

LVNV FUNDING, LLC

v.

JENNIE M. COOK

Submitted on Briefs February 7, 2012
Decided February 16, 2012

Panel: ALEXANDER, LEVY, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Jennie M. Cook appeals from the judgment of the District Court (Bangor, *Studstrup, J.*) denying, after hearing, her motions to set aside judgment and, by implication, her motion to strike a previously-entered default. M.R. Civ. P. 55(c), 60(b). On appeal, Cook contends that the District Court (1) abused its discretion in determining that Cook had failed to demonstrate good cause for her failure to respond to the complaint after being given an extension of time to answer; (2) committed an error of law in determining that she did not have a meritorious defense to the collection action; and (3) erred in rejecting Cook's claim that LVNV Funding, LLC, lacked standing to bring this action.

A party moving to set aside an entry of default pursuant to M.R. Civ. P. 55(c) must demonstrate good cause for failure to timely oppose the action and a meritorious defense to the claim that has been defaulted. 3 Harvey, *Maine Civil Practice* § 55:7 at 206-07 (3d ed. 2011). When, as here, a judgment has been entered on the default, the judgment may be set aside only by meeting the more stringent "excusable neglect" standard of M.R. Civ. P. 60(b). *See Butler v. D/Wave Seafood*, 2002 ME 41, ¶ 17, 791 A.2d 928. The record does not demonstrate that the court abused its discretion in declining to find good cause or excusable neglect to set aside the default judgment. *Id.* ¶ 15. When an appellant

has failed to demonstrate good cause or excusable neglect to set aside the default judgment, we need not address the second question, whether there was a meritorious defense to the claim. An asserted meritorious defense does not justify an avoidance of an unexcused failure to timely respond to a complaint.

The entry is:

Judgment affirmed.

On the briefs:

Jennie M. Cook, appellant pro se

Kate E. Conley, Esq., Susan J. Szwed, P.A., Portland, for appellee LVNV
Funding, LLC