STATE OF MICHIGAN

COURT OF APPEALS

JERRY RAY RASMUSSEN,

Plaintiff-Appellee,

v

MARGARET FAYE RASMUSSEN,

Defendant-Appellant.

UNPUBLISHED
December 28, 2001

No. 224435
Montcalm Circuit Court
LC No. 99-000507-DO

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

MEMORANDUM.

Defendant appeals as of right from a default judgment of divorce and the trial court's denial of her motion to set aside the default judgment. We affirm.

A ruling on a motion to set aside a default or default judgment is entrusted to the discretion of the trial court. *Alken-Ziegler, Inc v Waterbury Headers Corp,* 461 Mich 219, 227; 600 NW2d 638 (1999). Unless there has been a clear abuse of discretion, a trial court's ruling on the motion will not be set aside. *Id.* In reviewing the ruling, this Court must not substitute its judgment for that of the trial court. *Id.* at 228. Although the law favors the determination of claims on the merits, this state also has a general policy against setting aside defaults and default judgments that have been properly entered. *Id.* at 229.

MCR 2.603(D)(1) provides that a motion to set aside a default or default judgment "shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." "Good cause" within the meaning of this provision includes (1) a substantial irregularity or defect in the proceeding upon which the default judgment is based, or (2) a reasonable excuse for failure to comply with the requirements that created the default judgment. *Alken-Ziegler, supra* at 233-234.

In this case, defendant concedes that, insofar as plaintiff served defendant with all papers in conformity with the court rules, there was not a substantial irregularity or defect in the proceedings. Defendant argues, however, that plaintiff's misconduct—his false assurance in August 1999 that he did not plan to proceed with the divorce and his alleged interception of the notice of hearing on entry of default judgment after it was sent to defendant by first-class mail—constituted such a substantial irregularity. We reject this line of reasoning. The record does not

* Circuit judge, sitting on the Court of Appeals by assignment.

support defendant's bare assertion that plaintiff fraudulently lulled her into inaction. Rather, at a minimum, it is undisputed that defendant knew in August 1999 that plaintiff had filed for divorce, and she knew that he intended to proceed with the divorce no later than October 21, 1999, when she received the notice of entry of default and plaintiff told her that he was taking the next step toward divorcing her. Defendant's further claim that plaintiff or someone on his behalf intercepted the notice of the hearing on the entry of judgment is based on conjecture and was unsupported by affidavit or other proof. Given the highly deferential standard of review articulated in *Alken-Zeigler, supra* at 228-229, we find no abuse of discretion in the trial court's decision not to set aside the default judgment of divorce.

Defendant also contends that she established good cause because manifest injustice would result if the judgment were allowed to stand. However, in *Alken-Ziegler, supra* at 233, our Supreme Court expressly held that manifest injustice is not a prong of the "good cause" inquiry. We therefore decline to reverse on this basis.

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham