Asanuma v. Sadang, 13 ROP 13 (2005)
ZISKE ASANUMA,
Appellant,

v.

MICHIE EMERAECH SADANG,
Appellee.

CIVIL APPEAL NO. 04-028
Civil Action No. 04-040

Supreme Court, Appellate Division
Republic of Palau

Decided: October 25, 2005[1]

Counsel for Appellant: Kevin Kirk

Counsel for Appellee: William Ridpath

BEFORE: KATHLEEN M. SALII, Associate ⊥14 Justice; LOURDES F. MATERNE, Associate Justice; JANET HEALY WEEKS, Part-Time Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

This appeal involves Appellant's challenge to a default judgment originally entered by the trial court on August 9 and September 16, 2004. For the reasons set forth below, we affirm the ruling of the trial court.

BACKGROUND

On February 12, 2004, Appellee Michie Emeraech Sadang filed a complaint for divorce against Appellant Ziske Asanuma seeking, in addition to the dissolution of her marriage to Appellant, sole legal custody of their child, child support in the amount of $600.00 per month, and payment of one-half of Appellee's outstanding credit card debt. The Clerk of Courts issued a summons the same day, which was subsequently mailed, along with a copy of the complaint, to Appellant at his residence in Hawaii. Appellant did not respond to the complaint. Subsequently, on April 9, 2004, the Clerk of Court entered, upon Appellee's motion, a default judgment [2] against

[1] In light of Appellee's failure to respond to Appellant's brief, the court has concluded that oral argument would not materially assist in the resolution of this appeal. ROP R. App. P. 34(a).

[2] Editor's Note: The Clerk of Court entered a default on April 9, 2004, rather than a default judgment.

Appellant under ROP Rule of Civil Procedure 55. Appellant does not appear to have been served with a copy of this default. On August 26, 2004, Appellee requested a hearing be held in which she could "provide proof in support of her request for child support." On September 3, 2004, the trial court granted Appellee's motion for a child support hearing, to be held on September 14, 2004. Again, Appellant does not appear to have been served with a copy of Appellee's request for a hearing or of the trial court's granting of that request. Following this hearing, at which Appellant did not appear, the trial court entered judgment, dissolving the marriage and awarding Appellee sole legal custody of her child, monthly child support in the amount of $600.00, and an amount equal to one-half of the outstanding balance on a number of Appellee's credit cards. Appellant now appeals this entry of default judgment on the grounds that he did not receive notice of (1) the initial entry of default against him, (2) Appellee's subsequent request for a hearing, or (3) the court's order scheduling the September 14, 2004, hearing.[3]

ANALYSIS

Appellant moves to vacate the portion of the judgment ordering him to pay monetary damages to Appellee on the grounds that he did not receive notice and an opportunity to appear at the September 14, 2004, hearing. Appellant maintains that he was entitled to such notice under ROP Rule of Civil Procedure 55(b)(2), which he claims establishes a defaulting party's right to be heard at a hearing on the amount of damages ⊥15 awarded pursuant to a default judgment.[4]

Rule 55(b)(2) governs a trial court's entry of default judgment. The Rule provides, in relevant part:

> If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

ROP Rule of Civil Procedure 55(b)(2). The plain language of the Rule defeats Appellant's claim. The Rule states that a party is only entitled to written notice of an application for default judgment if the party "has appeared in the action." Appellant neither made an appearance nor responded in any way after being served with a summons and a copy of Appellee's initial

---

[3] The record does not indicate the reason behind Appellant's failure to bring motions to set aside the default and default judgment under ROP Rules of Civil Procedure 55(c) and 60(b). Rule 55(c) allows a trial court to set aside an entry or judgment of default "[f]or good cause shown." Rule 60(b) likewise grants a trial court the right to set aside a judgment on the grounds of, *inter alia*, mistake, inadvertence, and excusable neglect, or where the judgment is void.

[4] Appellee has not filed a response to Appellant's brief.

complaint. Having failed to do so, he waived any further rights to notice of hearing in the matter.[5] Moreover, although the trial court elected to hold a hearing on the child support issue, such a hearing "is not a prerequisite to the entry of a default judgment." *Gibbons*, 8 ROP Intrm. at 5. Indeed, Rule 55(b)(2) "merely states that the court *may* conduct such hearings as it deems necessary and proper, and therefore the decision of whether a hearing is necessary is left to the discretion of the trial judge." *Id. (*citing *Ngeliei v. Rengulbai* , 3 ROP Intrm. 4 (1991)). [6] In light of the fact that Appellant had no right to a hearing on damages to begin with, it cannot be said that the lack of notice of such a hearing constituted reversible error.

⊥16 **CONCLUSION**

For the above stated reasons, we affirm the trial court's entry of default judgment.

---

[5] Of course, "[i]n in the absence of valid service of process, proceedings against a party are void." *Gibbons v. Cushnie* , 8 ROP Intrm. 3, 5 (1999) *(*quoting *Aetna Business Credit v. Universal Decor and Interior Design* , 635 F.2d 434, 435 (5th Cir. 1981)). But Appellant does not claim that he was not adequately served with copies of a summons and the initial complaint and, indeed, the record reflects that such service was effectuated. It must be noted that Appellant has provided no explanation for his failure to respond to the initial summons and complaint.

[6] *Gibbons* is in conflict with some of the American case law cited by Appellant. In instances of such conflict, of course, the applicable Palauan law must apply. *See Akiwo v. ROP. Sup. Ct. Tr. Div.* , 1 ROP Intrm. 96, 99 (1984). In any event, the A.L.R. article (published in 1967) cited by Appellant demonstrates not, as Appellant asserts, that "the right to be heard at a hearing on damages is fairly well established in U.S. jurisprudence," but rather that a "conflict of authority [exists] as to the requirement of notice of a hearing to assess damages following a defendant's default." B. Finberg, Annotation, *Defaulting Defendant's Right to Notice and Hearing as to Determination of Amount of Damages* , 15 A.L.R. 3d 586, 589 (1967).