STATE OF MICHIGAN

COURT OF APPEALS

ROBERT DULLINGER,

Plaintiff-Appellee,

and

MELANIE DULLINGER,

Plaintiff,

v

HURON ESTATES MOBILE HOME COMMUNITY, a/k/a HURON ESTATES LIMITED PARTNERSHIP,

Defendant,

and

GAIL COGDILL,

Defendant-Appellant.

UNPUBLISHED
March 3, 2000

No. 210509
Wayne Circuit Court
LC No. 97-709519-NI

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant, Gail Cogdill, appeals as of right from an order granting a default judgment in favor of plaintiff, Robert Dullinger, in this personal injury case. On appeal, defendant argues that the default judgment was inappropriate because the trial court did not have the authority to default defendant where defendant's insurance representative attended the settlement conference, but did not negotiate a settlement. Defendant also argues that even if the default judgment were appropriate, defendant retained her right to a jury trial on damages. We reverse.

A trial court's authority to enter a default judgment against a party must fall within the parameters of the authority conferred under the court rules. *Henry v Prusak*, 229 Mich App 162, 168; 582 NW2d 193 (1998). The court rules do not authorize a default judgment against a party based on the failure of a representative of a party's insurance carrier to make a settlement offer. *Id.* at 170-171.

In *Henry*, the circuit court ordered counsel and parties to appear for a settlement conference and "be prepared to negotiate in good faith effort [sic] to reach a fair and reasonable settlement." *Id.* at 165. The parties and their counsel appeared at the settlement conference, but no settlement resulted. On that same day, the circuit court entered an order of default against the defendants because the defendants' insurance representative failed to make an offer to settle at the settlement conference. *Id.* at 166. The defendants filed a motion for reconsideration and a motion to set aside default judgment, and both motions were denied; however, the defendants were afforded a jury trial on damages. *Id.* at 166-167.

This Court recognized that a trial court may order persons with the authority to settle a case to appear for a settlement conference pursuant to MCR 2.401(F). *Henry*, *supra* at 168. However, this Court could find no authority for the trial court to default a party for failure to negotiate at the settlement conference. *Id.* at 169-170.

Here, the trial court stated that it granted a default judgment in favor of plaintiff based on a decision by a Kent County Circuit judge that concluded that a default could be entered where a party's insurance carrier appeared at a settlement conference but refused to negotiate.[1] The trial court clearly stated that its decision was based on the failure of defendant's insurance adjuster to negotiate a settlement, not on the failure of defendant to appear for the settlement conference.[2] As the present case is indistinguishable from *Henry*, the trial court erred in entering a default judgment against defendant.

In light of our resolution of this issue, we decline to address the remaining issue raised by defendant on appeal. Accordingly, we vacate the order of default judgment entered in this action and remand for further proceedings consistent with the court rules.

Reversed and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens

[1] We note that this Court subsequently reversed the Kent Circuit Court's decision on the authority of *Henry*. *Darrah v Blassingame*, unpublished opinion per curiam of the Court of Appeals, issued February 9, 1999 (Docket No. 202585).

[2] We note that even had the trial court's decision been based on the failure of the defendant to appear (and based on the record provided to this Court, it cannot be determined if defendant failed to appear at the settlement conference), such default would likely have been improvidently granted. *Schell v Baker Furniture Co*, 232 Mich App 470, 474-479; 591 NW2d 349 (1998).