

STATE OF MICHIGAN
COURT OF APPEALS

TUWANA ROBINSON,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 208081

Wayne Circuit Court

MARGARET WATSON, a/k/a MARGARET
PAGE,

LC No. 97-706383 NO

Defendant-Appellant

and

LISA COLE, CHARLES R. ROBINSON, and
BERNICE ROBINSON

Defendants.

.

Before: Whitbeck, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Defendant, Margaret Watson, appeals as of right from the trial court's order denying her motion to set aside an entry of default and granting plaintiff's motion for entry of a default judgment. We reverse and remand.

We review the trial court's refusal to set aside the entry of default for an abuse of discretion. *Park v American Casualty Ins*, 219 Mich App 62, 66; 555 NW2d 720 (1996); *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1992). A motion to set aside an entry of default may be granted only if good cause is shown and an affidavit of meritorious defense is filed. MCR 2.603(D)(1); *Park, supra* at 66-67. "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 that created the default; or (3) some other reason showing that manifest injustice would result if the default or default judgment were allowed to stand." *Park, supra* at 67; *Gavulic, supra* at 24-25.

Defendant argues that the trial court abused its discretion by refusing to set aside the entry of default because she paid costs as previously ordered by a visiting judge, the decision was improperly based on an assumption that she was judgment-proof, and the default proceedings were substantially defective insofar as plaintiff failed to provide defendant with notice of the entry of default. Defendant further argues that there was good cause to set aside the default judgment. Specifically, despite knowing defendant's out-of-state address and phone number, plaintiff obtained substituted service by posting and delivery in Michigan. Consequently, defendant had no actual notice of the lawsuit or a copy of the summons and complaint. As evidence that she had a meritorious defense to plaintiff's claim, defendant provided the trial court with a copy of a lease showing that the subject premises had been leased to a tenant who had agreed to maintain them, including the stairs on which plaintiff allegedly fell.

After carefully reviewing the record, we agree that defendant established both good cause and a meritorious defense for setting aside the default. The facts alleged in defendant's affidavit, if proven at trial, would preclude liability on plaintiff's claims. Further, defendant showed that the lack of notice was a substantial defect in the proceedings and that manifest injustice would result if the default were allowed to stand. Finally, the record shows that the trial court believed defendant to be judgment-proof when it decided to let the default judgment stand, and it counted this factor as weighing against defendant's motion to set the judgment aside. However, defendant's ability to pay the judgment entered against her does not bear on the merits of her motion to set aside the default judgment. Therefore, the trial court abused its discretion in considering defendant's ability to pay when it denied her motion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Joel P. Hoekstra