

**Reeves v Foundation for the Child Victims of the
Family Cts.**

2020 NY Slip Op 32719(U)

August 21, 2020

Supreme Court, New York County

Docket Number: 150731/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

INDEX NO. 150731/2019

KARL REEVES,

Plaintiff,

- v -

MOTION SEQ. NO. 001, 002, and
003

THE FOUNDATION FOR THE CHILD VICTIMS OF THE
FAMILY COURTS and JILL-JONES SODERMAN,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 82, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

were read on this motion to/for JUDGMENT - DEFAULT.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 86

were read on this motion to/for DISMISSAL.

In this action sounding, inter alia, in defamation, plaintiff Karl Reeves moves (motion sequence 001) for a default judgment against defendants The Foundation for the Child Victims of the Family Courts (“FCV”) and Jill-Jones Soderman (“Soderman”). FCV and Soderman oppose the motion and cross-move (motion sequence 001) to dismiss the amended complaint or, in the alternative, to serve a late answer. Soderman moves (motion sequence 002) to dismiss the complaint pursuant to CPLR 3211(a)(8) and plaintiff opposes the application. Soderman also purports

to move to dismiss the complaint in motion sequence 003 and plaintiff opposes the application. After consideration of the parties' contentions, as well as a review of the relevant statutes and case law, the motions are decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND:

Plaintiff Karl Reeves commenced this action against defendants Julianne Michelle Reeves ("Julianne"), Joycelyn Engle ("Engle"), Soderman, in her personal and professional capacities, and FCV by filing a summons and verified complaint on January 23, 2019. Docs. 1-2. This action arose from the failed marriage between plaintiff and Julianne and alleged attempts by Julianne and her mother, Engle, to engineer a lucrative financial settlement for Julianne in the divorce action by fabricating allegations of domestic abuse and other misconduct by plaintiff.

On May 20, 2019, plaintiff filed an ex parte application seeking to discontinue his claims against Julianne and Engle and to amend the caption to reflect, inter alia, the discontinuance against those defendants. Doc. 20.¹ By order filed June 17, 2019, this Court (Nervo, J.) granted plaintiff's application. Doc. 28.

In the amended complaint, plaintiff alleged causes of action for libel per se, intentional and negligent infliction of emotional distress, and prima facie tort. Doc.

¹ Although plaintiff filed the motion as an ex parte application, it was not an order to show cause but rather a proposed order allowing plaintiff to amend the complaint, and no motion sequence number was assigned to the application. Doc. 19-20.

12. Plaintiff also sought declaratory and injunctive relief and demanded compensatory and punitive damages. Doc. 12. Specifically, plaintiff alleged that FCV, which provides domestic crisis counseling, among other services, and Soderman, its Executive Director, made a series of false and misleading statements about him. Doc. 12; Doc. 71 at par. 3.

On May 15, 2019, plaintiff served FCV, a domestic not-for-profit corporation, via the Secretary of State pursuant to Not-For-Profit Corporation Law § 306. Doc. 24. Plaintiff unsuccessfully attempted to serve Soderman at her former address at 10 Cornelison Ave., Nyack, New York on May 17 and 18, 2019. Doc. 25. Plaintiff then attempted to serve Soderman at her last known place of abode, 21 Alps Road, Hewitt, New Jersey, on May 20, 2019 at 7:22 a.m. and on May 21, 2019 at 4:35 p.m. The process server then mailed the summons and complaint to Soderman on May 23, 2019. Doc. 25. On May 14, 2019, the process server unsuccessfully attempted to serve Soderman at what he mistakenly believed was the office of FCV. Doc. 27.

Plaintiff served FCV with the amended complaint via the Secretary of State on July 1, 2019. Doc. 31. A process server unsuccessfully attempted to serve Soderman at 26 Alps Road, Hewitt, New Jersey, her “last known place of abode as per DMV”, on July 6, 2019 at 2:15 p.m., July 8, 2019 at 7:55 a.m., and July 10, 2019 at 9:10 p.m. Doc. 32. After Soderman failed to answer the door at any of those times,

the process server affixed the amended pleading on her door and mailed the same to her on July 11, 2019. Doc. 32.

On August 29, 2019, plaintiff moved for a default judgment against FCV and Soderman (motion sequence 001). Doc. 33. In support of its motion, plaintiff argued that it properly served FCV and Soderman, that they failed to answer, and that, by submitting his verified complaint, he has established the facts constituting his claim. Doc. 34.

On September 6, 2019, Soderman, acting pro se, moved (motion sequence 002) to dismiss the complaint pursuant to CPLR 3211(a)(8) on the ground that plaintiff failed to properly serve her in accordance with CPLR 308(4). Doc. 45. In opposition, plaintiff argued that his process server made diligent attempts to determine where Soderman could be served and that the latter was properly served with process. Doc. 46. In reply, Soderman vehemently denied that she was ever served with process in this action.² Doc. 52.

On September 21, 2019, Soderman, still pro se, purported to move once again (motion sequence 003) to dismiss the complaint based on lack of jurisdiction. Doc. 54. Although the NYSCEF filing pertaining to the motion reads “notice of motion accompanying commencement docs”, no notice of motion was filed in connection

² This Court notes that although Soderman’s reply affidavit does not indicate where it was signed, it bears the stamp of a South Carolina notary. Doc. 52.

with the application. Doc. 54. The document filed instead of the notice of motion was the same document Soderman filed as her reply affidavit in motion sequence 002. Doc. 52. Plaintiff opposed the motion based, inter alia, on the fact that it was procedurally improper. Doc. 55.

On January 31, 2020, Soderman and FCV, after retaining counsel, opposed plaintiff's motion for default and cross-moved (motion sequence 001), pursuant to CPLR 3211(a)(8), to dismiss the complaint against Soderman based on a lack of personal jurisdiction or, in the alternative, for leave for Soderman and FCV to serve a late answer. Doc. 63.

In opposition, plaintiff argues that service on FCV and Soderman was proper, that said defendants failed to offer a reasonable excuse for their default, and that they failed to set forth any potentially meritorious defenses. Doc. 87.

In reply, FCV and Soderman reiterate, among other things, their argument that they should be permitted to file a late answer. Doc. 90.

LEGAL CONCLUSIONS:

Under CPLR 3012 (d), a trial court has the discretionary power to extend the time to plead, or to compel acceptance of an untimely pleading "upon such terms as may be just," provided that there is a showing of a reasonable excuse for the delay. In reviewing a discretionary determination, the proper inquiry is whether the court providently exercised its discretion. In *Artcorp Inc. v Citirich Realty Corp.* (140 AD3d 417 [1st Dept 2016]), [the Appellate Division, First

Department] adopted the factors set forth in *Guzetti v City of New York* (32 AD3d 234, 238 [1st Dept 2006, McGuire, J., concurring]) as those that "must . . . be considered and balanced" in determining whether a CPLR 3012 (d) ruling constitutes an abuse of discretion. Those factors include the length of the delay, the excuse offered, the extent to which the delay was willful, the possibility of prejudice to adverse parties, and the potential merits of any defense (32 AD3d at 238). *Emigrant Bank v Rosabianca*, 156 AD3d 468, 472-473 (1st Dept 2017).

214 Lafayette House LLC v Akasa Holdings, LLC, 2019 NY Slip Op 33561(U) (Sup Ct, NY County 2019).

This Court addresses these factors *seriatim* below.

Plaintiff served the amended complaint on FCV and Soderman in July 2019. Doc. 31-32. Thus, the time for FCV and Soderman to answer expired in or about August 2019. Although the pro se defendants did not move for an extension of time to answer until January 31, 2020 (Doc. 63), by which time they had retained counsel, their delay of approximately 5 months was not excessive. *See 214 Lafayette House LLC v Akasa Holdings, LLC, supra* (delay of approximately 5 months not excessive).

FCV and Soderman proffer as the excuse for their delay that they were not served with the complaint. This Court has "broad discretion in gauging the sufficiency of an excuse proffered by a defendant who failed to serve a timely answer." *Cirillo v Macy's*, 61 AD3d 538, 540 (1st Dept 2009). Although the affidavits of service filed by plaintiff establish that service was presumptively valid

(see *Madison Acquisition Group, LLC v 7614 Fourth Real Estate Dev., LLC*, 111 A.D.3d 800 [2d Dept 2013]) and FCV and Soderman's excuse for failing to serve a timely answer is "less than compelling", such excuse is nevertheless acceptable given the "strong preference in our law that matters be decided on their merits in the absence of demonstrable prejudice." *Elemery Corp. v 773 Assoc.*, 168 AD2d 246, 247 (1st Dept 1990); see also *Peg Bandwidth, LLC v Optical Communications*, 150 AD3d 625, 626 (1st Dept 2017); *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

Plaintiff's contention that FCV and Soderman are required to establish a meritorious defense is incorrect. "An affidavit of merit is not required on a motion for leave to serve a late answer where, as here, no default order or judgment [was] entered [against the defendants]." *Cirillo v Macy's*, 61 AD3d 538 (1st Dept 2009).

Further, and most importantly, plaintiff has submitted absolutely no proof that defendants' failure to answer in a timely fashion was willful and does not prove, or even allege, that he was prejudiced in any way by their delay in answering.

After consideration of these factors, this Court, in its discretion, grants FCV and Soderman leave to submit a late answer.

Given this result, plaintiff's motion for a default judgment (motion sequence 001) is denied as moot. Even assuming, arguendo, that plaintiff satisfied the requirements of CPLR 3215(f) for a default judgment, FCV and Soderman

established that they had a reasonable, albeit not compelling, excuse for failing to serve a timely answer. *See Peg Bandwidth, LLC v Optical Communications*, 150 AD3d 625, 626, 56 N.Y.S.3d 66 (1st Dept 2017). Also denied as moot is Soderman's motion to dismiss the complaint (motion sequence 002). Finally, Soderman's purported motion to dismiss the complaint (motion sequence 003) is denied as procedurally defective insofar as it lacks a notice of motion as required by CPLR 2214 and, in any event, is duplicative of the relief sought by Soderman in motion sequences 001 and 002 .

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of defendants' cross motion seeking leave to serve a late answer (motion sequence 001) is granted, and the cross motion is otherwise denied; and it is further

ORDERED that plaintiff's motion for a default judgment (motion sequence 001) is denied as moot; and it is further

ORDERED that defendant Soderman's motion to dismiss the complaint (motion sequence 002) is denied as moot; and it is further

ORDERED that defendant Soderman's purported motion to dismiss the complaint (motion sequence 003) is denied as procedurally improper; and it is further

ORDERED that defendants are directed to file an answer to plaintiff's amended complaint within 30 days after this order is uploaded to NYSCEF; and it is further

ORDERED that the parties are directed to appear for a telephonic preliminary conference on September 23, 2020 at 4:30 p.m., prior to which the parties must provide the court with a dial-in number and access code or must have all parties on the line and then patch in the court at (646) 386-5655; and it is further

ORDERED that, in lieu of a conference call on the aforementioned date, the parties may, prior to said date, request from chambers a preliminary conference form, complete the same, and return it to chambers by email to be so-ordered, leaving blank spaces for the compliance date and the note of issue filing deadline; and it is further

ORDERED that this constitutes the decision and order of the court.

8/21/2020

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE


20200821123207KFBP05D2069BE23804ACC934E664566A6AA40

KATHRYN E. FREED, J.S.C.