

STATE OF MICHIGAN
COURT OF APPEALS

ALLIED ELECTRIC SUPPLY COMPANY,

Plaintiff-Appellee,

v

GARY P. TENAGLIA and GT EINSTEIN
ELECTRIC, INC.,

Defendants-Appellants.

UNPUBLISHED

August 28, 2001

No. 224189

Oakland Circuit Court

LC No. 96-536091-CK

Before: Wilder, P.J., and Hood and Griffin, JJ.

PER CURIAM.

Defendants appeal by leave granted from a circuit court order denying their motion to set aside a default judgment. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion to set aside a default judgment shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. MCR 2.603(D)(1). Good cause sufficient to set aside an entry of default includes such matters as (1) a substantial defect or irregularity in proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand. *Huggins v MIC Gen'l Ins Corp*, 228 Mich App 84, 87; 578 NW2d 326 (1998). However, as explained in *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639; 617 NW2d 373 (2000), “[m]anifest injustice is *not* a third form of good cause that excuses a failure to comply with the court rules where there is a meritorious defense. Rather, it is the result that would occur if a default were not set aside where a party has satisfied the ‘good cause’ and ‘meritorious defense’ requirements of the court rule.” *Id.* at 653 (emphasis in original). The trial court’s ruling on a motion to set aside a default judgment is reviewed for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

After receiving service of process, defendants contacted counsel in a timely manner. Although counsel had sufficient time in which to file an answer to the complaint, he made an error in calculating the date the answer was due. Consequently, a default and default judgment were entered against defendants before their attorney took any action. Although it has been said

that counsel's neglect, which is attributable to his client, does not constitute good cause for setting aside a default, *Yenglin v Mazur*, 121 Mich App 218, 222; 328 NW2d 624 (1982); *Okros v Myslakowski*, 67 Mich App 397, 400; 241 NW2d 223 (1976), the court rules recognize that parties and lawyers might make minor errors without suffering the cataclysmic consequence of having a case dismissed without a hearing on the merits. *Totman v Royal Oak Sch Dist*, 135 Mich App 121, 126; 352 NW2d 364 (1984). Given that plaintiff's counsel conceded that defense counsel had done nothing wrong and the court noted that he had acted promptly, and given that defendants' failure to pay their debt and their refusal to accept service of process did not lead to their failure to defend the action in a timely manner and the subsequent entry of the default judgment, we find that the trial court abused its discretion in ruling that defendants had failed to establish good cause for setting aside the judgment.

Because defendants established good cause for setting aside the default judgment and submitted an affidavit of facts showing a meritorious defense, the legal validity of which is not at issue here, we reverse the trial court's order.

Reversed.

/s/ Kurtis T. Wilder

/s/ Harold Hood

/s/ Richard Allen Griffin