

U.S. BANK, N.A.

v.

MICHAEL A. TURNER et al.

Submitted on Briefs October 24, 2017

Decided November 9, 2017

Panel: MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Michael A. Turner appeals from an order denying his motion for relief from a judgment of foreclosure that was entered against him and an order denying his motion for reconsideration, both entered in the District Court (Skowhegan, *Benson J.*). Turner was served in hand with the foreclosure complaint, but did not file an answer and never appeared in any proceeding related to the underlying foreclosure.

In his motion for relief from judgment, Turner did not reference a specific subsection under M.R. Civ. P. 60(b), but argued that the court should grant his motion because, he claimed, the court mailed several notices to an incorrect address. The court analyzed Turner's motion under Rule 60(b)(1), which provides a ground for relief from judgment based on "mistake, inadvertence, surprise, or excusable neglect." *See* M.R. Civ. P. 60(b)(1). The court concluded that even if Turner had a reasonable excuse for his failure to appear, he failed to argue that he had a meritorious defense. *See Butler v. D/Wave Seafood*, 2002 ME 41, ¶ 17, 791 A.2d 928.

On appeal, Turner argues that he should be relieved from judgment based on M.R. Civ. P. 60(b)(4) or 60(b)(6). Because Turner raised the Rule 60(b)(4) argument for the first time in his appellate brief, that argument is deemed waived. *See Brown v. Town of Starks*, 2015 ME 47, ¶ 6, 114 A.3d 1003. Turner raised the Rule 60(b)(6) argument for the first time in his motion for reconsideration. Because “an argument made for the first time in a motion for reconsideration is not preserved for appeal,” we cannot consider Turner’s Rule 60(b)(6) argument. *Warren Constr. Grp., LLC v. Reis*, 2016 ME 11, ¶ 9, 130 A.3d 969 (citing *Dillon v. Select Portfolio Servicing*, 630 F.3d 75, 80 (1st Cir. 2011)).

We review both the denial of a motion for relief from judgment and the denial of a motion for reconsideration for an abuse of discretion. *See Shaw v. Shaw*, 2003 ME 153, ¶ 7, 839 A.2d 714; *Tarbuck v. Jaeckel*, 2000 ME 105, ¶ 13, 752 A.2d 176. Because we determine (1) that Turner’s Rule 60(b)(4) and 60(b)(6) arguments were not preserved for appellate review; (2) that the court appropriately considered Turner’s motion pursuant to Rule 60(b)(1); and (3) that Turner failed to show that he had a meritorious defense to the underlying action, we conclude that the court did not abuse its discretion.

The entry is:

Judgment affirmed.

Michael Turner, appellant, pro se

William B. Jordan, Esq., Shapiro & Morley, LLC, South Portland, for appellee
U.S. Bank, N.A.

Samuel M. Sherry, Esq., Portland, for appellee Harpster Receivables Management Corp.