# STATE OF MICHIGAN

# COURT OF APPEALS

DENNIS G. OTT,

      Plaintiff-Appellee,

v

JEFFREY ALLAN FANN

      Defendant-Appellant,

and

WILBUR LLOYD MOORE,

      Defendant.

No. 195433
Van Buren Circuit Court
LC No. 94-039806-NO-B

Before: White, P. J., and Cavanagh and Reilly, JJ

PER CURIAM.

Defendant appeals as of right from a default judgment entered in favor of plaintiff in the amount of $200,000 following defendant's failure to timely respond to plaintiff's complaint. We affirm in part and reverse in part.

On November 2, 1994, plaintiff filed suit against defendant and a codefendant alleging that he was injured as the result of an assault and battery. Defendant was served process on November 25, 1994 and codefendant was served process on February 15, 1995. Because defendant failed to take any action within the time prescribed by MCR 2.108, the clerk entered a default against him on February 22, 1995. The default was served on defendant on February 28, 1995. Codefendant filed an answer to plaintiff's complaint on March 8, 1995, and filed a demand for a jury trial on March 10, 1995. On November 22, 1995, after plaintiff and codefendant reached a settlement agreement, plaintiff's suit was voluntarily dismissed with prejudice as to codefendant. Finally, on December 8, 1995, defendant filed an answer to plaintiff's complaint and moved to set aside the default.

The trial court denied defendant's motion to set aside default, reasoning that there was no justification for defendant's failure to respond. After a hearing at which defendant was not allowed to participate, the trial court entered a default judgment against defendant in the amount of $200,000 for the intentional torts of assault and battery. Then, on rehearing of defendant's motion to set aside default, the trial court partially reversed its prior judgment, ruling that defendant was entitled to participate in a hearing on the issue of damages. Defendant argued that he was entitled to a jury determination of plaintiff's damages, because a demand for a jury trial had already been made in the case by codefendant. The trial court denied defendant's request, reasoning that defendant was not entitled to a jury determination because he never filed his own jury demand. After the hearing before the bench, the trial court entered the default judgment for plaintiff in the amount of $200,000 from which defendant now appeals.

Defendant contends on appeal that the trial court erred in refusing to set aside the default. We disagree. The question whether a default or default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1992). Except when grounded on a lack of jurisdiction, a motion to set aside a default or default judgment may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1); *Gavulic*, *supra* at 24. Good cause sufficient to warrant setting aside a default or a default judgment includes: (1) a substantial defect or irregularity in the proceeding on which the default was based; (2) a reasonable excuse for the failure to comply with requirements which created the default; or (3) some other reason showing that manifest injustice would result if the default and default judgment were allowed to stand. *Gavulic*, *supra* at 24-25.

Here, defendant argues that he had a viable claim of self-defense and that plaintiff would not have been prejudiced by a trial on the merits. However, defendant's only claim of "good cause" is his suggestion, unsupported by citation to legal authority, that he was justified in relying on codefendant to vigorously defend the action. This Court will not search for authority to sustain or reject a party's position. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995). In any event, we conclude that defendant's purported reliance on codefendant to defend the action on defendant's behalf was an insufficient claim of "good cause" to justify setting aside the default. Accordingly, we hold that the trial court did not abuse its discretion when it refused to do so with respect to the issue of defendant's liability. *Gavulic*, *supra* at 24.

Defendant also contends that he was entitled to a jury trial on the issue of plaintiff's damages. We agree. A default does not constitute a waiver of the right to a jury trial in a civil action. *Mink v Masters*, 204 Mich App 242, 246; 514 NW2d 235 (1994), citing *Wood v DAIIE*, 413 Mich 573, 583-584; 321 NW2d 653 (1982). Therefore, where it is necessary for the trial court to hold a hearing on the issue of damages, the defendant has a right to a jury determination if that right has been preserved despite defendant's default. *Mink*, *supra* at 246. In this case, codefendant filed a demand for a jury trial. Under *Mink*, this was sufficient to preserve defendant's right to a jury determination on the issue of damages because "once one party has filed a jury demand, all other parties may rely on that jury demand and need not independently file their own demand for a jury trial." *Mink*, *supra* at 246, citing

3 Martin, Dean & Webster, Michigan Court Rules Practice, p 148; see also *Chrysler Corp v Home Ins Co*, 213 Mich App 610, 612-613; 540 NW2d 485 (following *Mink*, *supra*, pursuant to Administrative Order No. 1994-4), special panel not convened 213 Mich App 801; 540 NW2d 799 (1995). Accordingly, following *Mink,* we hold that the trial court erred in denying defendant's request for a jury determination on the issue of damages.

Because we remand for a jury trial on the issue of damages, we need not consider defendant's remaining issue regarding the trial court's determination of plaintiff's damages.

The judgment of default entered against defendant is affirmed, plaintiff's damage award is reversed, and the case is remanded for a jury determination on the issue of damages. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Mark J. Cavanagh
/s/ Maureen Pulte Reilly