related case, "proceedings on the matter paused by mutual consent of the parties."

[4] The transcript of this hearing is not included in the record.

Prior to trial, the Hopson children settled their suit with respect to Nachman, and the claims in the amended complaint were dismissed against that party. At a trial solely on damages, a jury found Starbuck liable for $605,000. The court entered a final judgment order reflecting the jury's verdict on May 23, 2025.

ANALYSIS

Starbuck argues that the circuit court erred in granting default judgment against him because it did not grant the Hopson children leave to amend their complaint against him. Due to the lack of leave to amend against him, Starbuck asserts, he had no obligation to respond to the amended complaint and thus he was not in default.[5]

"A lower court's interpretation of the Rules of [the Supreme] Court, like its interpretation of a statute, presents a question of law that we review de novo." *Amin v. County of Henrico*, 286 Va. 231, 235 (2013) (quoting *LaCava v. Commonwealth*, 283 Va. 465, 469-70 (2012)). We also "review the trial court's jurisdiction *de novo*." *Jackson v. Jackson*, 69 Va. App. 243, 247 (2018).

Rule 3:8(a) provides, in part, that "[a] defendant must file pleadings in response within 21 days after service of the summons and complaint upon that defendant." "A defendant who fails

[5] As an initial matter, the Hopson children argue that Starbuck failed to file transcripts or written statements necessary to permit this Court's resolution of his assignments of error. The Hopson children correctly note that the record here does not include a transcript of the default judgment motion hearing or the motion to reconsider proceedings. "When the appellant fails to ensure that the record contains transcripts or a written statement of facts necessary to permit resolution of appellate issues, any assignments of error affected by such omission will not be considered." Rule 5A:8(b)(4)(ii). "If . . . the transcript is indispensable to the determination of the case, then the requirements for making the transcript a part of the record on appeal must be strictly adhered to." *Shiembob v. Shiembob*, 55 Va. App. 234, 246 (2009) (alteration in original) (quoting *Turner v. Commonwealth*, 2 Va. App. 96, 99 (1986)). We conclude these transcripts are not indispensable to our resolution of this case. Any argument by counsel or reasoning by the circuit court made at these hearings would have no impact on the outcome of this appeal. The dispositive issue here, whether the circuit court had jurisdiction to adjudicate the amended complaint, is a pure issue of law. *See, e.g.*, *JSR Mech., Inc. v. Aireco Supply, Inc.*, 291 Va. 377, 382 (2016) (finding a transcript not indispensable when the record "sufficiently sets before the Court the pure issue of law" on appeal).

to timely file a responsive pleading as prescribed in Rule 3:8 is in default." Rule 3:19(a). In the event of a default, "the court will, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due." Rule 3:19(c)(1). That said, Rule 3:19(b) provides that "[p]rior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading."

The Hopson children argue that Starbuck was in default because he failed to respond to any specific count of either the initial or amended complaint. And because he failed to ask the circuit court to file late responsive pleadings, he remained in default. Accordingly, they contend, the circuit court did not err in granting their motion for default judgment under Rule 3:19(c).

Their argument, however, ignores the impact on this case of Rule 1:8, the rule governing the amendment of pleadings. Rule 1:8 provides that "[n]o amendments may be made to any pleading after it is filed save by leave of court." Here, in its order addressing Nachman's demurrer to the initial complaint, the circuit court granted the Hopson children "leave to file an amended complaint against Nachman Realty, LLC within twenty-one (21) days from entry of this Order." In Virginia, a "court speaks through its orders." *Rubino v. Rubino*, 64 Va. App. 256, 265 (2015) (quoting *McBride v. Commonwealth*, 24 Va. App. 30, 35 (1997)). The court's written order in this case clearly did not grant leave to amend the complaint as to Starbuck. Leave to amend was only granted against Nachman.

The circuit court subsequently granted default judgment based on Starbuck's failure to respond to an amended complaint that was not amended against him pursuant to Rule 1:8. The question on appeal for this Court is whether the circuit court erred in doing so. We find that our Supreme Court's decision in *Mechtensimer v. Wilson*, 246 Va. 121 (1993) provides the answer. In *Mechtensimer*, plaintiff Mechtensimer filed a complaint against defendant Wilson and others, alleging that they had committed tortious acts against him. *Id.* at 122. Mechtensimer later filed

an amended complaint, without seeking leave of court as required by Rule 1:8. *Id.* Wilson then filed responsive pleadings to the amended complaint. *Id.* When Wilson later learned that the amended complaint had been filed without leave of court, he moved to dismiss the case, arguing that the circuit court lacked jurisdiction because Mechtensimer failed to comply with Rule 1:8. *Id.* The circuit court granted the motion. *Id.*

On appeal, Mechtensimer argued that the circuit court erred by dismissing the case "because, even though leave of court was not obtained before filing the amended [complaint], Wilson had made a general appearance by filing his grounds of defense and motion for a bill of particulars." *Id.* Our Supreme Court rejected this argument, holding that "[a]pplying the plain language of [Rule 1:8], . . . Mechtensimer's amended [complaint] was without legal efficacy because he failed to obtain leave of court to amend his original [complaint]. Thus, the court did not acquire jurisdiction to adjudicate any causes of action alleged in the amended [complaint]." *Id.* at 122-23; *see also Ahari v. Morrison*, 275 Va. 92, 93, 95-96 (2008) (applying *Mechtensimer* in holding that "an amended complaint is not deemed filed, and is thus without legal efficacy, until a trial court grants leave to amend").[6]

[6] In this case, as noted above, the Hopson children argue that Starbuck was in default because he failed to respond to any specific count of either the initial or amended complaint. Starbuck contends that his motions to dismiss for lack of personal jurisdiction qualified as responsive pleadings to the initial and amended complaints under the prior version of Rule 3:8(a) in place when the complaints were filed. To resolve this appeal, however, we need not address the issue of whether Starbuck's motions constituted responsive pleadings under either version of Rule 3:8(a). In *Mechtensimer*, the Supreme Court rejected the argument that the defendant had "waived any defects in process and service by filing responsive pleadings." 246 Va. at 123. It noted that while "the well-established rule [is] that a defendant waives defects in process and service thereof by appearing in an action," the issue in that case involved the jurisdiction of a circuit court to adjudicate claims in an amended complaint filed without leave of court; thus, the defendant's "pleadings responding to that [complaint] cannot confer jurisdiction upon the trial court." *Id.* Here, as in *Mechtensimer*, it is immaterial whether Starbuck's motions were responsive pleadings, because his pleadings could not "confer jurisdiction upon" the circuit court in regard to the amended complaint. *Id.*

The circuit court here found that Starbuck was in default for failing to file responsive pleadings to the amended complaint pursuant to Rule 3:8(a), but he had no obligation to respond to the amended complaint when it was not amended as to him under Rule 1:8. The amended complaint was "without legal efficacy" as to Starbuck because the Hopson children failed to obtain leave to amend against him. *Mechtensimer*, 246 Va. at 122. Therefore, "the court did not acquire jurisdiction to adjudicate any causes of action alleged in the amended [complaint]," *id.* at 123, and it erred in doing so in this case.

CONCLUSION

Because the circuit court lacked jurisdiction over Starbuck in regard to the amended complaint, it erred in entering a default judgment against him based on his failure to respond to that pleading. Since the default judgment is void for lack of jurisdiction, the circuit court also erred in failing to grant Starbuck's motion for reconsideration of that issue.[7] We therefore vacate the default judgment entered March 13, 2025, reverse the circuit court's final order entered May 23, 2025, and remand the case.[8]

Reversed, vacated, and remanded.

[7] Starbuck also assigned error to the circuit court's alleged failure to grant remittitur in the amount of the settlement between the Hopson children and Nachman. Because we reverse the circuit court's final judgment order, we need not address this argument on appeal.

[8] We remand to the circuit court to allow the parties the opportunity to present argument about the viability of any of the claims, such as the claims against Starbuck in the original complaint, if they so choose. We take no position on whether there are any surviving claims from the pleadings.