STATE OF MICHIGAN

COURT OF APPEALS

MYRNA LYNNE WIGGINS,

Plaintiff-Appellee/Cross-Appellant.

v

KURT D. GODDARD,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
June 4, 1999

No. 209415
Grand Traverse Circuit Court
LC No. 97-016064 NI

Before: Hoekstra, P.J., and Saad and R.B. Burns*, JJ.

PER CURIAM.

In this third-party no-fault case, defendant appeals as of right from a judgment for plaintiff in the amount of $321,000 that was issued following the entry of a default and a subsequent hearing on damages. Defendant challenges an order denying its motion to set aside the default, and also raises issues related to damages. On cross-appeal, plaintiff argues that the trial court erroneously found that defendant's sudden emergency defense was meritorious. We reverse and remand.

I

Defendant argues that the trial court erroneously found that defendant failed to establish good cause for setting aside the default. This Court will not reverse the trial court's refusal to set aside a default unless there is a clear abuse of discretion. *Huggins v Bohman*, 228 Mich App 84, 87; 578 NW2d 326 (1998).

The Court may grant a motion to set aside a default only if the defaulting party shows good cause and files an affidavit of facts showing a meritorious defense. MCR 2.603(D)(1); *Park v American Casualty Ins Co*, 219 Mich App 62, 66-67; 555 NW2d 720 (1996). Good cause sufficient to warrant setting aside a default includes: (1) a substantial defect or irregularity in the proceeding on which the default was based; (2) a reasonable excuse for the failure to answer the

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

complaint or otherwise respond; or (3) some other reason showing that manifest injustice would result if the default were allowed to stand. *Gavulic v Boyer*, 195 Mich App 20, 24-25; 489 NW2d 124 (1992). The defendant must not have intentionally attempted to delay the adjudication of the plaintiff's claims by failing to timely file an answer. *Daugherty v State*, 133 Mich App 593, 599; 350 NW2d 291 (1984).

Defendant argues that the court's finding that he had raised a meritorious defense, by itself, provided good cause because a manifest injustice will occur if he is not allowed to present the defense. This Court has held that in some circumstances, "[a] showing of a meritorious defense and factual issues for trial can fulfill the 'good cause' requirement because in some situations, allowing such a default to stand would result in manifest injustice." *Huggins*, 228 Mich App 87; see also *Komejan v Suburban Softball, Inc*, 179 Mich App 41, 51; 445 NW2d 186 (1989).[1] Furthermore, in addition to showing a meritorious defense, defendant here also claimed that he did not receive the notice of default though it was properly served by first-class mail. In *Kuikstra v Cheers Good Time Saloons, Inc*, 187 Mich App 699, 703; 468 NW2d 533 (1991), rev'd in part on other grounds 441 Mich 851; 489 NW2d 468 (1992), this Court held that the post office's failure to deliver a notification can serve as the good cause necessary to set aside a default. Thus, the non-receipt of the notice, coupled with the meritorious defense, constituted good cause.

Under these circumstances, we conclude that the trial court abused its discretion in refusing to set aside the default because there was good cause and no indication of intentional delay or prejudice to plaintiff.

II

Plaintiff argues on cross-appeal that the weather conditions defendant described did not support a sudden emergency defense. We disagree. "One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence." *Vsetula v Whitmyer*, 187 Mich App 675, 681, 468 NW2d 53 (1991), quoting *Socony Vacuum Oil Co v Marvin*, 313 Mich 528, 546; 21 NW2d 841 (1946). Our Supreme Court has held that the "sudden emergency" jury instruction is appropriate when a driver is confronted with a situation that is "unusual," meaning varying from the everyday traffic routine confronting a motorist, or "unsuspected," meaning appearing so suddenly that the normal expectations of due and ordinary care are modified. *Vander Laan v Miedema*, 385 Mich 226, 231-233; 188 NW2d 564 (1971). This Court has held that icy patches on roads in winter can be unsuspected, because "Michigan roads are not ice-covered and dangerously slippery all winter long." *Young v Flood*, 182 Mich App 538, 543; 452 NW2d 869 (1990). Like any natural phenomenon, winds would support a sudden emergency defense as long as they were unusual and unsuspected (and caused an emergency situation). Here, the trial court relied on defendant's affidavit in which he stated that the combination of wind and snow and ice created a sudden emergency. This was sufficient to find that defendant had a meritorious defense for purposes of setting aside the default.

As this Court has ruled that the default was wrongfully allowed to stand, we need not address the other issues raised on appeal.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Henry William Saad
/s/ Robert B. Burns

[1] But see *Reed v Walsh*, 170 Mich App 61, 66; 427 NW2d 588 (1988), suggesting that even if there is a meritorious defense and no intentional delay, there must be reasonably prompt action and a showing that the plaintiff will not be prejudiced by setting the default aside.