

STATE OF MICHIGAN
COURT OF APPEALS

ARNOLD SCHAFER,

Plaintiff-Appellee,

v

JESSE FEAGIN,

Defendant-Appellant,

and

MARCIA M. CHILDS,

Defendant.

UNPUBLISHED
October 23, 1998

No. 200009
Wayne Circuit
LC No. 96-629842 CZ

Before: Fitzgerald, P.J., and Holbrook, Jr., and Cavanagh, JJ.

PER CURIAM.

Defendant Jesse Feagin (hereinafter “defendant”)¹ appeals as of right from the circuit court’s order granting default judgment to plaintiff. We affirm.

Plaintiff, acting as receiver for a party awarded a substantial monetary judgment against defendant in 1994, sought to acquire real property owned by defendant in order to satisfy the judgment. However in late 1994 and early 1995, defendant conveyed several parcels of real property located in Detroit to codefendant Marcia Childs by quitclaim deeds. On June 19, 1996, plaintiff filed a complaint, alleging that Childs did not pay fair consideration for the properties, that defendant conveyed the properties so that they would not be available to satisfy the judgment against him, and that the conveyances were thus fraudulent. Plaintiff further alleged that defendant continued to collect rents and deduct depreciation on the transferred properties, demonstrating that defendant retained equitable title. Plaintiff asked the court to set aside or disregard the conveyances.

On July 23, 1996, plaintiff asked the clerk to enter the default of defendants for failure to appear, plead, or otherwise defend as provided by law. Claiming that defendants neither answered nor

moved the court to set aside the default, plaintiff filed a motion for default judgment on November 26, 1996. After a hearing, on December 6, 1996, the circuit court granted plaintiff's motion. Defendant argues on appeal that default judgment was improper because defendants were not properly served with the complaint, because defendant timely filed an answer, and because the underlying cause of action was fraudulently predicated. Defendant additionally argues that the default judgment violates codefendant Childs' due process rights. This Court reviews a trial court's decision to enter a default judgment for an abuse of discretion. *Chrysler Corp v Home Ins Co*, 213 Mich App 610, 612; 540 NW2d 485 (1995).

Plaintiff predicated the motion for default judgment on defendant's failure to answer the complaint and summons. Defendant argues that he did answer, filing an answer with the circuit court on July 16, 1996. This document features numbered paragraphs, although these do not correspond to those of the complaint, in violation of MCR 2.113(E)(1). Further, and more importantly, there is no satisfactory indication that defendant ever served plaintiff with the answer.² MCR 2.107(A) requires that every party who has filed a pleading be served with a copy of every paper later filed in the action. MCR 2.105 enumerates the permissible ways in which individuals may be served, but filing the paper in question with the court is not among them. Therefore, because defendant presents no evidence that plaintiff actually received the answer, and because the record includes no adequate proof of service, defendant's argument that he did provide an answer for purposes of avoiding a default must fail.

Defendant alternatively argues that he was never obliged to answer, because plaintiff failed to properly serve him with the summons and complaint. However, although defendant does allege technical defects in how he was served, defendant admits that he actually received both the summons and complaint. According to defendant, plaintiff served him with a copy of only the summons on June 27, 1996, after which defendant took the initiative to obtain a copy of the complaint from the circuit court, upon which defendant filed an answer with the court on July 16, 1996. Where service of process is technically defective, but the defendant nonetheless acknowledges receiving the summons and complaint by formally responding to them, the defects in service are cured. *Hill v Frawley*, 155 Mich App 611, 614; 400 NW2d 328 (1986).³

Regarding defendant's claim that the circuit court connived at fraud, nowhere in the argument section of defendant's brief does defendant allege that the trial judge knew or should have known that plaintiff's claims were based on misrepresentations. Further, defendant's assertions merely dispute the merits of plaintiff's case.⁴ Defendant does not point to specific events or documents in the record that clearly establish the existence of fraud, nor does he even suggest that any enlargement of the record would establish a fraud. "A party may not simply assert an error and then leave it to this Court to discover and explain the basis for his claim." *Williams v City of Cadillac*, 148 Mich App 786, 792; 384 NW2d 792 (1985), citing *Hull & Smith Horse Vans, Inc v Carras*, 144 Mich App 712; 376 NW2d 392 (1985).

Regarding defendant's argument that his codefendant's due process rights were violated, we need not reach that issue because defendant does not have standing to assert that claim. One party may not claim another party's appellate opportunities. *Branch Co Bd of Comm'rs v Service Employees*

International Union, Local 586, 168 Mich App 340, 346; 423 NW2d 658 (1988); *Winters v National Indemnity Co*, 120 Mich App 156, 159; 327 NW2d 423 (1982).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Donald E. Holbrook, Jr.

/s/ Mark J. Cavanagh

¹ Defendant filed a claim of appeal from the circuit court's order; codefendant Childs did not.

² Defendant does not assert that plaintiff actually received the answer, and defendant's attempt at proof of service is defective. Although the final page of the answer filed with the court says "Copy sent to Plaintiff by regular mail on above given date," and bears defendant's signature, there is no indication regarding precisely where and to whom the copy was sent, and the document is not notarized. Because this statement is the only indication in the record that plaintiff was served, beyond defendant's own bald assertions repeated elsewhere, there is no adequate proof of service in the record according to MCR 2.107(D).

³ The purpose of formal requirements for service of process is "to insure that defendant has adequate notice and an opportunity to defend." *Dogan v Michigan Basic Property Ins Ass'n*, 130 Mich App 313, 318; 343 NW2d 532 (1983). Thus, the lack of a formal proof of service in the record does not preclude the entry of a default. *Id.* at 319. Because defendant acknowledges that he actually timely received the summons and complaint, defendant's assertion that he was defectively served with the complaint is no defense to the default from which he appeals.

⁴ A party is not entitled to allege fraud from the party's simple disagreement with the opponent's position. A defendant who fails to defend may not then characterize the defendant's disagreements with the plaintiff's legal and factual representations as establishing fraud on the plaintiff's part, and then use that assertion of fraud to argue, in effect, that the defendant should prevail without having ever defended.