STATE OF MICHIGAN

COURT OF APPEALS

TROY'S CONSTRUCTION CORPORATION, Plaintiff/Counterdefendant-Appellant,	UNPUBLISHED December 14, 2001
v	No. 221100 Montcalm Circuit Court
RANDY REAGAN and MARCIA REAGAN, Defendants/Counterplaintiffs-Appellees.	LC No. 97-000357-CK

Before: Holbrook, Jr., P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff, which failed to appear for a mandatory settlement conference, appeals by right from a default and resulting default judgment entered by the trial court. We affirm.

Plaintiff contends that the trial court erred in several respects by granting the default and default judgment. We review for an abuse of discretion a trial court's decision to grant a default and default judgment for failure to appear at a scheduled settlement conference. *McGee v Mocambo Lounge, Inc*, 158 Mich App 282, 285; 404 NW2d 242 (1987); see also *Schell v Baker Furniture Co*, 232 Mich App 470, 474; 591 NW2d 349 (1998), aff'd and remanded on other grounds 461 Mich 502 (2000). As stated by the Supreme Court in *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999):

> An abuse of discretion involves far more than a difference in judicial opinion. *Williams v Hofly Mfg Co*, 430 Mich 603, 619; 424 NW2d 278 (1988). It has been said that such abuse occurs only when the result is "'so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.'" *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959), and noting that, although the *Spalding* standard has been often discussed and frequently paraphrased, it has remained essentially intact.

MCR 2.401(G) states, in relevant part:

> (1) Failure of a party or the party's attorney to attend a scheduled conference, as directed by the court, constitutes a default to which MCR 2.603 is applicable or grounds for dismissal under MCR 2.504(B).
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> (2) The court shall excuse the failure of a party or the party's attorney to attend a conference, and enter an order other than one of default or dismissal, if the court finds that
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> (a) entry of an order of default or dismissal would cause manifest injustice; or
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> (b) the failure to attend was not due to the culpable negligence of the party or the attorney.

Plaintiff first argues that the trial court should not have entered a default or default judgment because after the scheduled settlement conference, plaintiff did not receive a copy of the document entitled "Default, Application, Entry, Affidavit," on which the entry of default eventually occurred. We do not find plaintiff's argument persuasive. Indeed, under *Deeb v Berri*, 118 Mich App 556, 562; 325 NW2d 493 (1982), the entry of a statement of default (as opposed to the entry of a default judgment) can occur without notice to the defaulted party. Moreover, plaintiff *was* given notice of defendants' "motion for default judgment," which clearly indicated that defendants were seeking "entry of a default judgment," dismissal of plaintiff's complaint, and judgment for defendants on their counter-claim. No error occurred with respect to notice.

Next, plaintiff argues that the trial court should not have entered a default or default judgment because plaintiff's failure to appear did not constitute culpable conduct under MCR 2.401(G)(2)(b). Plaintiff contends that because it did not know about the settlement conference and was attempting to seek new counsel, no culpable conduct occurred. Plaintiff's purported excuse is unpersuasive. Indeed, notice of the January 15, 1999 settlement conference was sent to plaintiff's attorney on or around October 6, 1998. Plaintiff admitted that it found a letter in its attorney's file notifying it of the date of the settlement conference. Moreover, the amended trial notice sent directly to plaintiff (after its attorney withdrew from the case) contained a reminder of the settlement conference in boldface type. Accordingly, we conclude that an application of MCR 2.401(G)(2)(b) provides no basis for appellate relief.

Next, plaintiff argues that the trial court should not have entered a default or default judgment because manifest injustice under MCR 2.401(G)(2)(a) was apparent. Case law does not provide direct guidance with regard to the meaning of the phrase "manifest injustice" in MCR 2.401(G)(2)(a). We cannot agree with plaintiff's implication, however, that merely if a valid claim existed, it would constitute "manifest injustice" under MCR 2.401(G)(2)(a) to grant a default and default judgment to a defendant. Indeed, such an interpretation of the phrase "manifest injustice" often would render MCR 2.401(G) an ineffectual rule, because a valid claim could survive regardless of its proponent's failure to attend scheduled conferences.

Here, at a June 4, 1999 hearing, the trial court determined that no "manifest injustice" was apparent under MCR 2.401(G). Given the circumstances of the case and plaintiff's failure to appear for the settlement conference despite the notice provided, we discern no abuse of discretion with regard to that determination. See *Alken-Ziegler, supra* at 227-228.

We note that case law *does* discuss the phrase "manifest injustice" in the context of MCR 2.603(D)(1), which governs the setting aside of default judgments and which states:

> 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.

The Supreme Court, in discussing this rule, stated that "manifest injustice is the result that would occur if a default were to be allowed to stand where a party has satisfied the 'meritorious defense' and 'good cause' requirements of the court rule." *Alken-Ziegler, supra* at 233. Here, plaintiff did not demonstrate good cause and therefore has not established manifest injustice. This conclusion is supported by *First Bank of Cadillac v Benson*, 81 Mich App 550, 553-554; 265 NW2d 413 (1978), a case in which the defendant was defaulted for failing to comply with a discovery order. The defendant argued "that he had a reasonable excuse for his failure to comply with the production order because he was unable to obtain counsel," *id*. at 554, and that "manifest injustice would result if the default is not set aside." *Id*. at 555. This Court stated:

> In determining whether manifest injustice would occur, each case should be examined on its own facts.
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> In the present case, only because he failed to secure counsel for himself, when he had sufficient time to do so, is defendant being denied his day in court. [Defendant] placed himself in the situation and should not be heard to complain of manifest injustice. The problem was of his own making.

Similarly, the problem in the instant case was of plaintiff's own making. Again, no manifest injustice occurred.

Finally, plaintiff argues that the trial court should not have entered a default under MCR 2.401(G) without first holding a hearing and making findings with regard to the issues of culpable negligence and manifest injustice. However, there is nothing in the court rule mandating a hearing or specific findings on the record at the time the default is entered. Moreover, and significantly, the court later made the relevant findings and specifically referenced MCR 2.401(G) on June 4, 1999, in ruling on plaintiff's motion to set aside the default judgment. Under these circumstances, no abuse of discretion requiring reversal occurred.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter