

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

JENNIFER STONE,
Plaintiff

v.

HOLLY BRENNAN, et al.,
Defendants

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**CIVIL ACTION
NO. 06-468**

MEMORANDUM OPINION AND ORDER

RUFE, J.

July 25, 2006

This is a civil rights case brought by *pro se* Plaintiff Jennifer Stone (“Stone”) against the Lancaster County Children and Youth Social Service Agency (“LCCY”) and various individual employees of LCCY (collectively, “Defendants”). Presently before the Court are Stone’s Request for Default Judgment and Defendants’ Motion to Set Aside Entry of Default. For the reasons that follow, the Court denies Stone’s Request and grants Defendants’ Motion.

I. BACKGROUND

Stone has three minor children: Keith Allen William Stone (“Keith”), Joshua Allen Payne Petro (“Joshua”), and Kayla Stone (“Kayla”). Before the events giving rise to this suit, Keith and Joshua lived with Stone at her home in Lancaster County, Pennsylvania.¹ According to Stone, the LCCY removed Keith and Joshua from her custody on June 29, 2005 without court order or a hearing within seventy-two hours of removal, in violation of Pennsylvania law and her constitutional

¹ It is unclear if Kayla also lived with Stone. The only additional information provided in the Complaint about Kayla was that she was in Florida from around June 10, 2005 through the middle of July 2005.

right to due process. Stone also alleges that since becoming involved with ongoing LCCY proceedings, LCCY has submitted false reports to the Department of Public Welfare.

As a result of these events, Stone initiated this lawsuit seeking injunctive relief, compensatory damages, and punitive damages on January 31, 2006. The Court granted her *in forma pauperis* status, and she filed her Complaint on February 2, 2006.

The U.S. Marshals Service served the Summons and Complaint on Defendants on February 24, 2006. After more than two months without any response from Defendants, the Court issued an Order on May 10, 2006, directing Stone to seek entry of default judgment against Defendants or to show cause why her Complaint should not be dismissed for lack of prosecution. In turn, Stone filed her Request for Default Judgment on May 24, 2006. The Clerk of Court entered default that same day. The following day, the Court issued an Order directing the Clerk to serve on Defendants Stone's Request for Default Judgment and a copy of the docket reflecting that default had been entered.

On June 6, 2006, Defendants finally filed their Answer to Stone's Complaint. They contemporaneously filed the instant Motion to Set Aside Entry of Default, along with a response to Stone's Request for Default Judgment.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 55(c), a Court may set aside an entry of default upon a showing of good cause. In deciding whether good cause exists to set aside default, the Court must consider the following three factors: "whether vacating the default judgment will visit prejudice on the plaintiff, whether the defendant has a meritorious defense, and whether the default

was the result of the defendant’s culpable conduct.”² The Third Circuit disfavors defaults. “[I]n a close case, doubts should be resolved in favor of setting aside the default and reaching the merits.”³

Entry of default is a prerequisite to entry of default judgment under Rule 55(b).⁴

III. DISCUSSION

A. Prejudice

Setting aside entry of default prejudices the plaintiff where it results in “loss of available evidence, increased potential for fraud or collusion, or substantial reliance upon the judgment.”⁵ However, “delay in realizing satisfaction on a claim” and “the fact that the plaintiff will be required to further litigate the action on the merits” rarely constitute prejudice.⁶

Here, Stone fails to establish prejudice. Stone’s argument that lifting the default would prejudice her because it would keep her away from her children longer is unpersuasive; it is

² Harad v. Aetna Cas. & Sur. Co., 839 F.2d 979, 982 (3d Cir. 1988). The same standard for setting aside default judgment applies to setting aside entry of default, and thus cases dealing with setting aside default judgment are used throughout this opinion. See Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982).

Further, although some older Third Circuit opinions include a fourth factor, the effectiveness of alternative sanctions, see Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73-74 (3d Cir.1987), the balance of authority adopts the three-factor approach. The most recent Third Circuit opinion in this area, a non-precedential opinion, omits the fourth factor. See, e.g., Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., No. 05-1031, 2006 WL 623074, at *2 (3d Cir. Mar. 14, 2006). Nonetheless, out of an abundance of caution, the Court notes that less harsh sanctions than default would be just as effective in reprimanding Defendants’ conduct and would avoid the extreme last resort of foreclosing further litigation on the merits. Thus, the alternative sanctions factor weighs on the same side as the other factors, as the discussion below demonstrates.

³ Zawadski de Bueno v. Bueno Castro, 822 F.2d 416, 420 (3d Cir. 1987).

⁴ See 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2682 (2d ed. 1990).

⁵ Feliciano, 691 F.2d at 657.

⁶ Tecmarine Lines, Inc. v. CSX Intermodal, Inc., No. 01-1658, 2001 WL 950155, at *3 (E.D. Pa. Aug. 13, 2001) (citing Feliciano, 691 F.2d at 656-57).

merely another way of saying she would have to continue litigating her claims to achieve the satisfaction she seeks. Moreover, since this litigation is still in its early stages—discovery has not even begun—the Court finds no prejudice to Stone if the default is lifted.

B. Meritorious Defense

A meritorious defense exists where the “allegations of defendant’s answer, if established on trial, would constitute a complete defense to the action.”⁷ Thus, at this stage of the litigation, the defense need only avoid being “facially unmeritorious.”⁸

Here, Defendants have a meritorious defense. In their Answer, they provide detailed allegations that Keith and Joshua’s removal did not occur until *after* an appropriate hearing, in accordance with Pennsylvania law. If those facts were established at trial, they would contradict the essence of Stone’s case and constitute a complete defense to her claims for injunctive relief and damages. Stone’s re-assertion of the allegations in her Complaint is insufficient to undermine that conclusion for purposes of the instant Motion.

C. Culpable Conduct

A defendant’s conduct is culpable where its delay in answering was willful or in bad faith.⁹ Thus, reckless disregard for multiple communications from the court and the plaintiff, along with failure to investigate the source of an injury, constitutes culpable conduct.¹⁰ However, “more

⁷ Tozer v. Charles A. Krause Milling Co., 189 F.2d 242, 244 (3d Cir. 1951).

⁸ Gross v. Stereo Component Sys., Inc., 700 F.2d 120, 123 (3d Cir. 1983).

⁹ Feliciano, 691 F.2d at 657.

¹⁰ Hritz v. Woma Corp., 732 F.2d 1178, 1183 (3d Cir. 1984).

than mere negligence [must] be demonstrated.”¹¹

Here, Defendants explain that their delay was due to LCCY’s inadvertent failure to forward Stone’s Complaint to its insurance carrier, which represents LCCY and its employees in cases like the present one. On the current record, the Court finds that Defendants’ conduct, while negligent, was not sufficiently willful or in bad faith to warrant maintenance of the entry of default.¹²

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendants’ Motion to Set Aside Entry of Default. Since entry of default is a prerequisite to granting default judgment, the Court’s decision to set aside entry of default compels the Court to deny Stone’s Request for Default Judgment. Now that all parties are actively involved in this suit, the matter is ready to proceed to discovery and litigation on the merits.

An appropriate Order is attached.

¹¹ Id.

¹² See Elmore v. Ates-Kays Co., No. 89-3212, 1989 WL 114702, at *1 (E.D. Pa. Sept. 29, 1989) (holding that defendant mistakenly forwarding the complaint to the wrong insurance company did not constitute culpable conduct).

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ORDER

AND NOW, this 25th day of July 2006, upon consideration of Plaintiff's Request for Default Judgment [Doc. #6] and Defendants' Response thereto [Doc. #10], and upon consideration of Defendants' Motion to Set Aside Entry of Default [Doc. #9] and Plaintiff's Response thereto [Doc. #13], and for the reasons set forth in the attached Memorandum Opinion, it is hereby **ORDERED** that:

1. Defendants' Motion to Set Aside Entry of Default [Doc. #9] is **GRANTED**;
2. Plaintiff's Request for Default Judgment [Doc. # 6] is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.