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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2026-2027

SC-2026-0017

COR3 Capital, LLC

v.

GRO Marketing, LLC

Appeal from Tuscaloosa Circuit Court
(CV-25-900404)

PARKER, Justice.

This appeal arises from a contract dispute between a property-management company, COR3 Capital, LLC, and its marketing firm, GRO

Marketing, LLC. On appeal, COR3 challenges both a default judgment the circuit court entered against it and an order to pay GRO Marketing's attorney's fees. Because COR3 failed to sufficiently establish that it possesses a meritorious defense to GRO Marketing's claims, we affirm the default judgment. But we reverse the attorney-fee order because the circuit court failed to apply the so-called Peebles factors for evaluating the reasonableness of an attorney-fee award. See Peebles v. Miley, 429 So. 2d 439 (Ala. 1983). To this limited extent, we remand the case with instructions that the circuit court evaluate the attorney-fee issue after applying the Peebles factors.

I.

In 2023, GRO Marketing entered into a contract to provide marketing services (like apartment listings) for various residential rental properties in Texas. At the time, COR3 owned those properties, but another company, Asset Living, was managing them and signed the marketing contract. COR3 took over property-management duties for the properties sometime in 2024.

After GRO Marketing failed to get paid for its services, it sued COR3 on the theory that COR3 had entered into a contract with GRO

Marketing, that COR3 had breached the contract by not paying for the services, and that COR3 had been unjustly enriched by accepting GRO Marketing's services without paying for them. Specifically, GRO Marketing alleged, COR3 was a beneficiary of its contract with Asset Living because COR3 had owned the properties at that time. GRO Marketing further alleged that COR3 had assumed responsibility for the contract when it took over management of the properties from Asset Living in 2024. Attached to the complaint were several emails from COR3's property manager acknowledging that COR3 owed outstanding balances and discussing how it might pay them.

After COR3 failed to answer the complaint, the circuit court entered a default judgment in GRO Marketing's favor. In doing so, the circuit court awarded GRO Marketing damages and ordered COR3 to pay GRO Marketing's attorney's fees. The circuit court explained that GRO Marketing had "a 20% contingency contract with its counsel ... which is reasonable considering the nature of the case at hand."

About four months after being served with the summons and complaint, COR3 made its first appearance when it moved to set aside the default judgment and to quash service. See Ala. R. Civ. P. 55(e), 59(e).

COR3 argued that service had not been perfected and that the judgment was due to be set aside pursuant to the factors set forth in Kirtland v. Fort Morgan Authority Sewer Service, Inc., 524 So. 2d 600, 603 (Ala. 1988), for determining when to excuse a party's default. COR3 also moved to set aside the award of attorney's fees. In support, COR3 attached an affidavit signed by its property manager.

To the extent that COR3 properly filed those motions under the relevant court rules, see Ala. R. Civ. P. 55(e), 59(e), the passage of time meant that they were eventually denied by operation of law. See Ala. R. Civ. P. 59.1. On that basis, COR3 timely appealed.

II.

On appeal, COR3 argues that the circuit court abused its discretion in refusing to set aside the default judgment because, it says, all three of the Kirtland factors weighed in favor of setting aside the judgment.¹

¹COR3 also presented a separate argument alleging that the judgment was void because of a failure of service. While COR3's motion did not explicitly invoke Rule 60, Ala. R. Civ. P., such a motion must be construed as a motion under Rule 60(b)(4). See Ali v. Williamson, 308 So. 3d 898 (Ala. 2019). "The 90-day period provided in Rule 59.1 applies only to motions filed under Rules 50, 52, 55, and 59, Ala. R. Civ. P.; it does not apply to Rule 60(b) motions to set aside a judgment." Womble v. Moore, 370 So. 3d 817, 819 (Ala. 2022). Because Rule 60(b) motions are not denied by operation of law, COR3's motion to set aside the judgment as

COR3 also argues that the circuit court abused its discretion in the amount of attorney's fees awarded, failing to fully consider the Peebles factors in its assessment of appropriate fees.

A.

COR3 is not entitled to relief on the default-judgment issue. A court's decision on a motion to set aside a default judgment is ordinarily reviewed for abuse of discretion. Kirtland, 524 So. 2d at 603. But a denial by operation of law under Rule 59.1 does not receive the same degree of deference because it is not the product of reasoned decision making. See Hilyer v. Fortier, 176 So. 3d 809, 812 (Ala. 2015). Even reviewing this issue from scratch, however, we perceive no error in refusing to set aside the default judgment.

This result flows from application of the Kirtland factors. Those factors recognize that, while our goal is to decide cases on the merits whenever practicable, courts must also enforce litigation deadlines. Ultimately, there must be some limit to courts' willingness to look past a

void for failure of service is still pending before the circuit court. It is important to note that, should COR3 establish a lack of service, it is not required to allege a meritorious defense to have the judgment set aside. See Ex parte McCrory & Williams, Inc., 155 So. 3d 1018, 1020 (Ala. Civ. App. 2014).

failure to appear and defend against a complaint. See Kirtland, 524 So. 2d at 604-05. To strike the right balance in any one case, the Kirtland factors require courts to examine whether the defendant has a "meritorious defense"; whether setting aside the default judgment would "unfairly prejudice[]" the plaintiff; and whether the default judgment was a result of the defendant's own "culpable" conduct. Id. at 605. But the first factor -- whether the defendant has a meritorious defense -- is essentially a threshold factor, the first among equals. See Hilyer, 176 So. 3d at 814-15. To establish it, a movant must present specific allegations and actual evidence demonstrating at least a "plausible" but "complete" defense. Kirtland, 524 So. 2d at 606. "[B]are legal conclusions without factual support" will not suffice. Id.

COR3's presentation to the circuit court consisted of "bare legal conclusions without factual support." Id. In its motion, COR3 asserted nine defenses. But it presented each defense in conclusory fashion without including legal grounds that directly supported its position. The property manager's supporting affidavit, moreover, simply restates the conclusory allegations set forth in the motion. For those reasons alone,

the circuit court justifiably could have refused even to apply the Kirtland factors. See Carroll v. Williams, 6 So.3d 463, 468 (Ala. 2008).

Additionally, COR3 did not submit sufficient facts and evidence to support its defenses. Although COR3 accompanied its motion with the property manager's affidavit, the allegations in the affidavit were either factually irrelevant or directly refuted by the emails from the same property manager that were attached to the complaint. For example, COR3 asserts that it never assumed responsibility for the contract. But the property manager's emails directly contradict that assertion, expressly conveying COR3's intent to pay the outstanding balance on the contract. COR3 did not challenge the authenticity of those emails or attempt to explain this inconsistency. See Kirtland, 524 So. 2d at 606 (requiring that the meritorious defense be supported by a credible factual basis).

COR3 also asserted numerous other defenses -- that it never conducted business in Alabama; that it owes no money for services from GRO Marketing; that it has never been an intended or actual beneficiary of GRO Marketing and Asset Living's contract; that it has not failed to satisfy a contractual obligations to GRO Marketing and thus has not been

unjustly enriched; that it never entered into a contractual agreement with GRO Marketing; and that it did not receive any services through any contract from GRO Marketing. But each of those defenses are irrelevant if COR3 assumed responsibility for the contract as evidenced in its property manager's emails.

Without allegations to support a "plausible defense," we cannot conclude that COR3 met its initial burden under the Kirtland factors. We thus cannot conclude that the circuit court's failure to consider the Kirtland factors was reversible error.

B.

COR3 next argues that the circuit court abused its discretion in determining the amount of attorney's fees awarded. In particular, it argues there was insufficient evidence to support the award amount and that the circuit court based its decision solely on the fact that GRO Marketing had entered into a 20% contingency-fee agreement with its counsel. On this issue, we agree with COR3.

"The determination of whether an attorney fee is reasonable is within the sound discretion of the trial court and its determination on such an issue will not be disturbed on appeal unless in awarding the fee

the trial court exceeded that discretion." Pharmacia Corp. v. McGowan, 915 So. 2d 549, 552 (Ala. 2004). In Peebles v. Miley, 429 So. 2d 439 (Ala. 1983), this Court determined that, in awarding attorney's fees, a trial court must consider 12 factors designed to determine the reasonableness of an attorney-fee request:

"(1) the nature and subject matter of the employment; (2) the learning, skill, and labor requisite to its proper discharge; (3) the time consumed; (4) the professional experience and reputation of the attorney; (5) the weight of the attorney's responsibility; (6) the measure of success achieved; (7) the reasonable expenses incurred by the attorney; (8) whether the fee is fixed or contingent; (9) the nature and length of a professional relationship; (10) the fee customarily charged in the locality for similar legal services; (11) the likelihood that a particular employment may preclude other employment; and (12) the time limitations imposed by the client or by the circumstances."

Carver v. Foster, 928 So. 2d 1017, 1025 (Ala. 2005) (quoting Irons v. Le Sueur, 487 So. 2d 1352, 1359 (Ala. 1986)).

Here, the circuit court based the amount of the attorney-fee award on the 20% contingency-fee agreement alone, reasoning that the agreement was "reasonabl[e]" given the nature of the case. But the problem for GRO Marketing is that it presented no evidence as to the time its counsel actually spent on the case. "Because 'it is generally recognized that the first yardstick that is used by the trial judges [in

evaluating a request for attorney fees] is the time consumed,' ... a petitioner must include some accounting of the time consumed on the matter with an application for attorney fees." CBS Holdings, LLC v. Hexagon US Fed., Inc., ___ So. 3d ___, ___ (Ala. 2025) (quoting Peebles, 439 So. 2d at 141). This principle applies even when "the basis for the attorney fees is [not] premised on the time consumed." Id. Although the value and agreed-upon percentage of the claim are relevant to determining the reasonableness of the fees, there must be evidence of the time expended on the case and "[t]he fee must bear a reasonable relationship to the time expended on the case." Carver, 928 So. 2d at 1026-27.

Without evidence of the time spent by GRO Marketing's counsel on the case, there was insufficient evidence from which the circuit court could have properly determined the reasonableness of the fee award. We therefore reverse the circuit court's attorney-fee order and remand this case to allow the circuit court to make a finding as to all 12 Peebles factors. See CBS Holdings, ___ So. 3d at ___. In conducting this review, the circuit court may consider any information or evidence (including new evidence) helpful in determining the reasonableness of the attorney's

fees, and it must enter an order based on that evidence explaining how it assessed all 12 Peebles factors. See id.

AFFIRMED IN PART; REVERSED IN PART; REMANDED WITH INSTRUCTIONS.

Stewart, C.J., and Wise, Sellers, and Cook, JJ., concur.