

STATE OF MICHIGAN
COURT OF APPEALS

DONALD A. FERENZ, Personal Representative
of the Estate of HERBERT O. BROADBENT, III,
Deceased,

Plaintiff-Appellant,

v

MUSKEGON COUNTY ROAD COMMISSION,

Defendant-Appellee.

UNPUBLISHED
November 1, 2002

No. 230945
Muskegon Circuit Court
LC No. 99-039543-NZ

Before: Talbot, P.J. and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

Plaintiff appeals as of right from circuit court orders granting defendant's motion to set aside a default and defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion to set aside a default 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 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 is reviewed for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

Plaintiff effectuated proper service on defendant's chairman. MCR 2.105(G)(1). He intended to forward the summons and complaint to one of two men in the department responsible

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

for referring legal matters to counsel per department policy. Somehow, the papers were lost and defendant failed to answer the complaint. Although a party's carelessness or neglect does not constitute good cause, *White v Sadler*, 350 Mich 511, 522; 87 NW2d 192 (1957), 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). Thus, "the mere existence of negligence does not prevent a finding of good cause." *Levitt v Kacy Mfg Co*, 142 Mich App 603, 609; 370 NW2d 4 (1985). Given that defendant did not intentionally ignore the complaint and that it had a strong defense to the action, we cannot find that the trial court abused its discretion in setting aside the default. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227, 233-234; 600 NW2d 638 (1999).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Plaintiff's decedent was killed in an automobile accident at an intersection under defendant's jurisdiction. Plaintiff claimed that defendant negligently maintained the intersection by failing to provide adequate signs and lighting. The trial court dismissed plaintiff's complaint pursuant to *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 151, 183-184; 615 NW2d 702 (2000), in which the Court held that traffic signs and street lights are not within the improved portion of the highway designed for vehicular travel and thus do not come within the highway exception to governmental immunity. MCL 691.1402(1). This Court ruled in *Adams v Dep't of Transportation*, ___ Mich App ___, ___ NW2d ___ (Docket No. 230268, issued 10/11/02), slip op at 5, that *Nawrocki* is to have retroactive application. Accordingly, plaintiff's claims are barred by governmental immunity and the trial court properly granted summary disposition.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan