MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 19-63
Docket No. Was-18-446

ROBERT OSMANN

v.

CORY GUIMOND et al.

Submitted on Briefs May 30, 2019
Decided June 6, 2019

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

MEMORANDUM OF DECISION

Cory Guimond appeals from an order of the Superior Court (Washington County, *Mallonee, J.*) denying his motion to set aside a default judgment entered in favor of Robert Osmann on Osmann's employment-related complaint. *See* M.R. Civ. P. 60(b). Guimond asserts that the court abused its discretion when it concluded that his Rule 60(b) motion was premature because it was filed before a judgment was entered, and, for that reason, deferred ruling on it until after entry of judgment if Guimond chose not to withdraw the motion in the meantime. Even though Guimond presented the motion in form and substance as a Rule 60(b) motion, he contends that the court should have treated it as if it were a Rule 55(c) motion to set aside an entry of default, *see* M.R. Civ. P. 55(c). We review the trial court's denial of a Rule 60(b) motion for an abuse of discretion and "will set aside the trial court's decision only if the failure to grant the relief works a plain and unmistakable injustice against the moving party." *Ezell v. Lawless*, 2008 ME 139, ¶ 19, 955 A.2d 202.

After the court announced that it would not act on Guimond's Rule 60(b) motion until after a judgment was issued, Guimond did not object to that

process. Consequently, he has not preserved his challenge for appellate review. *See Warren Constr. Grp., LLC v. Reis*, 2016 ME 11, ¶ 9, 130 A.3d 969 (stating that "unless a fundamental liberty interest is at stake, we will not reach an issue that is raised for the first time on appeal").

Nonetheless, the court acted within its discretion by deferring consideration of Guimond's motion until after the entry of final judgment, given that the court was authorized to deny the motion outright as premature, *see Boynton v. Adams*, 331 A.2d 370, 373 n.2 (Me. 1975). Further, the court did not err by deciding the motion on the papers, *see In re David H.*, 2009 ME 131, ¶ 34, 985 A.2d 490 (stating "a court is not required to hold an evidentiary hearing, even when a party asserts that such a hearing is necessary, to receive evidence in support of a Rule 60(b) motion"), particularly when the motion incorporated a sworn statement executed by Guimond himself. Finally, the court did not abuse its discretion by denying the motion on its merits.

The entry is:

Judgment affirmed.

Jeremiah W. Rancourt, Esq., Law Office of Joseph M. Baldacci, Bangor, for appellant Cory Guimond

Marshall J. Tinkle, Esq., Thompson, MacColl & Bass, LLC, P.A., Portland, for appellee Robert Osmann

Washington County Superior Court docket number CV-2017-003
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