

## **CASE SCENARIO #1**

Charles Creditor files an action against Harry Husband and Wendy Wife for a deficiency judgment after foreclosing on property they jointly owned. Harry and Wendy, who have divorced, are both served with summons and complaint, and Harry answers the complaint. Wendy, however, fails to appear and the clerk enters default against her. Wendy moves to set aside the default, but the court denies her motion and later, after a nonjury trial, enters judgment in favor of Harry. Nevertheless, the court enters a default judgment against Wendy. Wendy appeals, claiming the court abused its discretion in denying her motion to set aside the default. She states that “I didn’t know that I had to file an answer. I am not an attorney and I have not been involved in civil litigation, other than the present civil action. Also, my husband and I were co-signors of the note, and I thought I could rely on him to defend this deficiency action since it related to property we jointly owned.”

Did the court commit an error in refusing to set aside the default? Even if not, would you have acted differently?

## CASE SCENARIO #2

Barbara K. Dinwiddie sued Big Bank of North Carolina, N.A. for breach of fiduciary duty and unfair trade practices regarding an alleged mismanagement and administration of three testamentary family trusts for which defendant served as trustee. For three years, the parties engaged in extensive discovery. Almost 4 years after the filing of the complaint, plaintiff filed an amended complaint, which defendant answered within two weeks.

The case was finally calendared for trial about two months after the answer to the amended complaint. The trial judge entered an order providing that all depositions were to be completed 17 days prior to trial, with the exception of rebuttal depositions which were to be completed 10 days prior to trial. Plaintiff gave notice to defendant's counsel that they intended to depose Big Bank pursuant to Rule 30(b)(6) on a specified date three weeks prior to the deadline. No one showed for the deposition. After a motion to compel filed by plaintiff's counsel was heard, the judge ordered the defendant to appear for a deposition a week before the scheduled trial date. Again, defendant did not appear. Based on the defendant's failure to appear, the judge ordered the defendant to appear at a Rule 30(b)(6) deposition the following month, postponed the trial, ordered the defendant to pay \$2,363.95 in sanctions, and warned that another failure to appear could result in a default judgment.

The defendant failed to appear yet again. The new trial judge was faced with a motion to strike the defendant's answer and enter a default judgment. He did so as to the breach of fiduciary duties claim on the basis that the defendant willfully and without just cause failed to abide by an Order of the Court.

Defendant claimed it learned of the default judgment hearing via an anonymous phone call just prior to the hearing and that they learned at the hearing of their attorneys' repeated failure to keep defendant informed of salient dates and issues regarding the depositions. Defendant summarily fired its original attorneys and hired new counsel. New counsel filed a Motion for Reconsideration pursuant to Rule 60(b) on the basis of attorney neglect rising to the level of fraud. The trial court denied the motion.

Error? Could the trial court have ruled differently?

### **CASE SCENARIO #3**

On July 28, 1999 plaintiffs filed a complaint for damages for the wrongful death of their son. On August 26, 1999, the county sheriff's department served the summons and complaint on the mother of the defendant, with whom defendant was presumed to be living. Defendant was 18 years old. On September 30, 1999 the clerk signed an entry of default against the defendant. The trial court entered a default judgment in the amount of \$3,000,000.00 on February 9, 2000, which was signed on March 10, 2000 and filed on March 22, 2000. On March 10, 2000, defendant filed a motion to set aside the default judgment based on Rule 55(d) and 60(b)(1) and (6), alleging the defendant had not been properly served with process. Defendant and his mother were deposed and their depositions were filed with the court.

Defendant testified that he moved to South Carolina on or about August 1, 1999 and no longer lived with his mother at the time she accepted the summons and complaint. When he left, he took only some clothes and did not tell his mother he was leaving. Defendant lived with an aunt and uncle in South Carolina and did not have his mail forwarded. On January 24, 2000, the defendant obtained a South Carolina driver's license, replacing his North Carolina license that listed his mother's address as his address. He admitted he had no intention of staying with his relatives for any length of time.

Defendant's mother testified that when asked by the deputy if her residence was considered the primary residence of her son, she answered, "yes." The day after she accepted service, she called the Sheriff and told him she was not comfortable having the papers delivered to her because she did not know her son's whereabouts. The sheriff directed her to mail the papers back, but she personally delivered them to the sheriff's department.

On September 15, 2000, the trial court denied the motion to set aside the default judgment.

Error? Could the trial court have ruled differently?

## **CASE SCENARIO #4**

“Baby” Swazey, sued her former boss, Patrick Welk, after he fired her from his dance studio for engaging in inappropriate dancing with customers. She was instructed not to teach hip hop moves such as the “motorcycle” to male customers over the age of 40, but she did so at the insistence of one such customer. After he suffered back pain from attempting the moves and then sued the studio, “Baby” was let go.

At trial, “Baby” testified that she only did what she was asked to do by the customer and Patrick had always told her that the customer was always right. Patrick’s lawyer summarily moved for a directed verdict at the close of “Baby’s” case, which was denied by the trial court, a huge fan of John Travolta. Patrick’s lawyer was so exasperated with the trial judge he had to ask for a recess to recover his emotions. Patrick then presented evidence that Baby was an at-will employee and had no right to bring the lawsuit. The jury sided with “Baby”.

After the jury was released, Patrick’s lawyer made a motion for Judgment NOV and, in the alternative, for a new trial pursuant to Rule 50. The trial judge, now aware of all the facts, reconsidered his earlier ruling and granted Patrick’s motion for judgment NOV and conditionally granted a new trial to Patrick.

Error? Could the trial court have ruled differently?

## CASE SCENARIO #5

Plaintiffs, Mama Cue and Suzie Cue (through a guardian ad litem), sued Bill Cannon for injuries Suzie suffered in a car accident. At the time of the accident, Suzie was 3 years old and was sitting on the rear bench seat of the family van with her two sisters. Mama Cue was sitting on the floor in front of the bench seat. None of the passengers were wearing seat belts. When Cannon collided with the rear of the van, Suzie flew forward, and her head banged into Mama Cue's head. At trial, Suzie sought to introduce expert testimony that she had sustained permanent cognitive impairment, but the judge – who believed that the standards in *Daubert v. Merrell Dow Pharmaceuticals* were the appropriate guidelines for determining the admissibility of expert testimony – granted Cannon's motion to exclude this testimony. At trial, Cannon admitted negligence and the case proceeded to trial on damages only. The jury awarded Mama Cue \$6,000 for Suzie's medical expenses, which was precisely the amount stipulated to by the parties. However, the jury awarded Suzie only \$1,500 for her personal injuries, even though plaintiffs had asked for much more, and Cannon's lawyer at trial had conceded that a larger award would be appropriate.

Plaintiffs moved for a new trial, offering a juror's affidavit, which states that the jurors believed that Suzie's parents were partly at fault for her injuries:

I and the other jurors considered all the evidence presented at the trial in determining the damage award in addition to our belief that the parents were contributorily negligent. We believed a smaller monetary award for the minor child than was sought by either the plaintiffs or the defendant was appropriate.

Plaintiff alleged as grounds for relief jury misconduct under Rule 59(a)(2), manifest disregard of the court's instructions under Rule 59(a)(5), and inadequate damages given under the influence of passion and prejudice under Rule 59(a)(6). What should the trial court do?

Assume the court denies the Rule 59 motion. Thirty-five days later, Suzie files a motion to set aside the judgment under Rule 60. She argues (correctly) that the court erred by applying the wrong standard in excluding her expert's testimony. She also argues excusable neglect, saying she relied on her lawyer, who failed to inform the trial court of the right standard for reviewing expert testimony. How should the court rule on this motion?

## **CASE SCENARIO #6**

Plaintiffs bought 58 acres of land in a rural area in 1994. Two years later, defendant, County Airport LLC, bought an adjacent property, constructed an airstrip, and began operating a commercial airport. For the next several years, planes took off and landed over plaintiffs' property, and at least two small planes crashed on the property, resulting in one death and several serious injuries to occupants of the planes.

In 2003, plaintiffs filed suit alleging nuisance and requesting compensatory and punitive damages as well as injunctive relief. At trial, plaintiffs testified that they intended to continue living on that property, despite the disruption and fear caused by the airport, which diminished their enjoyment of the property. A jury returned a verdict for plaintiffs and awarded \$358,000 in compensatory damages but rejected the claim for punitive damages. At a later hearing, the judge denied plaintiffs' request for a permanent injunction and granted defendant an aviation easement permitting continued operation of the airport.

Defendants file a timely motion for a new trial on the grounds of newly discovered evidence. In support of the motion, defendants present evidence that, shortly after the trial but before the hearing on the permanent injunction, plaintiffs bought additional property adjacent to the airport. Defendants also offer affidavits from four jurors indicating that knowledge of plaintiffs' intent to purchase this property would have influenced their verdict. Defendants argue that plaintiffs must have intended to purchase the additional land while the trial was ongoing and that the purchase undercuts plaintiffs' testimony at trial that they were in constant fear for their lives living next to the airport.

How should the court rule?