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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ANDREWS FEDERAL CREDIT
UNION,

Plaintiff and Respondent,

v.

MINERVA DAY et al.,

Defendants and Appellants.

B286634

(Los Angeles County
Super. Ct. No. BC631199)

APPEAL from a judgment of the Superior Court of Los Angeles County, John P. Doyle, Judge. Affirmed.

Hyde & Swigart and Sarah F. Khosroabadi for Defendants and Appellants.

A. Lysa Simon for Plaintiff and Respondent.

INTRODUCTION

Defendant Minerva Day appeals from the trial court's entry of a default judgment against her and the denial of her motion to vacate the judgment. Defendant argues the judgment was void because the trial court lacked personal jurisdiction over her. We affirm the judgment on different grounds – defendant made a general appearance and thus submitted to the trial court's jurisdiction months prior to entry of default.

FACTS AND PROCEDURAL BACKGROUND

In December 2015, defendant's husband became a member of plaintiff Andrews Federal Credit Union, and in December and January the husband (but not wife) applied for and obtained vehicle-secured loans from the credit union. On his membership signature card and loan applications, the husband represented he lived at a residence in Los Angeles, California and received mail at a post office box in Van Nuys. The husband eventually defaulted on the loans.

On August 19, 2016, the credit union filed a complaint in Los Angeles Superior Court against defendant and her husband to recover the debt. The cause of action against defendant was alleged under Family Code section 914, which in some circumstances makes a spouse liable for debts incurred by the other spouse for the necessities of life. The credit union served defendant and her husband by mailing the complaint to her post office box in Pennsylvania.¹ Neither filed a responsive pleading or a motion to quash service.

¹ Defendant had lived in California and, during this action, still had an active driver's license and voter registration. It appears defendant moved to Pennsylvania in August 2015. The Credit Union served defendant in Pennsylvania after obtaining

Three months after the filing of the complaint, on November 25, 2016, both defendant and her husband appeared in person in the superior court at a case management conference for this matter. There, the court scheduled future dates for a status conference, a pretrial conference and trial. The same day, the credit union personally served notice of the case management ruling on defendant and her husband at a Los Angeles address. The notice of ruling in part stated: “Notice is hereby given that the Case Management Conference in the above-entitled matter, came regularly before the Court on November 25, 2016, before the Honorable John P. Doyle, in Department 58, on the 8:30 a.m. calendar. A. Lysa Simon appeared on behalf of Andrews Federal Credit Union (hereinafter ‘Plaintiff’). Defendants Keith Stephen Day and Minerva Lydia Day both appeared.”²

Two months later, on February 2, 2017, the court entered defaults against defendant and her husband. A default judgment was entered against both on February 28, 2017.

On August 23, 2017 (202 days after the entry of the default), defendant filed a motion to vacate the judgment pursuant to Code of Civil Procedure section 473, subdivision (b). Defendant argued the judgment should be vacated on the grounds of mistake, inadvertence, or neglect due to defendant

her mailing address from her husband. The husband appears to have maintained a residence in both California and Pennsylvania.

² The notice of ruling stated the case management conference had taken place on November 25, 2016. The proof of service on the notice, however, has a November 21, 2016 date. The parties do not address this discrepancy, nor do we.

experiencing confusion and delay in finding an attorney. As a second, two-page argument she asserted that the court did not have personal jurisdiction over her. Defendant did not attack the manner of the service of the complaint.

The caption of the motion to vacate concluded with, “and Demurrer.”³ First, it ruled that defendant’s motion to vacate pursuant to Code of Civil Procedure section 473 was untimely as it was filed beyond the statutory 180-day period. The court also concluded that it had personal jurisdiction over defendant based on evidence indicating she was still a resident of California, specifically her still-valid California driver’s license and her current California voter registration. The court made no reference to a demurrer.

Defendant timely appealed.

³ Although the motion’s caption suggested defendant had also filed a demurrer, the accompanying points and authorities did not discuss a demurrer. The memorandum was limited to defendant’s claims that the default judgment was entered based on defendant’s mistake, inadvertence, or neglect, and that the trial court had no personal jurisdiction over her. A separate document, without a file stamp, was also prepared, entitled, “Defendant Minerva Day’s [proposed] Demurrer to Plaintiff’s Complaint.” This document was not in the Clerk’s Transcript on appeal, but we granted plaintiff’s request to augment the record to include it. The document contains an argument typically made in support of a demurrer. Neither party develops a meaningful argument about the effect of the demurrer. Accordingly, we discuss it no further, except to observe that the filing of a demurrer constitutes a general appearance. (Code Civ. Proc., § 1014; *Goodwine v. Superior Court of Los Angeles County* (1965) 63 Cal.2d 481, 484.)

DISCUSSION

Defendant argues that the trial court lacked personal jurisdiction over her since she was not physically present in California when served, did not contractually consent to jurisdiction, and was not a resident of California when the action was filed. Our standard of review in jurisdictional disputes varies: “When the evidence of jurisdictional facts is not in dispute, the issue whether the defendant is subject to personal jurisdiction is a legal question subject to de novo review. [Citation.] When evidence of jurisdiction is in dispute, we accept the trial court’s resolution of factual issues, draw all reasonable inferences in support of the trial court’s order, and review the trial court’s determination of factual issues for substantial evidence. [Citations.] ‘The ultimate question whether jurisdiction is fair and reasonable under all of the circumstances, based on the facts which are undisputed and those resolved by the court in favor of the prevailing party, is a legal determination warranting our independent review.’ [Citation.]” (*Burdick v. Superior Court* (2015) 233 Cal.App.4th 8, 17.)

Defendant spends much of her opening and reply briefs addressing personal jurisdiction based on California residency. She claims those facts are in dispute because she now lives in Pennsylvania. At the same time, she claims the trial court erred as a matter of law which appears to support that the facts are undisputed. We do not have to enter the fray of disputed versus undisputed facts nor do we express our opinion on defendant’s residency, because as the credit union points out, defendant made a general appearance in this action when she attended a case management conference. Cross talk about defendant’s residence and domiciliary is irrelevant.

It is well established that “‘a general appearance by a party is equivalent to personal service of summons on such party.’ (Code Civ. Proc., § 410.50, subd. (a).) ‘A general appearance operates as a consent to jurisdiction of the person, dispensing with the requirement of service of process, and curing defects in service.’” (*Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.* (2004) 114 Cal.App.4th 1135, 1145.) “A general appearance occurs where a party, either directly or through counsel, participates in an action in some manner which recognizes the authority of the court to proceed. It does not require any formal or technical act.” (*Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1756 (*Mansour*).) Unless a party appears specially, such as by way of a motion to quash, the party “waives ‘any right (he) may have to insist that jurisdiction of (his) person had not been obtained.’” (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 352.) In *Mansour*, *supra*, the appellate court found that defense counsel’s appearance at a case management evaluation conference – the very proceeding at which defendant personally appeared here – constituted a general appearance. Certain defendants had sought writ relief after the trial court denied those defendants’ motion to quash for lack of personal jurisdiction. The appellate court held that defendants’ appearance at a case management conference, as well as other litigation conduct, following the trial court’s denial of the motion to quash constituted a general appearance, and denied the writ. (*Mansour*, at p. 1756.)

Here, nothing in the record suggests defendant made a special appearance at any time in the trial court. But defendant did appear at the case management conference on November 25, 2016, and notice of what transpired was personally served on her.

In the absence of a reporter's transcript of that hearing and without any other documents in the record indicating defendant specially appeared to contest jurisdiction, we must assume the appearance constituted defendant's general submission to the trial court's jurisdiction over her person. (*In re Marriage of Obrecht* (2016) 245 Cal.App.4th 1, 9.)

We observe the trial court did not rest its jurisdictional finding on defendant's general appearance. Understandably defendant did not raise the point in her opening brief. But respondent did make that argument in its respondent's brief. Defendant ignored the point in her reply; nor did she argue that this court should not consider this ground for personal jurisdiction because it had not been raised in the trial court. (See *San Mateo Union High School Dist. v. County of San Mateo* (2013) 213 Cal.App.4th 418, 436 [issue not raised in trial court may be asserted on appeal if the question is a matter of law and the facts are undisputed].)

DISPOSITION

The judgment is affirmed. Respondent Andrews Federal Credit Union is awarded costs on appeal.

RUBIN, P. J.

WE CONCUR:

MOOR, J.

KIM, J.