

TOWN OF ACTON

v.

WENDY T. MACPHERSON

Submitted on Briefs April 24, 2019
Decided May 2, 2019

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, and HJELM, JJ.

MEMORANDUM OF DECISION

In this land use action, *see* M.R. Civ. P. 80K, Wendy T. MacPherson appeals from a judgment of the District Court (Springvale, *Driscoll, J.*), entered for the Town of Acton after a hearing at which she did not appear despite having received notice of the hearing. In its judgment, the court ordered MacPherson to remediate her violation of the Town's zoning ordinance and pay a \$5,000 civil penalty and attorney fees. She also appeals from the court's order denying her post-judgment motions. We affirm the judgment.

Because MacPherson failed to appear at the hearing and therefore offered no evidence or argument in her own defense, we review her challenges to the court's judgment only for obvious error and find none. *See* 30-A M.R.S. § 4452(3)(A), (D) (2018); *City of Portland v. Chau*, 2018 ME 161, ¶ 7, 198 A.3d 193.

We review for an abuse of discretion the court's orders denying MacPherson's post-judgment motions for relief from a default judgment, *see* M.R. Civ. P. 55(c), 60(b), and for a new trial or reconsideration of the judgment, *see* M.R. Civ. P. 59(a), (e). *See Ezell v. Lawless*, 2008 ME 139, ¶¶ 15-17, 19, 955

A.2d 202 (stating the standard of review for a motion to set aside a default judgment pursuant to M.R. Civ. P. 55(c), 60(b)); *Wardwell v. Duggins*, 2016 ME 55, ¶ 9, 136 A.3d 703 (stating the standard for review of a court’s denial of a Rule 59 motion). First, the court acted within its discretion by declining to hold a hearing on MacPherson’s motions, particularly where the court had the benefit of affidavits filed both by her and by a representative of the Town, and where the court was familiar with the procedural history of the case. *See Sargent v. Sargent*, 1997 ME 38, ¶ 5, 691 A.2d 184 (“[I]n most cases, Rule 60(b) motions are decided on the basis of affidavits and other documentary evidence . . . without the necessity of a lengthy evidentiary hearing.” (quotation marks omitted)). Beyond that, the court did not abuse its discretion by denying the motions on their merits. *See Richter v. Ercolini*, 2010 ME 38, ¶ 15, 994 A.2d 404 (stating that we grant “considerable deference” to the trial court’s determination of whether a party had a good excuse for his or her untimeliness that resulted in the court’s entry of default); *Cates v. Farrington*, 423 A.2d 539, 541 (Me. 1980) (stating that where the trial is before a judge without a jury, relief is available pursuant to Rule 59(a) or (e) only where there has been “manifest error of law or mistake of fact”).

The entry is:

Judgment affirmed.

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appellant Wendy T. MacPherson

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appellee Town of Acton