

STATE OF MICHIGAN
COURT OF APPEALS

KEITH ROLAND TICE,

Plaintiff-Appellee,

V

JULIE KAY TICE,

Defendant-Appellant.

UNPUBLISHED

December 10, 2002

No. 235333

Lapeer Circuit Court

LC No. 00-027979-DO

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals as of right the default judgment of divorce and the trial court's order denying her motion for reconsideration or to set aside the default judgment. We affirm.

Plaintiff filed a complaint for divorce. Defendant did not answer the complaint and initially did not retain an attorney. A default was entered against defendant. At some point defendant retained counsel, and the parties negotiated a property settlement. At trial, plaintiff put on proofs to establish the trial court's jurisdiction to grant the divorce and was questioned by his counsel and defendant's counsel regarding the settlement. Defendant did not object to the terms of the settlement. The trial court granted the divorce.

Plaintiff submitted a proposed default judgment of divorce under the seven-day rule. MCR 2.602(B)(3). Defendant objected to the proposed judgment on the ground that it did not reflect a true agreement, but did not specify in what way the proposed judgment did not comport with the court's ruling. Subsequently, defendant moved to set aside the default, arguing that she had not agreed to the terms of the settlement. Plaintiff moved for entry of judgment. The trial court denied defendant's motion to set aside the default and granted plaintiff's motion for entry of judgment, noting that defendant raised no objection to the terms of the settlement at trial.

Defendant moved for reconsideration of the motion to set aside the default or in the alternative to set aside the default judgment of divorce. Defendant asserted she had good cause to set aside the default or the default judgment. She contended the proceedings were defective because the trial court never inquired regarding whether she agreed with the terms of the settlement, and she had a reasonable excuse for failing to answer the complaint because she and plaintiff agreed she did not need to retain an attorney. Defendant also sought to have the judgment set aside on grounds of excusable neglect, fraud/misrepresentation, and extraordinary circumstances. MCR 2.612(C)(1)(a), (c), and (f). The trial court denied the motion.

A motion to set aside a default or a default judgment is to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1). Good cause consists of: (1) a procedural defect or irregularity; or (2) a reasonable excuse for the failure to comply with the requirements that created the default. Manifest injustice is not a discrete occurrence that can be assessed independently. It is the result that would occur if a default were allowed to stand after a party has demonstrated good cause and a meritorious defense. If a party puts forth a meritorious defense and then attempts to establish good cause by showing a procedural defect or a reasonable excuse for failure to comply with the requirements that led to the default, the strength of the defense will affect the showing of good cause that is necessary. If a party states a meritorious defense that would be absolute if proven, a lesser showing of good cause is required to prevent manifest injustice. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999). We review a trial court's decision to grant or deny a motion to set aside a default or a default judgment for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

A trial court may relieve a party from a final judgment, order, or proceeding on the basis: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) of fraud, misrepresentation, or other misconduct of an adverse party; (4) that the judgment is void; (5) that the judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. MCR 2.612(C)(1)(a)-(f). We review a trial court's decision to grant or deny a motion to set aside a prior judgment for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Cason v Auto Owners Ins Co*, 181 Mich App 600, 609; 450 NW2d 6 (1989).

Defendant argues the trial court abused its discretion by denying her motion for reconsideration of the motion to set aside the default or in the alternative to set aside the default judgment. We disagree and affirm the judgment of divorce and the trial court's order denying defendant's motion for reconsideration or to set aside the default judgment. Defendant has failed to establish good cause to set aside the default or the default judgment. The trial court's failure to question her regarding the terms of the settlement did not constitute a substantial defect or irregularity in the proceedings. No statute or court rule required the trial court to do so. Defendant was represented by counsel during the hearing and defense counsel questioned plaintiff regarding the settlement. Any failure of defense counsel to ask further questions or to raise any objections that defendant might have had is attributable to defendant and does not justify setting aside a default. *Park, supra* at 67.

Furthermore, defendant's initial agreement to forego retaining counsel did not constitute a reasonable excuse for failure to comply with the requirements that created the default. Defendant was entitled to proceed without counsel; however, her decision to do so did not eliminate the requirement that she answer the complaint. MCR 2.110(B). The trial court did not abuse its discretion by denying defendant's motion for reconsideration of the motion to set aside the default or to set aside the default judgment of divorce. *Alken-Ziegler, supra*; *Cason, supra*.

Moreover, defendant has failed to establish that she was entitled to have the default judgment set aside on the grounds of excusable neglect, fraud/misrepresentation, or extraordinary circumstances. MCR 2.612(C)(1)(a), (c), and (f). Defendant's tactical decisions during the course of the proceedings, including the decisions to proceed without counsel and to delay moving to set aside the default until after the divorce was granted, do not constitute excusable neglect or extraordinary circumstances that would justify setting aside the judgment. *Limbach v Oakland Co Bd of Road Comm'rs*, 226 Mich App 389, 393; 573 NW2d 336 (1997). Defendant's allegations of fraud/misrepresentation were not sufficiently specific to justify an evidentiary hearing. The trial court did not abuse its discretion by denying defendant relief under MCR 2.612(C)(1).

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter