

STATE OF MICHIGAN
COURT OF APPEALS

JAN M. LORENZ and WILLIAM LORENZ,

Plaintiffs-Appellants,

v

JENNIFER REBECCA GERSTENKORN,

Defendant-Appellee.

UNPUBLISHED
September 3, 1999

No. 210588
Berrien Circuit Court
LC No. 96-001031 NI

Before: Markman P.J., and Saad and P. D. Houk*, JJ.

PER CURIAM.

Plaintiffs appeal of right from the trial court's order granting defendant's motion for summary disposition. While this appeal is docketed as one challenging the order granting summary disposition, the final order, MCR 7.202(8)(a)(i), plaintiffs actually challenge a prior order granting defendant's motion to set aside a default. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Jan Lorenz and defendant were involved in an automobile accident. Plaintiffs filed suit alleging negligence and loss of consortium. Defendant was served with the summons and complaint on June 8, 1996. She delivered the summons and complaint to Roger Wilschke, her Allstate Insurance Company agent, during the second week of June, 1996. Pursuant to company policy, Wilschke placed the documents in a pre-addressed envelope and mailed them via regular first class mail to Allstate's Grand Rapids office. When no answer was received, the circuit court clerk entered a default on July 5, 1996.

Defendant moved to set aside the default, arguing that she had good cause for doing so, and a meritorious defense to plaintiffs' claims. In support of the motion, defendant presented evidence that a search of Allstate's files and records revealed no evidence that the summons and complaint had been received from Wilschke. The trial court granted the motion, finding that the failure of the postal service

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

to deliver documents constituted good cause for setting aside a default. *Kuikstra v Cheers Good Time Saloons, Inc*, 187 Mich App 699; 468 NW2d 533 (1991).

Subsequently, the trial court granted defendant's motion for summary disposition brought pursuant to MCR 2.116(C)(10), finding that no genuine issue of fact existed as to whether plaintiff's injuries constituted a serious impairment of body function. *DiFranco v Pickard*, 427 Mich 32; 398 NW2d 896 (1986). Plaintiffs do not challenge that decision on appeal.

Pursuant to MCR 2.603(D)(1), a motion to set aside a default may be granted only if good cause is shown and an affidavit of meritorious defense is filed. Good cause sufficient to warrant the setting aside of a default includes: (1) a substantial defect or irregularity in the proceeding on which the default was based; (2) a reasonable excuse for failure to comply with the requirements that created the default; or (3) some other reason showing that manifest injustice would result if the default were allowed to stand. *Huggins v MIC General Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998). We review the decision to set aside a default for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

Plaintiffs argue that the trial court abused its discretion by granting defendant's motion to set aside the default. We disagree and affirm. Plaintiffs correctly point out that there is a presumption that items properly addressed and placed in the mail reach their destinations. *Crawford v State of Michigan*, 208 Mich App 117, 121; 527 NW2d 30 (1994). However, contrary to plaintiffs' assertion, defendant presented evidence to rebut the presumption that the envelope mailed by Wilschke reached Allstate's Grand Rapids office. The evidence showed that defendant's claim was presented to Allstate on February 8, 1996, and that a number was assigned to it at that time. Rhonda Williams, an Allstate claims adjuster, testified by deposition that receipt of a summons and complaint would be docketed on the computer. Her search of Allstate's files and records related to defendant's claim did not reveal the receipt of the summons and complaint mailed by Wilschke. The demonstrated failure of the postal service to deliver documents constitutes good cause for setting aside a default. *Kuikstra, supra*, at 703. Like the defendant in *Kuikstra, supra*, defendant here presented affidavits and documentary evidence that established that the summons and complaint had been mailed but had not been delivered to the intended recipient. We hold that defendant demonstrated good cause for setting aside the default.

The policy of this state generally favors the meritorious determination of issues, and encourages the setting aside of defaults upon timely motion. *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1994). Defendant established good cause for setting aside the default, and filed an affidavit of meritorious defense as required. MCR 2.603(D)(1). The trial court's decision to set aside the default did not constitute an abuse of discretion.

Affirmed.

/s/ Stephen J. Markman

/s/ Henry William Saad

/s/ Peter D. Houk