

STATE OF MICHIGAN  
COURT OF APPEALS

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ANTONIO FOUNTAINE,  
  
Plaintiff-Appellee,

v

DAMAN LEE QUEEN,  
  
Defendant-Appellant.

UNPUBLISHED  
November 5, 2002

No. 234240  
Wayne Circuit Court  
LC No. 00-005635-NI

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Before: Talbot, P.J., and Whitbeck, C.J., and Gage, J.

MEMORANDUM.

Defendant Daman Queen appeals as of right from the default judgment entered against him in this case. We reverse. We decide this case without oral argument pursuant to MCR 7.214(E).

The trial court entered a default and a default judgment against Queen because he was not personally present at trial.<sup>1</sup> However, Queen's counsel was present, and there was no subpoena or court order in force requiring Queen's personal presence. Thus, the trial court erred by entering a default because, as this Court held in *Rocky Produce, Inc v Frontera*,<sup>2</sup> absent a subpoena or court order commanding personal appearance, a civil defendant is not required to appear in person for a scheduled trial.

We disagree with Fountaine's effort to distinguish the present case from *Rocky Produce*. First, *Rocky Produce* flatly held that a civil defendant is not required to personally appear (as opposed to being represented by counsel) at trial absent a subpoena or court order requiring the civil defendant's personal appearance. Further, while Fountaine indicates that Queen's testimony was necessary for Queen to attempt to establish certain affirmative defenses, that is not a basis to support the default entered in this case. That a defendant is not personally present at the beginning of a trial obviously would not, in itself, prevent the defendant from being

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<sup>1</sup> The record reflects that Queen personally arrived at the courtroom on the day in question after the trial court decided to default him for not being personally present, but the trial court indicated that this would not change its decision to enter a default.

<sup>2</sup> *Rocky Produce, Inc v Frontera*, 181 Mich App 516, 517-518; 449 NW2d 916 (1989); see also MCR 2.117(B)(1) (providing that an appearance by an attorney is deemed an appearance by a party and that, unless a particular rule directs otherwise, any act required of a party may be performed by an attorney representing the party).

present when the defense needed to call him as a witness. In other words, a civil defendant could, like witnesses generally, be present when needed to give testimony, but not attend further parts of a trial.

We reverse the default and default judgment entered in this case, and we remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ William C. Whitbeck

/s/ Hilda R. Gage