

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL WILLIAMS a/k/a : CIVIL ACTION
MICHAEL McPHERSON, :
Plaintiff, :
v. :
JERRY BRICKER, ET AL., :
Defendants. : No. 96-1532

MEMORANDUM AND ORDER

VanArtsdalen, S.J.

On October 16, 1997, Plaintiff Michael Williams, a state prisoner currently incarcerated at SCI Graterford, filed a Motion for Relief From Judgment (filed document #61), and an Objection to Setting Aside the Defaults and Default Judgment (filed document #62). On October 22, 1997, he filed a Motion to Vacate Judgment (filed document #63). Plaintiff claims that he inadvertently failed to assert facts supporting granting of an alternative remedy. For the reasons below, Plaintiff's Motions will be denied.

Factual Background

Plaintiff Michael Williams, a state prisoner currently incarcerated at SCI Graterford, filed a complaint and an amended complaint for injuries he sustained at the prison when he slipped and fell down a flight of prison stairs in March 1994. Plaintiff asserts that although he complained of his injuries to Defendants, Defendants acted with deliberate indifference to his medical needs.

Plaintiff's amended complaint filed September 16, 1996 named

as Defendants, Drs. Arnold Schwartz, Dennis Moyer, Norman Stempler. Defendants were validly served with Plaintiff's amended complaint, but failed to answer. Plaintiff filed motions for default and default judgment against Defendants for their failure to respond to his amended complaint (filed documents #38 and #46), and defaults were entered against each. Additionally, a default judgment was entered against Defendant Moyer. The default against Defendant Stempler was set aside, and the suit against Defendant Stempler ultimately resulted in summary judgment being entered against Plaintiff.

On September 2, 1997, Plaintiff filed another Motion for Default Judgment against Defendant Schwartz and another Motion for a Default Judgment against Defendant Moyer. (filed document #53). On September 10, 1997, both Defendants filed a Motion to Reconsider the Granting of Plaintiff's Motion to Enter Default Judgment and a Motion to Set Aside Entry of Default Judgments. (filed document #54).

On October 1, 1997, I entered an Order setting aside the default judgment against Defendant Moyer, and the defaults against both Defendants Moyer and Schwartz (filed document #59). I also denied the Motion for Default Judgment against Defendant Schwartz, and granted both Defendants leave to file an answer to Plaintiff's amended complaint within ten days of the filing of that Order. In that Memorandum and Order, I found (1) that the record did not sufficiently show that setting aside the defaults or default judgments would prejudice Plaintiff; (2) that

Defendants did set forth prima facie meritorious defenses; (3) that while Defendants' conduct may have been negligent, the record did not suggest that Defendants acted willfully or in bad faith in failing to answer Plaintiffs amended complaint; and (4) that Plaintiff did not assert that he had incurred any costs or expenses in securing the defaults and default judgment or in responding to the motion to set them aside.

Plaintiff has filed a Motion for Relief From Judgment, an Objection to Setting Aside the Defaults and Default Judgment, and a Motion to Vacate Judgment, claiming that he inadvertently failed to assert facts supporting granting of an alternative remedy. Specifically, Plaintiff asserts that he failed to ask the court to grant costs of \$600.00 from each Defendant for time spent for research, materials, motions, affidavits, and postage. Additionally, Plaintiff reasserts the arguments from his original motion for entry of default and default judgment.

Legal Analysis

Defendants rely upon Federal Rules of Civil Procedure 55 and 60 in their Motion To Set Aside Entry of Default Judgments. A decision to set aside the entry of default judgment pursuant to Federal Rules of Civil Procedure 55 and 60 is left to the discretion of the district court. United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194 (3d Cir. 1984). The Third Circuit, however, has indicated that it does not favor the entry of defaults or default judgments. Id. "As a general matter, default judgments are disfavored; a decision on the merits is

preferable in most cases." Peters v. Sun Aire Transport, 1987 WL 4808 (E.D. Pa.) citing Gross v. Stereo, 700 F.2d 120, 122 (3d Cir. 1983). In close cases, doubts are to be resolved in favor of the party moving to set aside the default judgment. United States v. \$55,518.05 in U.S. Currency, 728 F.2d at 194; see also Gross, 700 F.2d at 122.

The Third Circuit has stated that when considering whether to set aside a default, a district court must consider four factors: "(1) whether lifting the default would prejudice the plaintiff; (2) whether the defendant has a prima facie meritorious defense; (3) whether the defaulting defendant's conduct is excusable or culpable; and (4) the effectiveness of alternative sanctions." EMASCO Ins. Co. V. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987); see also Zawadski De Bueno v. Bueno Castro, 822 F.2d 416, 419-20 (3d Cir. 1987); Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984); Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982).

These factors were carefully considered in my Memorandum of October 1, 1997, and to date, Plaintiff has not asserted any additional facts substantiating a reversal of my decision as to any of these factors. More specifically, Plaintiff has failed to substantiate any of his costs. Therefore, I still find that all of the factors favor setting aside the defaults and default judgment, as Plaintiff has not alleged any additional facts to support a different result. Plaintiff's Motions will be denied.

An appropriate order follows.

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ORDER

It is ORDERED that Plaintiff's Motion for Relief From Judgment (filed document #61), Objection to Setting Aside the Defaults and Default Judgment (filed document #62), and Motion to Vacate Judgment (filed document #63) are all DENIED. All earlier deadlines for the completion of discovery and for the filing of dispositive and pretrial motions shall remain in effect.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

October 29, 1997