

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GWENDOLYN ALOIA, et al., *Plaintiffs/Appellees/Cross-Appellants,*

v.

STEPHEN GORE, *Defendant/Appellant/Cross-Appellee.*

No. 1 CA-CV 20-0431

FILED 2-15-2022

Appeal from the Superior Court in Maricopa County

No. CV2015-013391

The Honorable Timothy J. Thomason, Judge

VACATED AND REMANDED

COUNSEL

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OPINION

Presiding Judge Randall M. Howe delivered the opinion of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 A jury awarded Gwendolyn Aloia and nine other plaintiffs (collectively, the “Donor Families”), \$8.5 million in compensatory damages and \$50 million in punitive damages against defendant Stephen Gore and other defendants for various torts involving the mishandling of the body parts of the Donor Families’ deceased loved ones. The trial court granted Gore’s motion for relief from judgment under Arizona Rule of Civil Procedure Rule (“Rule”) 60(b), ruling that the punitive damages award was constitutionally excessive and reducing it to \$8.5 million.

¶2 Gore appeals that ruling, arguing that the trial court erred in failing to reduce the award even more. The Donor Families cross-appeal, arguing that because Gore first challenged the punitive damages award in an untimely motion for new trial under Rule 59, the trial court lacked jurisdiction to consider the issue in a Rule 60 motion.

¶3 We agree that the trial court lacked jurisdiction to consider the Rule 60(b) motion because Rule 60(b) cannot be used to evade the timeliness requirement of a motion for new trial under Rule 59 in this instance. We therefore vacate the trial court’s judgment reducing the jury’s punitive damages award and remand the matter to the trial court for re-entry of the original judgment.

FACTS AND PROCEDURAL HISTORY

¶4 In 2003, Gore founded Biological Resource Center, Inc. (“BRC”). BRC accepted donated bodies and supplied specimens to medical, academic, and research facilities. It represented that it would not sell any of the bodies but would accept a processing fee from requesting institutions. Contrary to that representation, however, BRC sold the donated specimens. In addition, some specimens that BRC distributed were contaminated. As a result of an FBI investigation, Gore pleaded guilty to one count of illegal control of a criminal enterprise for providing institutions with contaminated and unauthorized human tissue. The Donor Families and other plaintiffs sued Gore and others alleging various torts and claiming

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emotional harm. A jury awarded the Donor Families \$8.5 million in compensatory damages and \$50 million in punitive damages.

¶5 After the jury verdicts in the Donor Families' favor against Gore, the trial court ordered that all "parties and/or counsel" confer and submit one form of final judgment that addressed "all remaining claims and all remaining parties," including claims involving other plaintiffs and other defendants that had been resolved without trial, because it wanted to enter one final judgment disposing of the entire case. At a request by the parties at a later status conference, the trial court ordered that the parties lodge a proposed form of partial final judgment resolving the Donor Families claims against Gore within 10 days. The Donor Families lodged a form of judgment on December 23, 2019, and served a copy of that form of judgment on Gore through TurboCourt. The trial court signed the Donor Families' proposed judgment against Gore as a partial final, appealable judgment under Rule 54(b) on January 24, 2020. That same day, the trial court also signed another partial final Rule 54(b) judgment in favor of other defendants. The clerk of court filed these judgments the same day.

¶6 The clerk of court, however, did not notify any party that the judgments had been signed and filed, as Rule 58 required. On January 28, 2020, the Donor Families saw the signed judgments after receiving notice of filing related to the other Rule 54(b) partial final judgment. On February 4, 2020, Gore's attorney received a copy of a motion to strike the Rule 54(b) judgment in favor of the other defendants through TurboCourt. Six days later, Gore's attorney received notice of a motion filed by the other defendants to correct their Rule 54(b) judgment. That motion noted that the judgment involving the other defendants had been entered on January 24, 2020, but stated that the clerk had failed to send notice of the judgment. The trial court then amended the other judgment, and the clerk sent notice of that amended judgment to Gore on February 25, 2020, but Gore's attorney made no filings in response to the notice or reviewed the docket to determine if a partial final judgment against Gore had been filed. Instead, upon receiving the February 25, 2020, filing, an electronic calendaring software system Gore's attorney used set a deadline to file post-judgment motions as starting on that date. On March 12, 2020, Gore then moved for new trial or remitter under Rule 59 asserting that the punitive damages exceeded constitutional due process protection.

¶7 The Donor Families moved to strike Gore's motion for new trial as untimely. Gore's attorney then reviewed the docket and found that the partial final judgment in favor of the Donor Families and against Gore had been signed by the trial court and entered by the clerk of court on

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January 24, 2020. Gore moved to extend time to file his Rule 59 motion and under Rule 6(b)(2). Gore later moved to extend time to file post-judgment motions and to file a delayed appeal under Rule 60(b) and Arizona Rule of Civil Appellate Procedure (“ARCAP”) 9. Gore argued that counsel’s mistake, inadvertence, surprise, or excusable neglect required relief from the final judgment under Rule 60(b)(1) and that, in the alternative, extraordinary circumstances of hardship or injustice warranted relief under Rule 60(b)(6). The trial court struck Gore’s Rule 59 motion as untimely and denied his time extending motions under Rule 6(b) and ARCAP 9 as likewise untimely. It requested, however, further briefing on Gore’s Rule 60(b) motion.

¶8 After more briefing, the trial court ruled that Gore could raise his claim that the punitive damages exceeded constitutional protections outside the ambit of Rule 59 and that relief under Rule 60(b)(1) and 60(b)(6) was appropriate. For Rule 60(b)(1), the court did not fault actions by Gore’s attorney and found the attorney was mistaken but justified in believing that he would receive notice from the clerk of court and that one final judgment would come at the end of litigation. It concluded that Gore’s attorney had acted with sufficient due diligence in staying apprised of the docket. It also found that the circumstances warranted relief under Rule 60(b)(6), stating that “it is hard to imagine a situation more fitting for relief under Rule 60(b)(6) than one where tens of millions of [dollars in] unconstitutional punitive damage awards have been entered.”

¶9 Following full briefing, the court found that the Due Process Clause of the Fourteenth Amendment of the United States Constitution imposed a substantive limit to the punitive damages awarded. It then determined that the jury’s punitive damages awards were unconstitutionally excessive and reduced the punitive damages to 8.5 million, a 1:1 ratio with the compensatory damage awards. Gore timely appealed and the Donor Families timely cross-appealed.

DISCUSSION

¶10 Gore appeals the trial court’s reduction of the jury’s punitive damages award, claiming that a greater reduction is needed to fit within the United States Constitution’s parameters. The Donor Families argue in their cross-appeal that the trial court erred in granting relief under Rule 60(b) because the court lacked authority to reduce the jury’s punitive damages award after expiration of the deadline for post-trial motions under Rule 59. Because Donor Families’ cross-appeal raises a threshold issue, we address the cross-appeal first.

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¶11 The trial court found that Rule 60(b)(1) and Rule 60(b)(6) permitted it to reduce the jury’s punitive damages award. A trial court enjoys broad discretion whether to grant relief from a judgment or order under Rule 60(b), *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357, 364 ¶ 24 (App. 2015), and this court reviews its decision for an abuse of that discretion, *Rogone v. Correia*, 236 Ariz. 43, 48 ¶ 12 (App. 2014), but reviews interpretations of court rules de novo to determine whether the trial court has correctly applied the law, *see Gonzalez v. Nguyen*, 243 Ariz. 531, 533 ¶ 8 (2018).

¶12 The trial court lacked jurisdiction to grant relief under either Rule 60(b)(1) or Rule 60(b)(6). As the parties recognized, Rule 59 sets forth the procedure to contest the constitutionality of a jury’s punitive damages award when a defendant does not timely move for a judgment as a matter of law under Rule 50. *See* Rule 50, 59(a)(1)(E) (“excessive or insufficient damages” as grounds for new trial) and 59(f) (allowing grant of a conditional new trial when reduction of damages is ordered). As stated above, a Rule 59 motion for a new trial “must be filed no later than 15 days after the entry of judgment.” This deadline may not be extended by stipulation or court order “except as allowed by Rule 6(b)(2).” Failure to comply with Rule 59’s deadline deprives a court of jurisdiction to rule on the motion’s merits. *See Edwards v. Young*, 107 Ariz. 283, 285 (1971).

¶13 Neither party contests that Gore untimely filed his Rule 59 motion and motion to extend time under Rule 6(b)(2) or that he failed to timely move to extend time to appeal under ARCAP 9(f). Thus, Gore’s failure to comply with Rule 59 jurisdictionally barred the court from hearing Gore’s argument that the punitive damages exceeded constitutional bounds and from reducing the jury’s punitive damages award in this instance. *See id.* In *Edwards*, the supreme court held that neither a parties’ stipulation nor a court order can extend the time for a Rule 59 motion beyond the means that the Rule allows. *Id.* The *Edwards* court was convinced that when “the Rules of Civil Procedure specifically recognize that the time for filing a motion for a new trial may not be enlarged, the efficacy of the rule” depends on the court’s willingness to enforce it. *Id.* The supreme court reiterated this strict application of Rule 59 less than a decade later in *Welch v. McClure*. 123 Ariz. 161, 164 (1979). There, the supreme court determined that if a new trial motion “is not timely, the court may not exercise any discretion, but is obligated to deny the motion for lack of power to grant new trial relief.” *Id.* (quoting 6A *Moore’s Federal Practice* ¶ 59.09(3)).

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¶14 Gore nonetheless argues that the supreme court in *Welch* left open the possibility of Rule 60(b) relief in some capacity if the untimely Rule 59 motion “states grounds for relief under [Rule 60(b)].” *Id.* (quoting 6A *Moore’s Federal Practice* ¶ 59.04(7) at 26). Rule 60(b), however, does not provide Gore relief from his untimely Rule 59 motion under these circumstances.

¶15 Under Rule 60(b)(1), a court may relieve a party from a judgment or order for that party’s mistake, inadvertence, surprise, or excusable neglect. Rule 60(b)(1). A party’s mere neglect, inadvertence, or forgetfulness without a reasonable excuse, however, does not warrant relief, meaning the party must suffer the consequences of the judgment. *See, e.g., Ulibarri v. Gerstenberger*, 178 Ariz. 151, 163 (App. 1993); *Coconino Pulp & Paper Co. v. Marvin*, 83 Ariz. 117, 120 (1957). Diligence is the “final arbiter of whether mistake or neglect is excusable.” *City of Phoenix v. Geyler*, 144 Ariz. 323, 332 (1985). A court cannot grant relief without “more than counsel’s mere failure to learn of the entry of judgment or failure of the clerk to comply with the requirement of giving Rule [58(c)] notice.” *Chung v. Choulet*, 248 Ariz. 236, 240 ¶ 12 (App. 2020) (quoting *Geyler*, 144 Ariz. at 332-33); *see also* Rule 5.3(b) (“Each attorney of record is responsible for keeping advised of the status of [. . .] pending actions in which that attorney has appeared[.]”).

¶16 The trial court found that Gore’s attorney had “been professional, diligent, and careful” throughout the case and did not find fault in his actions. It concluded that Gore’s attorney acted with sufficient due diligence in staying apprised of the docket and that he was justified in believing that a single, final judgment would be forthcoming and that he would have notice of the judgment. This conclusion was error. *See Chung*, 248 Ariz. at 240 ¶ 12.

¶17 While the trial court said that it had planned to sign one final judgment, it changed course and requested that the parties file a stipulated form of partial final judgment against Gore. The Donor Families lodged a proposed form of judgment and Gore’s attorney received notice of the judgment and “knew or should have known the judgment was forthcoming[.]” *Chung*, 248 Ariz. at 240 ¶ 13. Accordingly, the court signed two Rule 54(b) partial final judgments on January 24, 2020, including Gore’s. Both were filed later that same day, although the clerk of court did not provide notice to any of the parties subject to the judgments. Even without this notice, though, the parties to the other partial final judgment filed various post-trial motions, including a notice of appeal on February 25, 2020, related to their judgment. In fact, the Donor Families had checked

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the docket within the Rule 59 timeframe because they, along with Gore, had received the motions filed by the other defendants and thus saw that the court had signed and the clerk of court had entered their Rule 54(b) judgment.

¶18 Gore even received notice of an unrelated motion to amend judgment on February 10, 2020, that stated the parties did not receive Rule 58 notice of the Rule 54(b) Judgment. At the very least, Gore knew or should have known that he could not justifiably rely on the court's earlier pronouncement that a single, final judgment would conclude the case and knew or should have known that a judgment was likely forthcoming or had already been signed by the court and entered by the clerk of court. *See Chung*, 248 Ariz. at 240 ¶ 13; *Geyler*, 144 Ariz. at 332. Gore was thus required to show that he had taken steps to determine whether the court had signed the stipulated judgment against him, *see Chung*, 248 Ariz. at 240 ¶ 13, especially considering that parties typically may easily check the status of a judgment through an online-accessible docket, *id.* ¶ 14.

¶19 Gore's attorney conceded, however, that he never reviewed the docket from January 24, 2020 (when the Rule 54(b) judgment had been signed and entered), until after he received the Donor Families' motion to strike his Rule 59 motion for a new trial. Gore therefore did not show that he acted with due diligence or that he was justified in failing to do so and the court erred in concluding otherwise. *Id.* (stating that because due diligence is "of paramount importance," the "mere silence and passage of time" does not satisfy this requirement). Because Gore has failed to establish due diligence in being apprised of the judgment and was not justified in not maintaining due diligence, the court's relief under Rule 60(b)(1) was improper. *See id.*; *Geyler*, 144 Ariz. at 332.¹

¶20 Gore likewise cannot rely on Rule 60(b)(6). Under Rule 60(b)(6), a court may grant a party relief for "any other" reason not stated in Rules 60(b)(1)–(5). Rule 60(b)(6) applies when the "need for finality [in judgments] must give way in extraordinary circumstances." *See Park v. Strick*, 137 Ariz. 100, 104 (1983); *see also Gendron v. Skyline Bel Air Estates*, 121 Ariz. 367, 368 (App. 1979) ("Rule 60(c)(6) gives the courts ample power to vacate judgments whenever such action is appropriate to accomplish justice."). But Rule 60(b)(6) does not allow the trial court to re-weigh evidence or review legal errors. *See Welch*, 123 Ariz. at 164. Nor does Rule

¹ Because Gore cannot establish due diligence or a justified reason for lack thereof, his motion for a delayed appeal under Rule 6(b) also fails. *See Chung*, 248 Ariz. at 240 ¶ 13.

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60(b)(6) provide an alternative to an appeal. *Tippit v. Lahr*, 132 Ariz. 406, 408 (App. 1982); see also *Anderson v. Hawkins*, 129 Ariz. 83, 85 (App. 1981) (relief under Rule 60(b)(6) does not “encompass a claim of error for which appeal is proper”).

¶21 The only Arizona decisions that have allowed the trial court to assess the constitutionality of a punitive damages award under Rule 60(b)(6) are those contained in a default judgment entered after a defendant has defaulted. See *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, 221 ¶ 22 (App. 2000). A default judgment cannot be directly appealed, however. See *Hirsch v. Nat’l Van Lines, Inc.*, 136 Ariz. 304, 311–12 (1983) (direct appeal from a default judgment is impermissible unless the default judgment was “not authorized by Rule 55 or if there is a question regarding either personal or subject matter jurisdiction”).

¶22 Because Gore could have timely appealed the jury’s punitive damage award reflected in the partial final judgment or timely moved for relief under Rule 59, his circumstance is not “extraordinary.” As a result, it was error for the trial court to effectively extend Rule 59’s strict time limit under Rule 60(b)(6). See *Welch*, 123 Ariz. at 164; *Edwards*, 107 Ariz. at 285. Because the court erred in granting Gore relief from judgment under Rule 60(b), the trial court lacked jurisdiction to modify the January 24, 2020, partial final judgment. We therefore lack jurisdiction to consider Gore’s appeal and must vacate the trial court’s judgment reducing the jury’s punitive damages award.

CONCLUSION

¶23 For these reasons, the judgment of the trial court is vacated and we remand to the trial court to re-enter the January 24, 2020, partial final judgment in favor of the Donor Families and against Gore. As the party prevailing on appeal, the Donor Families are entitled to their costs on appeal in accordance with ARCAP 21.



AMY M. WOOD • Clerk of the Court
FILED: AA