

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-4994

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SUNSET CIRCLE LAND, Lot No. 11
in Orange County, Texas,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of Texas
1:92 CV 218

June 2, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

James Riley Cornett, Jr., appeals the district court's final order of forfeiture of his real property, entered pursuant to the forfeiture provisions of 18 U.S.C. § 2254 (1988). Finding no reversible error, we affirm.

Cornett was convicted by a jury for possession of photographs depicting minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(4)(B) (1988), and for unlawfully

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

intercepting electronic communications, in violation of 18 U.S.C. § 2511(1)(a) (1988). Pursuant to the forfeiture provisions under 18 U.S.C. § 2254, the Government filed a verified complaint *in rem* for forfeiture of Cornett's real property, appurtenances, and fixtures. See Supplemental Rules for Certain Maritime and Admiralty Claims, Supplemental Rule C; *United States v. One 1988 Dodge Pickup*, 959 F.2d 37, 42 n.6 (5th Cir. 1992) ("The Supplemental Rules . . . govern judicial forfeiture proceedings."). After reviewing the verified complaint and supporting papers, the district court authorized a warrant for the arrest of Cornett's real property.¹

On July 13, 1992, the U.S. Marshal executed personal service of the summons and warrant for arrest of Cornett's real property upon Cornett in a Louisiana jail, where he was in custody awaiting sentencing after his conviction a month earlier. See Supplemental Rule C(3). Notice of a pretrial conference was sent by certified mail to Cornett on July 17, 1992. See Docket at 2.

When Cornett failed to file a verified claim within 10 days of service of process in accordance with Supplemental Rule C(6),² the Government filed a motion requesting entry of default, pursuant to Fed. R. Civ. P. 55(a). The deputy clerk accordingly entered

¹ The district court also ordered publication for public notice under Supplemental Rule C(4) in a designated newspaper of general circulation. See Record on Appeal at 37.

² Rule C(6) provides that "[t]he claimant of property that is the subject of an action *in rem* shall file a claim within 10 days after process has been executed, or within such additional time as may be allowed by the court, and shall serve an answer within 20 days after the filing of the claim."

default against Cornett on August 3, 1992.³ Three days later, Cornett filed a rambling and lengthy "answer" with the district court. Cornett's response was filed three weeks after he received personal service of the warrant for the arrest of his property.

The pretrial conference was held as planned on August 20, 1992. See Docket at 3. Cornett failed to make an appearance. That same day, the Government moved for a default judgment of forfeiture, pursuant to Fed. R. Civ. P. 55(b)(2). A draft order for Final Judgment of Forfeiture was attached, erroneously citing forfeiture provisions under the Controlled Substances Act, 21 U.S.C. § 881(a)(7) (1988). See Record on Appeal at 134-37. The district judge signed the order as drafted. See *id.* at 148-51.

Following Cornett's appeal, which was filed on December 22, 1992, the Government filed a "motion for Circuit Court to treat clerical error in judgment as though corrected, or in the alternative, for leave to petition district court to correct clerical error in judgment pursuant to Rule 60(a) of the Federal Rules of Civil Procedure." Supplemental Record at 2. On January 26, 1993, we granted the Government's motion to treat the clerical error as corrected and held that a Rule 60(a) correction was unnecessary. See Supplemental Record at 1.

On appeal, Cornett argues that the district court's final order of forfeiture was reversible error because: (1) the wrong

³ The warrant for arrest on Cornett's real property was executed on August 4, 1992.

statute was cited; and (2) default judgment was improper.⁴ See Brief for Cornett at 3-8.

We need not address the clerical error issue, because the final judgment of forfeiture is treated as corrected. See Supplemental Record at 1. The final order of judgment was thus pursuant to 18 U.S.C. § 2254.

Even assuming *arguendo* that Cornett established standing to contest the forfeiture,⁵ there is no merit to his argument that default judgment was improper.⁶ We review a district court's refusal to set aside entry of default under Fed. R. Civ. P. 55(c)

⁴ Cornett also argues that he should have been given notice of the sanctions actually imposed. See Brief for Cornett at 6-7. The Government's verified complaint informed Cornett of imminent foreclosure and the time within which Cornett had to file a verified claim and answer. See Record on Appeal at 1-4. Moreover, because Cornett received notice through personal service of process before the entry of default and final judgment of forfeiture, *see id.* at 42, his argument regarding lack of notice is without merit.

⁵ "[T]he filing of a claim is a prerequisite to the right to file an answer and defending on the merits." *Dodge Pickup*, 959 F.2d at 42 n.6 (5th Cir. 1992) (citation omitted); *see also United States v. One 1978 Piper Navajo PA-31 Aircraft*, 748 F.2d 316, 319 (5th Cir. 1984). The duty to file a claim under Supplemental Rule C(6) is triggered once the Government properly executes service of process under Rule C(3). *United States v. \$38,570 U.S. Currency*, 950 F.2d 1108, 1113 (5th Cir. 1992). The Government complied with the requirements of Rule C(3). See Record on Appeal at 42. Thus, because Cornett failed to file a verified claim, he probably also failed to establish standing to contest the forfeiture of his property. *Dodge Pickup*, 959 F.2d at 42 n.6 (noting that claimant probably failed to establish standing to contest forfeiture, notwithstanding assertion that he owned *res*, where verified claim filed more than 10 days after execution of process).

⁶ "[A]ppellant contends that the District Court should not have granted the Government's Motion for Final Judgment of Forfeiture based on the entry of default against the claimant." Brief for Cornett at 8.

for abuse of discretion.⁷ *CJC Holdings, Inc. v. Wright & Lato, Inc.*, 979 F.2d 60, 63 (5th Cir. 1992). One of the factors we consider when reviewing a district court's refusal to set aside default is whether the claimant had a defense to the forfeiture which would probably have been successful. See *id.* at 64 ("Under either rule [Rule 55(c) or Rule 60(b) (governing motions to set aside default judgment)], we examine . . . whether a meritorious defense is presented."). "The ultimate inquiry remains whether the defendant shows 'good cause' to set aside the default." *Id.* Cornett's failure to comply with Rule C(6) after actual notice, together with his failure to show a meritorious defense erodes any "good cause" argument. See Record on Appeal at 42; *Piper Navajo PA-31 Aircraft*, 748 F.2d at 318-19 (finding no abuse of discretion in court's refusal to set aside default judgment)) arguably an easier standard for claimant to meet than standard for finding abuse of discretion in court's refusal set aside entry of default⁸) where claimant fails to show meritorious defense). Therefore, we find no abuse of discretion in the district court's refusal to set aside entry of default. Consequently, we also find no abuse of discretion in the court's subsequent entry of default judgment. Accordingly, the district court's final order of

⁷ We liberally read Cornett's pro se "answer" as a motion to set aside entry of default. See Record on Appeal at 53-129.

⁸ "Because of the seriousness of a default judgment, and although the standard of review is abuse of discretion, 'even a slight abuse [of discretion] may justify reversal.'" *CJC Holdings*, 979 F.2d at 63 n.1 (quoting *Williams v. New Orleans Pub. Serv.*, 728 F.2d 730, 734 (5th Cir. 1984))

forfeiture is **AFFIRMED.**