



The appellee, Ms. Parkins, filed a motion pursuant to Rule 60.02, Tennessee Rules of Civil Procedure, for relief from a default judgment entered against her in favor of the appellant, Cynthia Holcomb. Ms. Holcomb has appealed claiming that the trial court erred in granting the motion. We reverse the trial court.

There are no material facts in dispute. The record reflects that Ms. Holcomb contracted with Kyle Parkins, Gloria Parkins' husband, whereby Mr. Parkins was to construct a home for Ms. Holcomb. She gave Mr. Parkins a check for twenty-five thousand dollars (\$25,000.00), allegedly an advance on the construction contract. Mr. Parkins began some preliminary work towards the construction of the house, but never proceeded to any material degree.

Mr. Parkins approached Ms. Holcomb about borrowing some money from her to pay for work done elsewhere. She gave him forty thousand dollars (\$40,000.00) in addition to the twenty-five thousand dollars previously advanced and in return he gave her a check for forty thousand dollars (\$40,000.00). He told her, however, not to cash the check until he told her to do so. Substantial time passed with no work being done by Mr. Parkins for Ms. Holcomb. When inquiries were made about cashing the check, Mr. Parkins gave a variety of excuses as to why the check should not be

cashed. Eventually, M<sup>s</sup>. Holcomb attempted to cash the check. After several attempts, she was unable to cash the check due to insufficient funds in M<sup>r</sup>. Parkins' account.

M<sup>s</sup>. Holcomb then turned to an attorney for legal advice. Again M<sup>r</sup>. Parkins was given an opportunity to make the check good but failed to do so. M<sup>s</sup>. Holcomb filed suit against M<sup>r</sup>. Parkins and his wife, Gloria Parkins, the appellee, and others who are not parties to this appeal.

Constable Gary Cutshaw served M<sup>r</sup>. Parkins with a complaint and summons. M<sup>r</sup>. Parkins volunteered to take the summons to M<sup>s</sup>. Parkins and later returned it to Constable Cutshaw containing a signature which he represented to be that of M<sup>s</sup>. Parkins. It was, in fact, a forgery admittedly done by M<sup>r</sup>. Parkins.

According to M<sup>s</sup>. Parkins, she knew about the lawsuit but believed that it involved only her husband. Constable Cutshaw later explained to M<sup>s</sup>. Parkins that he had a summons ostensibly bearing her signature and that she was involved in the lawsuit. When asked if she wished him to bring her a copy of the summons and complaint, she declined.

Apparently, M<sup>s</sup>. Parkins took no measures to defend herself and a default judgment was entered against both M<sup>r</sup>. and M<sup>s</sup>. Parkins for sixty-eight thousand, four hundred fifty-six dollars and fifty-one cents (\$68,456.51) in compensatory damages and three thousand dollars (\$3,000.00) in punitive damages.

M<sup>s</sup>. Parkins became aware of the judgment after an execution had been issued thereon. She filed a motion to stay the execution and a motion to set aside the default judgment. After a hearing on the motions, the trial court issued a temporary restraining order against M<sup>s</sup>. Holcomb restraining her from further execution against M<sup>s</sup>. Parkins, conditioned upon payment of a cash bond in the amount of eighty thousand dollars (\$80,000.00) into the Registry of the court. Subsequently, the trial court ordered the default judgment set aside conditioned upon the bond described above remaining with the court.

An interlocutory appeal was granted by the trial court. Application was then made to this court and this court allowed the appeal. We now have the case before us on a multitude of issues presented by M<sup>s</sup>. Holcomb. In sum and substance, however, the dispositive issue is whether or not the court abused its discretion in granting the Rule 60.02 relief.

Rule 60.02, T. R. C. P., provides in pertinent part as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud ... (3) the judgment is void; (4) the judgment has been satisfied ...; or (5) any other reason justifying relief from the operation of the judgment.

It is well-settled that a motion for relief from a judgment pursuant to Rule 60 addresses itself to the sound discretion of the trial court; the scope of review on appeal is whether the trial court abused its discretion. Toney v. Mieller Company, 810 S.W2d 145 (Tenn. 1991); Underwood v. Zurich Ins. Co., 845 S.W2d 94 (Tenn. 1993).

The trial court determined that the judgment was not void. In so doing, he accredited the testimony of Constable Cutshaw fully. In his memorandum opinion, the court made the following observations:

... Here, Ms. Parkins not only knew of the suit and her involvement in it, she was advised by Constable Cutshaw that he had in hand a summons bearing her signature. (Emphasis in original). She was pointedly asked by the constable if she wished to bring to her additional copies of the summons and complaint, and she declined. The constable then noted on the summons that he "verified" Ms. Parkins'"s acceptance of service.

Had Ms. Parkins not had this conversation with Constable Cutshaw or, having had the conversation, told him that her purported signature was a forgery, the burden would have been upon Mr. Cutshaw to properly serve her with process. But having learned from Cutshaw that she was a named defendant, and knowing that he had in his possession a document purporting to bear her signature, and then declining his offer to bring to her additional copies of the papers, she tacitly suggested to Cutshaw that she considered herself as having been served with the papers. She therefore should not be allowed to claim that she was not served. The situation in this case is more akin to that described in the Kentucky case of Gray v. Jackson Purchase Production Credit Association, 691 S.W2d 904 (Ky. App. 1985). Gray at the very least stands for the proposition that one may be estopped from denying that there has been a proper service of process.

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This judgment is not void; Ms. Parkins' actions estop her from attacking the sufficiency of service of process upon her. To state it succinctly, Ms. Parkins knew that she had been sued and she disdained Constable Cutshaw's offer to bring her additional copies of the suit papers. ...

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After having found that the judgment was not void, the court was concerned with the question of what effect granting Mr. Parkins relief would have on a motion for Mr. Parkins for relief should he so ask. As above noted, he resolved the issue by providing for a bond sufficient to protect the plaintiff should the plaintiff ultimately prevail.

We agree with the trial court that the judgment is not void. Without serious question, Mr. Parkins is estopped under the

developed facts in this case from denying service of process. We have found no authority in this jurisdiction directly in point, i.e., that an estoppel can be applied to prevent a party defendant from denying service of process, however, there is no reason why the ordinary rules of estoppel should not be applied.

Estoppel requires as a minimum (1) reliance upon the statement or actions of another without opportunity to know the truth and (2) action based on that reliance which results in detriment to the one acting. W. F. Holt Co. v. A & E Electric Company, Inc., 665 S.W.2d 722 (Tenn. App. 1983). Campbell v. Precision Rubber Prods. Corp., 737 S.W.2d 283 (Tenn. App. 1987). Obviously here, the appellee, M. Parkins had the opportunity to know the truth. The appellant, on the other hand did not have such an opportunity. Obviously, the appellant relied upon the facts created by the actions of M. Parkins in proceeding to judgment and application for execution. Further, some prejudice or detriment will accrue to the appellant in that she will be likely to incur additional attorney's fees and expenses for further trial.

We hold that a party can be estopped from denying service of process under proper circumstances. We agree with the judgment of the trial court that this is a proper case for the application of estoppel.

Having determined that the judgment is not void, the only grounds for relief pursuant to Rule 60.02 available to M<sup>s</sup>. Parkins must necessarily be under enumerated ground (5), i.e., any other reason justifying relief from operation of the judgment.

While by his own admission, M<sup>s</sup>. Parkins forged the signature of M<sup>s</sup>. Parkins, she was aware at all times after Constable Cutshaw "verified on 3-22-95 with M<sup>s</sup>. Parkins" that a lawsuit was pending and that she was a party. She deliberately chose, as did M<sup>s</sup>. Parkins, to disregard the action, hence, a default judgment was properly entered.

We must now decide, if in the interest of justice, the default judgment should be set aside as to M<sup>s</sup>. Parkins. The Tennessee Rules of Civil Procedure should be construed liberally to grant relief from default judgments. Tennessee Dept. of Human Servs. v. Barbee, 689 S.W2d 863, 867 (Tenn. 1985). Ordinarily, persons seeking post-judgment relief from a default judgment must show that they have grounds entitling them to relief and that they have a meritorious defense. Nelson v. Simpson, 826 S.W2d 483, 485 (Tenn. Ct. App. 1991). Parties asserting that a default judgment is void need not, however, assert or prove that they have a meritorious defense. Patterson v. Rockwell Int'l, 665 S.W2d 96, 100-101 (Tenn. 1984).

A judgment is not void simply because it is wrong. To be found void, a judgment must have been rendered by a court lacking jurisdiction over the subject matter or the parties or acting in some other manner inconsistent with the requirements of due process. Mignavox Co. v. Boles & Hite Constr. Co., 583 S.W2d 611, 613 (Tenn. App. 1979).

Having heretofore determined that the judgment in this case is not void, we must look to see if the appellee has demonstrated that she has a meritorious defense. Our examination of the record reflects that, unfortunately for Ms. Parkins, she chose to rest her case on the proposition that the judgment was void.<sup>1</sup> No other defense was asserted, meritorious or otherwise.

Under the circumstances reflected by the record in this case, we are of the opinion that the trial court abused its discretion in setting aside the default judgment. Accordingly, we reverse the judgment of the trial court and remand this case for such other and further action as may be necessary and consistent with this opinion.

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<sup>1</sup>We note that an answer was filed after the default judgment was entered and after the chancellor had set aside the default judgment. The answer was filed after the record had been lodged in this court. Hence, our conclusion that no meritorious defense was presented or considered by the trial court.

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Don T. Murray, J.

CONCUR:

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Houston M Goddard, Presiding Judge

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Gary Wade, Judge, by designation

IN THE COURT OF APPEALS

CYNTHI A HOLCOMB,	)	GREENE CHANCERY
	)	C. A. NO. 03A01-9511-CH-00414
	)	
Plaintiff - Appellant	)	
	)	
	)	
	)	
vs.	)	HON. DENNIS H. INMAN
	)	CHANCELLOR
	)	
	)	
	)	
KYLE PARKINS and wife, GLORIA	)	REVERSED AND REMANDED
PARKINS, and ANDREW JOHNSON	)	
BANK,	)	
	)	
Defendants - Appellees	)	

ORDER

This appeal came on to be heard upon the record from the Chancery Court of Greene County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was reversible error in the trial court.

Accordingly, we reverse the judgment of the trial court and remand this case for such other and further action as may be necessary and consistent with this opinion.

PER CURIAM