POST JUDGMENT MOTIONS
Calhoun/Cleburne County Bar Association
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1. Overview

How does Counsel proceed after a judgment has been entered by the Court in a civil matter:

Default Judgment (Rule 55(c))

Post Trial Judgments (Rule 59)

Rule 60(b)(1-6)

ARCrimPro: 24.1

Knowing the specific rules and legal standards for each will assist Counsel, and the Court, in determining if your motion has merit.

THERE IS NO SUCH THING AS A **MOTION TO RECONSIDER**

2. The Default Judgment

A. Scenario:

Party files a civil suit. Service is perfected. Time to respond has lapsed (7 days for unlawful detainer; 14 days Dist Ct. Civil.; 30 days in Circuit Court). Plaintiff files request to enter default and default judgment. Court enters default judgment. Defendant wants to set aside the default judgment.

B. Procedural Remedy

1. Rule 55(c)

> "Setting aside default. ***In its discretion***, the court may set aside an entry of default at any time before judgment. The ***court may on its own motion*** set aside a judgment by default ***within thirty (30) days*** after the entry of the judgment. ***The court may also set aside a judgment by default on the motion of a party filed not later than thirty (30) days after the entry of the judgment.***" Emphasis added.

2. Legal Standard To Set Aside A Default Judgment Under Rule 55(c)

In Keith MARTIN and Keith Martin Construction Company, Inc. v. Jeff P. CRUMPTON and Ashley Crumpton.883 So.2d 700, the Court of Civil Appeals stated ***the applicable standard*** regarding motions to set aside default judgments under Rule 55 ©, as follows:

"Our supreme court has held that the trial court's use of discretionary authority should be resolved in favor of the defaulting party *where there is doubt as to the propriety* of the default judgment. Johnson v. Moore, 514 So.2d 1343 (Ala. 1987). Our supreme court has also established ***guidelines to assist a trial judge in exercising his discretion***.

'[A] trial court's broad discretionary authority under Rule 55(c) *should not be exercised without considering the following three factors*:

1) whether the defendant has a ***meritorious defense***;

2) whether the plaintiff will be unfairly prejudiced if the default judgment is set aside; and

3) whether the default judgment was a result of the ***defendant's own culpable conduct.***"'

Martin, supra., continues with:

"Our courts have said that "[c]onduct committed willfully or in bad faith constitutes culpable conduct for purposes of determining whether a default judgment should be set aside." Leventhal v. Harrelson, 723 So.2d 566, 570 (Ala.1998). Such conduct is "'characterized by incessant and flagrant disrespect for court rules, deliberate and knowing disregard for judicial authority, or intentional nonresponsiveness.'" Sawyer v. Perkins, 717 So.2d 432 (Ala.Civ.App.1998)(quoting Kirtland, 524 So.2d at 608)). ***Negligence by itself is insufficient to establish culpable conduct warranting denial of a motion to set aside default judgment***. Sawyer, 717 So.2d at 434. A defaulting party's "reasonable explanation for inaction and non-compliance may preclude a finding of culpability." Kirtland, 524 So.2d at 608. (Emphasis added).

C. Practice Pointer

Ensure your motion outlines each of the three requirements set out in *Martin*, *supra.* The motion should then be supported by affidavit testimony from your client or any other witness that can support any of the three requirements; as well as documentary evidence.

3. Rule 59(a) Motion For New Trial [Within 30 days of Judgment]

A. Scenario:

Typically, you have a jury trial on the merits [could be bench trial]. Jury comes back with verdict against your client. You think the verdict is inconsistent with, or not supported by, the evidence [no merely in dispute between the parties] when applied to the applicable law.

B. The Rule

"A new trial may be granted to all or any of the parties and (1) on all of the issues in an action in which there has been a trial by jury; for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Alabama; and (2) on all or part of the issues in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Alabama. On a motion for a new trial in an action tried without a jury; the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment."

C. Rule 59(a) Legal Standard

Bailey v. Sawyer, 991 So.2d 725 (Ala.Civ.App. 2007)"

"The decision to grant or to deny a motion for a new trial rests within the sound discretion of the trial court. Hill v. Cherry, 379 So.2d 590 (Ala.1980). A denial of a motion for a new trial strengthens the presumption of correctness afforded a jury verdict, Osborne v. Cobb, 410 So.2d 396 (Ala.1982), and the decision of the trial court will not be disturbed ***unless the verdict is against the preponderance of the evidence or is clearly wrong or unjust***. Black Belt Wood Co. v. Sessions, 514 So.2d 1249, 1252 (Ala.1987); see also Shiloh Constr. Co. v. Mercury Constr. Corp., 392 So.2d 809 (Ala.1980)." Emphasis added.

The grounds set out in a motion for new trial must sufficiently specify the precise error that is alleged to have occurred. Benson v. Vick, 460 So.2d 1309 (Ala.Civ.App. 1984) see also, Flowers v. Dean 18 ALW 19-8 (2070344) 5/1/09 (which quotes Benson, supra.)

D. Practice Pointer

Like *Bailey, supra.,* states: the motion ***must sufficiently specify the precise error that is alleged to have occurred***. Frequently, attorney's file motions with language similar to: *"the verdicts is contrary to the law; the verdict is contrary to the evidence,"* with NO case law to support specific facts or legal errors. In these instances, do not be surprised if the Court summarily denies your motion.

4. Rule 59(e): Motion to Amend, Alter or Vacate [Within 30 days of Judgment]

A. Scenario.

Typically, you have a bench trial on the merits [could be a jury trial]. Court comes back with verdict against your client. Again, you think the verdict is inconsistent with, or not supported by, the evidence [no merely in dispute between the parties] when applied to the applicable law.

B. The Rule

"Motion to alter, amend, or vacate a judgment. A motion to alter, amend, or vacate the judgment shall be filed not later than thirty (30) days after entry of the judgment."

C. Legal Standard

Bradley, et al. v. Town of Argo, 2 So.3d 819, wherein the Court stated:

> "Whether to grant relief under Rule 59(e), Ala. R. Civ. P., ***is within the trial court's discretion***. See Moore v. Glover, 501 So. 2d 1187, 1191 (Ala. 1986) (Torbert, C.J., concurring specially) ("During the 30-day period after the entry of judgment, the trial court has great judicial discretion that it may exercise over its final judgment. The trial judge should be able to consider any evidence in deciding whether to vacate the entry of summary judgment. Any reasonable explanation of the party's failure to offer evidence in response to a motion for summary judgment will suffice, but this does not mean that under the guise of a Rule 59(e) motion a party can belatedly submit available evidence in opposition to a motion for summary judgment."). In *In re Brickell*, 142 Fed. App. 385, 391 (11th Cir. 2005) (not selected for publication in the Federal Reporter), the United States Court of Appeals for the Eleventh Circuit addressed the comparable Federal Rule 59(e), stating:
>
> > 'We review the denial of a Rule 59(e) motion to alter or amend judgment for abuse of discretion. *Mays v. U.S. Postal Serv.*, 122 F.3d 43, 46 (11th Cir. 1997) (per curiam). `***The only grounds for granting [a Rule 59(e)] motion are newly-discovered [previously unavailable] evidence or manifest errors of law or fact***.' *Kellogg v. Schreiber* (In re Kellogg), 197 F.3d 1116, 1119 (11th Cir. 1999). Rule 59(e) may not be used to relitigate a claim or to present arguments or evidence that could have been raised prior to the entry of judgment. *Mincey v. Head*, 206 F.3d 1106, 1137 n. 69 (11th Cir. 2000).'" (Emphasis added).

D. Practice Pointer

Same as Rule 59(a), i.e., just don't say: the verdict is contrary to the law and evidence. It's not that hard, but you have to put the work into the motion.

5. Special Considerations Re Rule 55 & 59

A. Scenario

After trial court enters judgment against your Client. You think you meet the criteria for either a new trial (59(a) or 59(e)). You timely file your motion and comply with the substantive legal standard for such a motion. The Court never rules on your motion. **What's happens?**

B. The Rule 59.1

> "No postjudgment motion filed pursuant to Rules *50, 52, **55**, or **59*** shall remain pending in the trial court for more than ***ninety (90) days***, unless with the *express consent of all the parties, which consent shall appear of record*, or unless extended by the appellate court to which an appeal of the judgment would lie, and such time may be further extended for good cause shown. ***A failure by the trial court to render an order disposing of any pending postjudgment motion within the time permitted hereunder, or any extension thereof, shall constitute a denial of such motion as of the date of the expiration of the period.***"

C. Legal Standard.

Strict compliance by appellate courts. A timely filed motion tolls the time to appeal. Appeal time begins to run based on one of two events:

1. The Court denies the motion within the 90 day period. Appeal time begins to run from the date of denial.

2. Motion denied by operation of law, i.e., court does not rule. On expiration of the 90th day, time to appeal begins to run.

NOTE: *Any order entered by the trial court in response to a Rule 59 motion after the 90 day period where there is no consent ON THE RECORD by the Parties to extend the time, is a VOID order, i.e., Court does not have jurisdiction at that point in time.*

D. Practice Pointer

1. Timely file your Rule 55 or 59 motions.

2. CALCULATE 90 days from the filing date. PUT THAT DATE IN YOUR CALENDAR. Calculate 42 days from the expiration of the 90 day period. DON'T BLOW IT.

3. Make sure any agreement to extend the Rule 59 time is PUT ON THE RECORD.

6. Rule 60(b) [The Mother of All Post Judgment Motions]

A. The Rule [To Many Scenarios To Create]

"On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons ***(1), (2), and (3) not more than four (4) months after the judgment, order, or proceeding was entered or taken***. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. Leave to make the motion need not be obtained from any appellate court except during such time as an appeal from the judgment is actually pending before such court. If leave of the appellate court is obtained, the motion shall be deemed to have been made in the trial court as of the date upon which leave to make the motion was sought in the appellate court. This rule does not limit the power of a court to entertain an independent action within a reasonable time and not to exceed three (3) years after the entry of the judgment (or such additional time as is given by § 6-2-3 and § 6-2-8, Code of Alabama 1975) to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, supersedeas, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

B. Standard For Rule 60(b)(1) [Mistake/Inadvertence/Excusable Neglect]

Nair v. Joshi, 578 So.2d 1296 (Ala. 1991) states in relevant part:

> "The grant or denial of a motion for relief from judgment under Rule 60(b)(1) is a matter ***within the discretion of the trial court and the trial court's ruling will be reversed only for an abuse of that discretion***. In this case, we find no abuse of discretion.
>
> Nair admittedly received by way of certified mail a copy of the summons and complaint. He elected not to respond to the summons. He says, but offers no admissible evidence to support his allegation, that a Pennsylvania lawyer advised him that he need not file a response to the complaint and that the matter should be litigated in Pennsylvania. Therefore, he says, his failure to file an answer to the complaint was not the result of a mistake, inadvertence, surprise, or excusable neglect. If Nair's hearsay statements are true, then we must conclude that ***he failed to respond to the complaint because of a deliberate choice and not because of a mistake, inadvertence, surprise, or excusable neglect. A mistake of law is not a basis for setting aside a judgment under Rule 60(b)(1)***. Daugherty Associates v. Silmon, 535 So.2d 135 (Ala.1988)."

C. Standard For Rule 60(b)(2) [Newly Discovered Evidence]

McLeod v. McLeod, 473 So.2d 1097 (Ala.Civ.App. 1985):

> "However, we also note that "newly discovered evidence" as contemplated by Rule 60(b)(2) ***means evidence in existence at the time of trial of which the movant was unaware, and which could not through due diligence have been discovered in time to move for new trial under Rule 59***, A.R.Civ.P. See Beaty v. Head Springs Cemetery Association, 413 So.2d 1126 (Ala.1982). These motions are not favored, and the burden of proof is on the moving party. Id."

D. Standard For Rule 60(b)(3) [Fraud]

Requires A Finding Of Clear and Convincing Evidence Of (1) Fraud and (2) That The Fraud Prevented The Opposing Party From Fully And Fairly Presenting Their Case.

Pacifico v. Jackson, 562 So.2d 174, 179 (Ala.1990), the Supreme Court of Alabama reiterated the legal standard a party must present when seeking to set aside a judgment for fraud under Rule 60(b)(3):

> "One who contends that an adverse party has obtained a verdict through fraud, misrepresentation, or other misconduct (Rule 60(b)(3)) ***must*** prove by 'clear and convincing evidence (1) that the adverse party engaged in fraud or other misconduct ***and*** (2) that this misconduct prevented the moving party from fully and fairly presenting his case. [Citation omitted.] The resolution of these two issues is within the trial court's discretion, and on review, our only inquiry is whether the trial court abused it discretion." *Montgomery v. Hall*, 592 F.2d 278, 279 (5th Cir. 1979). See,

also, *Penn v. Irby,* 496 So.2d 751 (Ala.1986).'" ***Emphasis added***. See also McDaniel v. McDaniel, 694 So.2d 34, 37 (Ala.Civ.App.1997).

The *Pacifico* Court went on to state:

> "For a discussion ***of the long standing rule governing post-trial allegations of fraud*** see *United States* v. *Throckmorton*, 98 U.S. 61, 68-69, 25 L.Ed.93 (1878); and *Hazel-Atlas Glass Co. V. Hartford-Empire Co.,* 322 U.S. 238, 64 S.Ct. 997, 88 L. Ed. 1250 (1944)." Emphasis added

United States v. Throckmorton, 98 U.S. 61, 25 L.Ed.93 (1878), wherein the Supreme Court stated the following:

> "But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in the case. ***Where the unsuccessful party has been prevented from exhibiting fully his case***, ***by fraud or deception practiced on him by his opponent***, ***as by keeping him away from court***, ***a false promise of a compromise***; ***or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side, - these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.*** See Wells, Res Adjudicata, sect. 499; Pearce v. Olney, 20 Conn. 544; Wierich v. De Zoya, 7 Ill. 385; Kent v. Ricards, 3 Md. Ch. 392; Smith v. Lowry, 1 Johns. (N. Y.) Ch. 320; De Louis et al. v. Meek et al., 2 Iowa, 55. *In all these cases, and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.*" Emphasis added.

The Supreme Court in *Throckmorton* added:

> [T]he doctrine is equally well settled that the court ***will not*** set aside a judgment ***because it was founded on a fraudulent instrument, or perjured evidence***, ***or for any matter which was actually presented and considered in the judgment assailed***. Mr. Wells, in his very useful work on Res Adjudicata, says, sect. 499: 'Fraud vitiates every thing, and a judgment equally with a contract; that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, ***the court will not go again into the merits of an action for the purpose of detecting and annulling the fraud***.'" Emphasis added.

This principal has not only survived since 1878, but was based on the English Common Law, as the *Throckmorton* states:

> "The principle and the distinction here taken was laid down as long ago as the year 1702 by the Lord Keeper in the High Court of Chancery, in the case of Tovey v. Young, Pr. Ch. 193. This was a bill in chancery brought by an unsuccessful party to a suit at law, for a new trial, which was at that time a very common mode of obtaining a new trial. ***One of the grounds of the bill was that complainant had discovered since the trial was had that the principal witness against him was a partner in interest with the other side***. The Lord Keeper said: 'New matter may in some cases be ground for relief, ***but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial***, unless it appears by deeds, or writing, ***or that a witness on whose testimony the verdict was given was convicted of perjury***, or the jury attainted.' The case seems to have been well considered, for the decree was a confirmation of one made by the Master of the Rolls." Emphasis added.

And continues with:

> "The maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. ***But where the same matter has been actually tried, or so in issue that it might have been tried, it is not again admissible; the party is estopped to set up such fraud, because the judgment is the highest evidence, and cannot be contradicted***." Emphasis added.

And finally:

> "That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, ***would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases***." Emphasis added.

D. Standard For Rule 60(b)(4) [Void Judgment]

In Weaver v. Weaver, 4 So.3d 1171 (Ala.Civ.App. 2008), the Court of Civil Appeal stated:

" ‘ " The standard of review on appeal from the denial of relief under Rule 60(b)(4) is not whether there has been an abuse of discretion. When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place. If the judgment is valid, it must stand; if it is void, it must be set aside. ***A judgment is void only if the court rendering it lacked jurisdiction of the subject matter or of the parties***, or if it acted in a manner inconsistent with due process. Satterfield v. Winston Industries, Inc., 553 So.2d 61 (Ala.1989)." ’ " Emphasis added.

E. Standard For Rule 60(b)(5) [Satisfaction of Judgment]

I couldn't find any cases.

E. Standard For Rule 60(b)(6) [Extraordinary Circumstances]

Branson Machinery v. Hilltop Tractor, LLC, et al., 1100173 (ALSC 2011):

"Relief under Rule 60(b)(6) is reserved for ***extraordinary circumstances***, and is available only in cases of extreme hardship or injustice.'" Chambers County Comm'rs v. Walker, 459 So.2d 861, 866 (Ala. 1984) (quoting Douglass v. Capital City Church of the Nazarene, 443 So.2d 917, 920 (Ala. 1983)). **Clause (6), however, is mutually exclusive of the specific grounds of clauses (1) through (5)**, and a party may not obtain relief under clause (6) if it would have been available under clauses (1) through (5). ... Because clause (6) operates exclusively of the specific grounds listed in clauses (1) through (5), ***this Court has stated that a party may not escape the four-month limitation applicable to clauses (1) through (3) merely by characterizing the motion as seeking relief under clause (6)."*** Emphasis added.

'Relief under Rule 60(b)(6) is reserved for extraordinary circumstances, and is available only in cases of extreme hardship or injustice.' [Citations omitted]. ***Nor can Rule 60(b)(6) be used 'for the purpose of relieving a party from the free, calculated, and deliberate choices he has made. A party remains under a duty to take legal steps to protect his own interest***.' [Citations omitted]." Emphasis added.

1. Well, When Do I Get To Use Rule 60(b)(6)? Answer: Very Infrequently.

But, here's an example.

Plaintiff filed complaint against Defendant A alleging personal injury from an auto accident.

Problem: A let his brother B drive his car....B gives A's name at accident scene. Nice brother. A gets served. A calls Plaintiff's attorney and explains. Attorney says no problem. Attorney ends up taking A's default. A doesn't know about default until there is a garnishment issued by Plaintiff's attorney.

Robinson v. Howell, 726 So.2d 283 (Ala.Civ.App. 1998), the Court of Civil Appeal stated the following with regards to a Rule 60(b)(6) motion:

> "Rule 60(b)(6) permits the trial court to grant relief from a judgment for "any other reason justifying relief from the operation of the judgment," and Rule 60(b) provides that "[t]he motion shall be made within a reasonable time." Relief from a judgment may be obtained under Rule 60(b)(6) "***only in cases involving extreme hardship or injustice***." Watson v. Watson, 696 So.2d 1071, 1074 (Ala.Civ.App.1996).

7. The Rule In Criminal Law: Rule 24.1

(a) POWER OF THE COURT. When the defendant has been sentenced, the court, on motion of the defendant or on its own motion, may order a new trial.

(b) TIMELINESS. A motion for a new trial ***must be filed no later than thirty (30) days after sentence is pronounced***. After a denial of a motion for a new trial, the previously filed notice of appeal shall be deemed to have been filed as of the date of the denial of the motion and shall include an appeal from the denial of the motion.

(c) GROUNDS. The court may grant a new trial:

(1) For the reason that the verdict is contrary to law or to the weight of the evidence; or

(2) If for any other reason the defendant has not received a fair and impartial trial.