

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK D. BRENNAN and BEDELLA M.
BRENNAN,

UNPUBLISHED
March 10, 2000

Plaintiffs-Appellants,

v

No. 216093
Court of Claims
LC No. 98-017038-CM

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Defendant-Appellee.

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

PER CURIAM.

Plaintiffs appeal as of right from the trial court's orders granting defendant's motions to set aside default and for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

Plaintiffs argue that the trial court abused its discretion in setting aside the default entered against defendant. We agree. We review a court's decision to set aside a default for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999); *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). An abuse of discretion exists only when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, passion or bias. *Alken-Ziegler, supra*. Further, whether the trial court abused its discretion in setting aside the default hinges on an interpretation of a court rule, which is a question of law that we review de novo. *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999). "When a court incorrectly chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct." *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994); *Bracco v Michigan Technological University*, 231 Mich App 578, 585; 588 NW2d 467 (1998).

While the law favors determination of claims on the merits, the policy of this state is generally against setting aside properly entered defaults and default judgments. *Alken-Ziegler, supra* at 229. Pursuant to MCR 2.603(D)(1), "[a] motion to set aside a default or a default judgment, except when

grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.” See also *Alken-Ziegler, supra* at 223, 233.

When addressing whether to set aside the default in the present case, the trial court focused on the latter requirement of a meritorious defense. The court determined that defendant presented a dispositive, meritorious defense. Having found such, the trial court concluded that manifest injustice would result unless the court granted defendant’s motion to set aside the default. This is the same analysis that this Court applied in *Alken-Ziegler, supra*, but which our Supreme Court determined to be erroneous. *Id.* at 226, 229.

According to our Supreme Court, a manifest injustice inquiry may not blur the *separate* inquiries of good cause and meritorious defense. *Alken-Ziegler, supra* at 229, 231. Instead, manifest injustice is the result that would occur if a default were allowed to stand where a party has satisfied both the good cause and meritorious defense requirements of MCR 2.603(D)(1). *Id.* at 233. Depending on the strength of the meritorious defense demonstrated by a party, a lesser showing of good cause may be required in order to prevent manifest injustice. *Id.* at 233-234.

In the present case, defendant failed to fulfill the first requirement—good cause. The good cause inquiry under MCR 2.603(D)(1) may be established by demonstrating either a substantial irregularity or defect in the proceeding on which the default is based, or a reasonable excuse for failure to comply with the requirements that created the default. *Id.* at 233. Here, defendant makes no claim with respect to the first basis for showing good cause. Rather, defendant proffered its counsel’s busy schedule as good cause to set aside the default. However, this Court has repeatedly stated that a busy schedule is not a valid excuse for failing to meet a filing deadline such that a default can be set aside on grounds of good cause. *Daugherty v State of Michigan*, 133 Mich App 593, 598; 350 NW2d 291 (1984), citing *Midwest Mental Health Clinic, PC v Blue Cross & Blue Shield of Michigan*, 119 Mich App 671, 674-675; 326 NW2d 599 (1982) (“[A] busy schedule and a heavy caseload do not constitute a reasonable excuse for failure to file a timely answer”); see also *Mission Investment Co v Perfect Totalisator Corp*, 51 Mich App 376, 380; 214 NW2d 898 (1974).¹

In light of the foregoing, we need not determine whether defendant has a meritorious defense, because both good cause *and* a meritorious defense must be shown before a default judgment may be set aside. MCR 2.603(D)(1); *Alken-Ziegler, supra* at 229. Even assuming defendant has a meritorious defense, defendant is not entitled to the setting aside of the default, having failed to show good cause. Consequently, we find that the trial court abused its discretion in setting aside the default, and thus we reverse.

Because our determination on this issue is dispositive, we do not reach the other issues raised by plaintiffs.

Reversed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Donald S. Owens

¹ These cases were decided under GCR 1963, 520.4, the predecessor to MCR 2.603(D)(1). The two rules are essentially identical, with minimal changes not relevant here. Although *Alken-Ziegler, supra*, clarifies the existing rule, making the manifest injustice analyses in these cases questionable, we conclude that it does not negate previous determinations that busy schedules do not constitute good cause.