IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PAWNEE LEASING CORPORATION,	:	APPEAL NO. C-150228 TRIAL NO. A-1106548
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
KUBOTA OF CINCINNATI, INC.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In 2009, Kubota of Cincinnati, Inc., its president Andrea Holden, and Matthew Steele, leased three air compressors from Pawnee Leasing Corporation. In 2011, Pawnee sued Kubota, Holden, and Steele for nonpayment and for the return of the compressors. In 2012, the trial court granted a default judgment in favor of Pawnee and ordered the defendants to return the compressors.

In May 2013, an order and notice of garnishment to Kubota as the employer of judgment debtor Holden was personally served upon Holden at Kubota's business address. In July 2013, Pawnee sought a contempt order against Kubota for its failure to comply with the garnishment order. Pawnee served its motion upon Kubota and Holden, as its statutory agent, by regular mail. Certified mail to Holden at her residence was returned "unclaimed."

The court's notice of the hearing on Pawnee's contempt motion was sent by certified and regular mail to Kubota in care of Holden at the Kubota business address. The certified mail was returned "refused."

No representative of Kubota appeared at the contempt hearing. A magistrate of the Hamilton County Common Pleas Court issued a decision finding that all necessary parties had been properly notified of the hearing and finding Kubota in contempt of the garnishment order. Following the contempt finding, the magistrate ordered Kubota to pay Pawnee $23,120.11. Kubota filed no objections, and in May 2014, the trial court adopted the magistrate's decision. Kubota did not appeal the judgment.

On May 21, 2014, a sheriff's deputy served a copy of a writ of execution upon Donald Holden at Kubota and applied levy tags to two trucks on Kubota's property. On July 8, 2014, the trial court ordered the trucks to be sold and the proceeds applied to the judgment against Kubota.

On July 22, 2014, days before the sale was to occur, Kubota filed a Civ.R. 60(B) motion for relief from the court's May 2014 judgment. In support of its motion, Kubota supplied an affidavit by Andrea Holden, who averred that she had not received either the contempt motion or notice of the hearing on the motion.

The trial court denied the motion, finding that Kubota had failed to establish excusable neglect under Civ.R. 60(B)(1) or under any other grounds for relief under the rule. The court rejected Kubota's claim that it had not been served with either the garnishment order or with notice of the contempt hearing, and found that both had been properly served.

In a single assignment of error, Kubota argues that the trial court erred by denying its motion for relief from judgment. To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the

motion is timely made. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. If any one of the three requirements is not met, the motion must be denied. *See id.* at 151; *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994). The decision to grant or deny a motion for relief from judgment is within the trial court's sound discretion. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 520 N.E.2d 564 (1988).

Kubota claims that it is entitled to relief "under one of the grounds stated in Civ.R. 60(B)," but it does not specify which of the grounds it relies upon. Kubota contends that it was entitled to have the judgment vacated because its statutory agent, Andrea Holden, had not received notice of the motion or the contempt hearing. We agree with the trial court that Kubota's contention is covered by Civ.R. 60(B)(1), involving claims of "mistake, inadvertence, surprise or excusable neglect." *See Little v. First Am. Title Ins. Co.*, 8th Dist. Cuyahoga No. 102733, 2015-Ohio-4700, ¶ 13; *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. Franklin No. 05AP-51, 2005-Ohio-5924, ¶ 32.

Both the contempt motion and the notice of hearing on the motion were served on Kubota at its business address by regular mail. The record contains no indication that either was undelivered or undeliverable. In her affidavit in support of Kubota's motion for relief, Holden said that *she* had not received the contempt motion or a notice of hearing. But Holden did not say that the address for Kubota had been incorrectly listed in the certificate of service in Pawnee's contempt motion. Nor did she say that the address for Kubota was incorrectly listed in the praecipe in the court's hearing notice or on the certified mailing of the notice that had been returned "refused."

Because Kubota failed to sufficiently rebut the presumption of proper service, the trial court properly presumed that service of the contempt motion and hearing notice were proper. *See Cincinnati Ins. Co. v. Emge*, 124 Ohio App.3d 61, 63, 705 N.E.2d 408 (1st Dist.1997). Because Kubota failed to demonstrate excusable neglect or

any other ground for relief under Civ.R. 60(B), the trial court did not abuse its discretion in denying Kubota's motion for relief from judgment. We overrule the assignment of error and affirm the court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 25, 2015

per order of the court _____.
Presiding Judge