Rel: June 28, 2019

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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180058

Charles D. Langley

v.

Harlon B. Farrar

Appeal from Marion Circuit Court
(CV-16-900014)

PER CURIAM.

Charles D. Langley appeals from a judgment of the Marion Circuit Court ("the trial court") denying his Rule 60(b)(4) and (6), Ala. R. Civ. P., motion, which sought relief from a judgment the trial court had entered in favor of Harlon B. Farrar and against Langley in the amount of $31,914.80. We reverse and remand.

In February 2016, Farrar filed a complaint against Langley along with written discovery requests in the trial court. Farrar's complaint sought to recover $31,914.80, which, Farrar alleged, Langley owed Farrar pursuant to a promissory note. The summons prepared by Farrar for service of the complaint and discovery requests on Langley listed an address for Langley in Winfield. It is undisputed from the record that both the street address and the city listed on the summons were incorrect; Langley's correct address was in Guin. The sheriff's return of service shows that the summons and complaint, along with the discovery requests, were served on "Charles D. Langley in Marion County, Alabama on 2-9-16." The sheriff's return of service does not indicate the specific address where Langley was served.

On February 25, 2016, representing himself and without counsel, Langley filed an answer to Farrar's complaint that listed his correct address in Guin. In the answer, Langley denied the claim stated in Farrar's complaint. On March 2, 2016, Langley filed responses to the discovery requests that had been served with the summons and complaint. In his responses, Langley denied that he owed Farrar any money.

The record shows that on March 11, 2016, the trial-court clerk's office mailed notices of a pretrial conference to be held on May 11, 2016, to Farrar's counsel and Langley. The notice intended for Langley was mailed to him in an envelope addressed to the incorrect Winfield address that had been listed on the summons. On March 23, 2016, the envelope containing Langley's notice of the pretrial conference was returned to the trial-court clerk's office marked "Return to Sender, No Such Street, Unable to Forward."

An entry on the State Judicial Information System case-action summary dated May 11, 2016, the day of the pretrial conference, indicates that, on that date, the trial court set the action for trial on August 19, 2016. There is no indication in the record that the trial-court clerk's office sent written notice of the trial date to either Farrar's counsel or Langley.

On August 18, 2016, the day before the scheduled trial, counsel for Farrar filed a motion to compel Langley to respond further to the discovery requests that had been served with the complaint. The certificate of service on the motion to compel indicates that Farrar's counsel mailed a service copy

of the motion to compel to Langley's correct address in Guin. The motion to compel contained no indication that the action had been set for trial.

On August 19, 2016, the trial court entered a judgment in favor of Farrar and against Langley in the amount of $31,914.80, the amount sought in Farrar's complaint. The judgment stated that Langley had not appeared for the trial, that Farrar and his counsel had appeared for the trial, and that the trial court had based its judgment on testimony it had received from Farrar and exhibits introduced by Farrar. The record does not contain a transcript of the trial, but nothing in the record indicates that the trial court was informed that the address the trial-court clerk had used for the purpose of sending Langley notices was incorrect and that it was not the same address that was listed on both Langley's answer and Farrar's motion to compel, which Farrar's counsel had mailed to Langley the day before the trial.

The trial-court clerk's office subsequently mailed a notice of the judgment to Langley, once again addressing it to the incorrect Winfield address. The envelope containing the notice was, once again, returned to the trial-court clerk's

office marked "Return to Sender, No Such Street, Unable to Forward."

In May 2017, the trial-court clerk's office issued a certificate of judgment. In July 2017, the trial-court clerk's office issued a writ of execution at Farrar's request. Both the writ of execution and the notice of right to claim exemption from execution that accompanied it listed Langley's address as the incorrect Winfield address.

On August 30, 2018, Langley filed a motion in the trial court pursuant to Rule 60(b)(4) and (6) seeking relief from the judgment. Langley's motion asserted that he had not appeared at the trial because he had not been given notice that the action was set for trial on August 19, 2016; that he had not received notice of the trial because Farrar had provided incorrect and misleading information regarding his address to the trial court; and that he had a meritorious defense to Farrar's claim. In support of his motion, Langley filed an affidavit in which he testified, in pertinent part:

> "2. I am the defendant in the above-styled lawsuit. Although I do not recall how the complaint was served, at some point I became aware that Harlon B. Farrar had filed a lawsuit claiming that I owed him money. The address on the summons was '103 Langley Road, Winfield, Alabama 35594.' This is not

my address. The service address as set out on page 2 of the Complaint is '103 Langley Road, Guin, Alabama 35563.' This is not my address.

"3. According to the summons, I had 30 days within which to file my answer to the complaint. On February 25, 2016, I filed my answer to the complaint denying that I owed [Farrar] any money, I included on my answer my correct address of:

"Charles D. Langley
301 Langley Road Guin, Alabama 36563

"4. I responded in a timely manner to the discovery served with the complaint, in which responses I denied that I owed [Farrar] any money.

"5. After the filing of my answer, I received no notice of the scheduling of any trial, hearing or other judicial proceeding. I became aware that a judgment had been rendered against me only upon being served on or about August 8, 2018 with a writ of execution. Had I received notice of trial or hearing I would have been present because I do not owe Harlon B. Farrar any money.

"6. I acknowledged that on October 1, 2004, I borrowed $10,016.50 from Harlon B. Farrar. That indebtedness was paid in full on August 14, 2006 as so noted on the promissory note, a copy of which is attached hereto as 'Exhibit A.' I further acknowledged that on February 15, 2005, I borrowed $8,520.00 from Harlon B. Farrar. That indebtedness was paid in full on August 14, 2006 as so noted on the promissory note, a copy of which is attached hereto as 'Exhibit B.' The notes were returned to me by Mr. Farrar."

On September 4, 2018, the trial court entered a judgment denying Langley's Rule 60(b)(4) and (6) motion. Langley then timely appealed to this court.

The standard of review applicable to a ruling on a Rule 60(b)(4) motion is de novo. See General Motors Corp. v. Plantation Pontiac-Cadillac, Buick, GMC Truck, Inc., 762 So. 2d 859, 861 (Ala. Civ. App. 1999). "When the grant or denial of relief turns on the validity of the judgment, as under Rule 60(b)(4), discretion has no place." Satterfield v. Winston Indus., Inc., 553 So. 2d 61, 64 (Ala. 1989). The standard of review applicable to a ruling on a Rule 60(b)(6) motion is whether the trial court exceeded its discretion. Shipe v. Shipe, 477 So. 2d 430, 432 (Ala. Civ. App. 1985)

On appeal, Langley first argues that the circumstances under which the judgment in favor of Farrar was entered did not afford him procedural due process and that, therefore, the judgment should have been vacated under Rule 60(b)(4). A judgment entered without affording a party procedural due process is void. Ex parte Third Generation, Inc., 855 So. 2d 489, 492 (Ala. 2003). Procedural "'due process ... means notice, a hearing according to that notice, and a judgment

entered in accordance with such notice and hearing.'" Neal v. Neal, 856 So. 2d 766, 782 (Ala. 2002) (quoting Frahn v. Greyling Realization Corp., 239 Ala. 580, 583, 195 So. 758, 761 (1940)) (emphasis omitted).

> "Although it is generally held in Alabama that a party is under a duty to follow the status of his case, whether he is represented by counsel or acting pro se, and that, as a general rule, no duty rests upon either the court or the opposing party to advise that party of his scheduled trial date, see the cases collected at 18A Ala. Digest Trial § 9(1) (1956), a party's right to procedural due process is nonetheless violated if he is denied his day in court because the court, acting through its clerk, assumed the duty of notifying that party of his scheduled trial date and then negligently failed to do so."

Ex parte Weeks, 611 So. 2d 259, 262 (Ala. 1992).

In Davis v. Davis, 183 So. 3d 976 (Ala. Civ. App. 2015), a divorce case, this court recited the circumstances that had resulted in the entry of the divorce judgment:

> "On January 24, 2014, the [Elmore Circuit Court] entered an order scheduling the final hearing in the divorce action for March 5, 2014. The record contains an envelope indicating that the notice of the scheduled hearing sent to the husband at the prison at which he is incarcerated was returned to the circuit clerk's office because the address did not include the husband's 'Register Number' at the prison. The envelope also bears a stamp indicating that the address was insufficient and that the letter could not be forwarded. There is nothing in the record to indicate that an attempt was made to

> resend the notice with the husband's register number included in the address. The husband had included his register number as part of the address he provided in his answer to the complaint and in subsequent filings. The case-action summary does not include a notation that the notice was returned to the clerk's office; however, the docket sheet for this case available on the alacourt.com Web site, which contains information derived from the State Judicial Information System, indicates an entry stating 'bad address.'
>
> "On March 5, 2014, the [Elmore Circuit Court] entered an order stating:
>
> > "'Case called. Default entered against the husband as he did not appear for trial. Proposed Final Decree to be sent to Court.'
>
> "The wife then submitted a proposed judgment, which awarded the wife the marital residence and [a check issued by the United States Department of Agriculture arising out of litigation brought on behalf of African-American farmers]. The [Elmore Circuit Court] adopted the proposed judgment in its divorce judgment entered on March 6, 2014."

183 So. 3d at 980. The husband filed a postjudgment motion, which the Elmore Circuit Court denied. The husband then timely appealed to this court. On appeal, this court acknowledged the general rule that a court is not under a duty to notify a party of his or her trial date; however, this court further noted that

> "'"a party's right to procedural due process is nonetheless violated if he is denied his day in court because the court,

> acting through its clerk, assumed the duty of notifying that party of his scheduled trial date and then negligently failed to do so." Ex parte Weeks, 611 So. 2d 259, 262 (Ala. 1992).'"

183 So. 2d at 980-81 (quoting M.S. v. State Dep't of Human Res., 681 So. 2d 633, 635 (Ala. Civ. App. 1996)). Holding that the entry of the divorce judgment had not afforded the husband procedural due process, this court stated:

> "[T]he circuit clerk's failure to notify the husband of the hearing in the divorce action after the notice the clerk sent was returned deprived the husband of his right to procedural due process. '"A judgment or order that is entered in violation of principles of procedural due process is void. See Ex parte Third Generation, Inc., 855 So. 2d 489, 492 (Ala. 2003) (discussing Neal [v. Neal, 856 So. 2d 766 (Ala. 2002)], and concluding that a judgment is void if it violates principles of procedural due process)."' Ex parte Montgomery, 97 So. 3d 148, 152-53 (Ala. Civ. App. 2012) (quoting Ex parte Montgomery, 79 So. 3d 660, 670 (Ala. Civ. App. 2011))."

183 So. 3d at 981. Cf. Ex parte U.S. Steel Mining Co., 160 So. 3d 1245 (Ala. Civ. App. 2014) (holding that a trial court's dismissal of the plaintiff's action without affording the plaintiff notice and an opportunity to be heard is inconsistent with procedural due process).

The record in this case demonstrates that Langley provided his correct address in his answer; that the address

was not changed in the court records; that notice to Langley of a pretrial conference was returned to the trial-court clerk with the notation that there was "[n]o such street," establishing that the notice was not delivered; and that a trial was scheduled without any notice to Langley, which resulted in a judgment being entered against him. Accordingly, we conclude that the entry of the August 19, 2016, judgment did not afford Langley procedural due process and that the judgment is therefore void. See Davis, 183 So. 3d at 981 ("[T]he circuit clerk's failure to notify the husband of the hearing in the divorce action after the notice the clerk sent was returned deprived the husband of his right to procedural due process."). Consequently, we reverse the trial court's judgment denying Langley's Rule 60(b)(4) motion, and we remand the cause for further proceedings consistent with this opinion. Because Langley's first argument regarding Rule 60(b)(4) is dispositive, we do not reach his other arguments.

REVERSED AND REMANDED.

Thompson, P.J., and Hanson, J., concur.

Donaldson, J., concurs specially, with writing.

Moore and Edwards, JJ., dissent, with writings.

DONALDSON, Judge, concurring specially.

I question the continued validity of analyzing whether the trial-court clerk first undertook a duty to send notice of case events before a party can raise lack of notice in a challenge to a judgment under Rule 60(b)(4), Ala. R. Civ. P. See Rule 4.I(C), Ala. R. Jud. Admin. ("The clerk ... shall issue all process and notices required by law ... to be issued."). If "law," or in this case procedural due process, requires notice before a judgment is to be entered, then who else is going to send the notice other than the clerk?

Also, in my view, there should be a distinction between motions attacking the validity of a judgment due to lack of notice of the litigation before the court has acquired personal jurisdiction over the party and lack of notice of events occurring during the litigation after personal jurisdiction has been obtained. See Ex parte U.S. Steel Mining Co., 160 So. 3d 1245, 1249-50 (Ala. Civ. App. 2014) (Donaldson, J., concurring specially). I think that when a judgment has been entered without jurisdiction over either the subject matter or the person, the motion should be cognizable under Rule 60(b)(4) and should not be subject to a time

limitation because the judgment is void. A movant's diligence in keeping abreast of the litigation is not material to that analysis. Once a trial court with subject-matter jurisdiction has acquired personal jurisdiction over the parties, however, I think a motion attacking a judgment based on a lack of notice of events occurring during the litigation should be cognizable under Rule 60(b)(6) and should be subject to a reasonable-time requirement because, in my view, the judgment should be viewed as voidable. A movant's diligence in keeping up with the litigation would be a material issue in that analysis.

But my view is not consistent with existing law because, currently, no distinction is drawn between lack of notice of the litigation and lack of notice of events during the litigation. See Ex parte U.S. Steel Mining Co. supra (holding that dismissal of an action by the trial court without advance notice was inconsistent with due process).

MOORE, Judge, dissenting.

Charles D. Langley appeals from a judgment of the Marion Circuit Court ("the trial court") denying his Rule 60(b), Ala. R. Civ. P., motion to set aside a judgment entered by the trial court against Langley and in favor of Harlon B. Farrar. In his Rule 60(b) motion, Langley argued that he had been denied due process because he had not received notice of the trial that had resulted in the judgment entered against him. The record indicates, in pertinent part and as stated in the main opinion, that the summons prepared by Farrar in service of his complaint against Langley contained an incorrect address for Langley; that, although he provided his correct address in his answer to the complaint, Langley did not otherwise point out that the address on the summons was incorrect or ask the trial-court clerk to correct his address in the court's records; that the trial-court clerk mailed notice of a pretrial conference to Farrar's counsel and to Langley at the incorrect address as stated in the summons; that, on the date of the pretrial conference, the action was scheduled for a trial to be conducted on a future date; that there is no indication that the trial-court clerk sent written

notice of the trial to either Farrar's counsel or to Langley; and that a judgment was later entered by the trial court, indicating that Langley had failed to appear for the trial and that, based on the testimony presented by Farrar, judgment was entered in favor of Farrar.

As observed by our supreme court in Ex parte Weeks, 611 So. 2d 259, 262 (Ala. 1992), "it is generally held in Alabama that a party is under a duty to follow the status of his [or her] case" and no duty rests upon the court to advise that party of his or her scheduled trial date. The supreme court clarified in Weeks, however, that if a trial court, acting through its clerk, assumes the duty of notifying a party of his or her scheduled trial date and then negligently fails to do so, that party's right to procedural due process is nonetheless violated. Id. This court has indicated that, if a trial-court clerk mails written notice of a hearing date and that notice is returned, the court has assumed the duty to notify the party of the hearing date. See M.S. v. State Dep't of Human Res., 681 So. 2d 633, 635 (Ala. Civ. App. 1996) (noting that the record reflected that "the trial court, through its clerk, [had] assumed the duty of notifying the

[parties] of the scheduled hearing date[] and that the notice sent to the [parties] was returned to the clerk because the clerk had used an incorrect zip code"); and Davis v. Davis, 183 So. 3d 976, 981 (Ala. Civ. App. 2015) (holding that "the circuit clerk's failure to notify the husband of the hearing in the divorce action after the notice the clerk sent was returned deprived the husband of his right to procedural due process"). In the present case, however, there is no indication in the record on appeal that the trial-court clerk sent notice of the trial setting to either Langley or to Farrar or Farrar's attorney. Accordingly, the trial-court clerk did not assume the duty of notifying Langley such that its failure to do so deprived Langley of his right to procedural due process. Because Langley's sole argument on appeal is related to his assertion that he did not receive notice of the trial setting and I conclude that that argument does not merit reversal, I respectfully dissent.

EDWARDS, Judge, dissenting.

Harlon B. Farrar sued Charles D. Langley in the Marion Circuit Court ("the trial court") to recover moneys that allegedly were past due under a promissory note executed by Langley in favor of Farrar. Langley was personally served with the complaint, and he filed an answer, in which he stated his address as 301 Langley Road, Guin, Alabama 35563, as opposed to 103 Langley Road, Winfield, Alabama 35594, as was stated on the summons. The trial court set a pretrial hearing, and the trial-court clerk sent notice of that hearing to the parties via regular mail; Langley's notice was mailed to the address listed on the summons. The State Judicial Information System case-action summary indicates that, on May 11, 2016, the trial court set the case for a trial to be held on August 19, 2016; the case-action summary does not reflect that any notices of the trial date were transmitted or mailed to the parties. Langley failed to appear for trial, and the trial court entered a judgment in favor of Farrar for the sum he requested in his complaint, $31,914.80.

Upon receiving a writ of execution against his personal property in August 2018, Langley filed in the trial court a

motion seeking relief from the August 2016 judgment, relying on Rule 60(b)(4) and (6), Ala. R. Civ. P. In that motion, Langley argued that the August 2016 judgment was void because he had not received notice of the trial date. The trial court denied Langley's motion on September 4, 2018, and Langley appealed that judgment to this court.

On appeal, Langley first argues, as he did below, that the trial-court circuit clerk's failure to notify him of the trial date results in the August 2016 judgment being void for a lack of due process. He relies on Ex parte Weeks, 611 So. 2d 259, 262 (Ala. 1992), in which our supreme court explained that "a party's right to procedural due process is ... violated if he is denied his day in court because the court, acting through its clerk, assumed the duty of notifying that party of his scheduled trial date and then negligently failed to do so." However, that particular statement in Ex parte Weeks cannot be viewed in isolation.

In Ex parte Weeks, Kenneth Earl Weeks, a criminal defendant, appealed to the circuit court his district-court convictions for driving under the influence and driving without a license. 611 So. 2d at 260-61. The circuit court

set the case for a trial, at which Weeks failed to appear, and then dismissed the appeal. Id. at 261. After the circuit court declined to reconsider its dismissal order, Weeks filed a petition for the writ of mandamus in the Court of Criminal Appeals, requesting that it order the circuit court to reinstate his appeal. Id. The Court of Criminal Appeals denied the petition, and Weeks then filed a petition for the writ of mandamus in the supreme court. Id.

Weeks presented an affidavit in support of his petition for the writ of mandamus in the supreme court outlining the facts underlying the dismissal of his appeal by the circuit court. Id. He explained in that affidavit that he had contacted the clerk's office five separate times between November 1989 and March 1990 to inquire when his case would be set for trial. Id. The clerk's office employee who answered Weeks's March 1990 telephone call informed him that he did not need to call "'all the time'" and that he would be notified of his court date by the clerk. Id. Weeks stated that he had informed the clerk of his correct address and his telephone number during that March 1990 telephone call. Id. He made no further inquiry of the clerk's office until his mother

telephoned the clerk's office in October 1990 on his behalf; she was informed that the case had been called for trial in April 1990 and that, because Weeks had not appeared, the appeal had been dismissed. Id.

Our supreme court explained that "[p]rocedural due process ... contemplates the rudimentary requirements of fair play, which include a fair and open hearing before a legally constituted court or other authority, with notice and the opportunity to present evidence and argument, representation by counsel, if desired, and information as to the claims of the opposing party, with reasonable opportunity to controvert them." Id. The court went on to state that "it is generally held in Alabama that a party is under a duty to follow the status of his case, whether he is represented by counsel or acting pro se, and that, as a general rule, no duty rests upon either the court or the opposing party to advise that party of his scheduled trial date." Id. at 262. However, in Ex parte Weeks, the supreme court concluded that the clerk, by assuring Weeks that he did not need to telephone the clerk's office to check the status of his case, had assumed the duty of notifying Weeks of his trial date and then had "negligently

failed to do so" because the clerk sent the notice of the trial date to Weeks's former address despite his having informed her of his new address in March 1990. Id.

Although Langley presented some evidence indicating that the clerk's office had been given an incorrect address by Farrar and had used that incorrect address when sending out the notice of the pretrial hearing, those facts are, in my opinion, not sufficient facts upon which to support a conclusion that the trial court erred in denying Langley's Rule 60(b)(4) motion. The general rule is that a party, even one appearing pro se, must keep abreast of the status of his or her case. Ex parte Weeks, 611 So. 2d at 262. Unlike Weeks, Langley was not told to stop telephoning the clerk's office to check on the status of his case. Langley does not present any evidence indicating that he ever telephoned the clerk's office to inquire about the status of the case against him, much less that he was either given incorrect information or told that he no longer needed to contact the clerk's office. Instead, from all that appears in the record, Langley made no inquiries whatsoever about the status of the case against him. Thus, I have no basis on which to conclude that

the clerk's office undertook any duty to inform Langley of his trial date. See Marks v. Marks, 181 So. 3d 361, 364 (Ala. Civ. App. 2015) ("Given the absence of any evidence indicating that the clerk of the trial court assumed the duty to notify the former wife of her scheduled trial date, the former wife failed to present sufficient factual grounds to support her Rule 60(b)(4) motion.").

The main opinion relies on Davis v. Davis, 183 So. 3d 976, 980 (Ala. Civ. App. 2015), to conclude that the trial court erred in failing to grant Langley's Rule 60(b)(4) motion. I disagree. The record reflects that the clerk's office did not send a notice of the trial date to either Langley or Farrar. Therefore, I find this case to be more like Marks, 181 So. 3d at 364, because the record does not reflect that the clerk's office "assumed the duty to notify [Langley] of [the] scheduled trial date."

I also believe that Davis, and the case on which it relies, M.S. v. State Department of Human Resources, 681 So. 2d 633 (Ala. Civ. App. 1996), are in some conflict with the general rule that a party must stay abreast of his or her own case, which rule our supreme court explained in Ex parte

Weeks. As I explained above, the key fact giving rise to the conclusion that the clerk's office assumed the duty to notify Weeks of the trial date in Ex parte Weeks was the clerk's office personnel's verbal instruction to Weeks to stop telephoning the clerk's office, a fact that is not present in this case. In my opinion, that instruction is what displaced Weeks's duty to contact the clerk's office to stay abreast of the status of his case and shifted that duty squarely onto the clerk's office. However, to allow the fact that clerk's offices often send out notices regarding trial settings and other matters to become an assumption of a duty to notify parties of the status of their cases would completely subsume the duty that a party has to keep abreast of the status of his or her case and would allow the exception spoken of in Ex parte Weeks to swallow the rule.

Because I would not reverse the trial court's denial of Langley's Rule 60(b) motion based on his argument that the clerk's office failed to notify him of his trial date, I must also address Langley's second argument on appeal to determine whether the trial court's judgment is due to be affirmed. Langley also argues that the trial court abused its discretion

by denying his Rule 60(b) motion insofar as it was premised on Rule 60(b)(6). He relies on Ex parte Robinson Roofing & Remodeling, Inc., 709 So. 2d 444 (Ala. 1997), to support his argument. I find Ex parte Robinson Roofing distinguishable.

The pro se defendant in Ex parte Robinson Roofing had not filed an answer in the circuit court to the plaintiff's complaint against it. 709 So. 2d at 444. However, the pro se defendant had served an answer on the plaintiff. Id. In the affidavit in support of the motion for a default judgment, the plaintiff asserted that the pro se "defendant had failed to answer or otherwise to defend against the complaint." Id. at 445. The circuit court entered a default judgment against the pro se defendant, who later sought to have that judgment set aside under Rule 60(b)(6) on the basis that the plaintiff's counsel had fraudulently misrepresented to the circuit court that the pro se defendant had failed to respond to the complaint. Id.

On appeal from the denial of the pro se defendant's Rule 60(b)(6) motion, this court affirmed, without an opinion. Robinson Roofing & Remodeling, Inc. v. Clayton (No. 2951297, Nov. 22, 1996), 696 So. 2d 1097 (Ala. Civ. App. 1996) (table).

On certiorari review, our supreme court determined that "this case presents an extraordinary circumstance that calls for equitable relief" under Rule 60(b)(6). Id. at 446. The supreme court based its decision on the fact that "when the plaintiff's counsel filed an affidavit stating that the [pro se] defendant had not defended the lawsuit, the plaintiff did not disclose to the court that the [pro se] defendant had filed a defense with plaintiff's counsel." Id. The supreme court noted that "[a] party has a duty to take the legal steps necessary to protect its own interests" and that the pro se defendant had, in fact, taken legal steps to protect its interest by sending an answer to the plaintiff. Id. Relying on the principle that Rule 60(b) permits relief from a judgment based on fraud on the court, our supreme court concluded that the circuit court had abused its discretion by failing to grant the pro se defendant relief from the default judgment. Id.

Langley equates the situation in Ex parte Robinson Roofing, which amounted to fraud on the court perpetrated by the plaintiff's attorney, with what he characterizes as Farrar's intentional failure to provide Langley's correct

address to the clerk's office when he filed his complaint. Of course, Langley himself sent the clerk's office his correct address in his answer. The failure of the clerk's office to make the necessary correction, if there was such a failure, is not attributable to Farrar. Thus, I do not perceive any fraud on the part of Farrar such that Langley would be entitled to relief from the August 2016 judgment under Rule 60(b)(6).

Langley failed to make any effort to keep abreast of the status of the case against him. In fact, he ignored the case against him after filing his answers to discovery on March 2, 2016, until August 2018, when learned that Farrar intended to execute on the judgment that had been entered against him.

> "'"Relief under Rule 60(b)(6) is reserved for extraordinary circumstances, and is available only in cases of extreme hardship or injustice." Douglass v. Capital City Church of the Nazarene, 443 So. 2d 917, 920 (Ala. 1983), citing Howell v. D.H. Holmes, Ltd., 420 So. 2d 26 (Ala. 1982). 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." See 11 C. Wright & A. Miller, Federal Practice & Procedure, § 2864 at 214-215 (1973).'"

Ex parte Branson Mach., LLC, 78 So. 3d 950, 959 (Ala. 2011) (quoting Chambers Cty. Comm'rs v. Walker, 459 So. 2d 861, 866 (Ala. 1984)). For more than two years, Langley chose to ignore the pending case against him to his peril. The record contains no support for the conclusion that Langley is entitled to the extraordinary remedy of Rule 60(b)(6) relief, and I therefore find no abuse of the trial court's discretion in denying Langley's motion insofar as it sought relief under that subsection of the rule.

Accordingly, I would affirm the judgment of the trial court denying Langley's Rule 60(b) motion, and, therefore, I respectfully dissent.