

STATE OF MICHIGAN  
COURT OF APPEALS

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CURTIS D. CUMMING,

Plaintiff-Appellee,

v

FLORA GRIMALDI AND MARY E. THOMPSON,

Defendants-Appellants.

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UNPUBLISHED

January 31, 1997

No. 181282

Oakland County Circuit

LC No. 93-461198

Before: Reilly, P.J., and Sawyer and W.E. Collette,\* JJ.

MEMORANDUM.

Defendants appeal as of right a circuit court order denying defendant Grimaldi's motion to vacate a judgment for specific performance entered against defendants and in favor of plaintiff. Grimaldi, who was unrepresented by counsel, failed to appear for trial. The trial court proceeded with a bench trial, allowing plaintiff to present proofs and admitting Grimaldi's deposition into evidence. The court entered judgment in favor of plaintiff. Grimaldi filed a motion to vacate the judgment, which the court denied. We affirm.

Contrary to defendants' argument, the trial court was not required to order or subpoena Grimaldi to appear for trial. The case upon which defendants rely, *Rocky Produce, Inc v Frontera*, 181 Mich App 516; 449 NW2d 916 (1989) indicates that a default judgment may not be entered against a defendant for failure to appear at trial when the defendant's attorney appeared and the defendant was not personally subpoenaed or ordered to attend. The present case is distinguishable from *Rocky Produce* inasmuch as no one appeared for trial on Grimaldi's behalf.

Defendants argue that the judgment should have been entered by default and the trial court abused its discretion by not setting it aside. We need not determine whether the judgment entered by the court should have been a default judgment. Even if we were to accept defendants' argument that the court should have entered a default judgment, under MCR 2.603(D)(1), defendants must show good cause (and a meritorious defense) for a default judgment to be set aside. Grimaldi did not

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\* Circuit judge, sitting on the Court of Appeals by assignment.

establish good cause for her failure to attend the trial. She had notice of the date of the trial from the court's scheduling order and was also called by the court on the day of the trial. Because Grimaldi failed to establish good cause as is necessary to set aside a default judgment, we are not persuaded that the court's failure to set aside the judgment was an abuse of discretion.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ David H. Sawyer

/s/ William E. Collette