STATE OF MICHIGAN

COURT OF APPEALS

AARON LYONS, a Minor, by his Conservator, CYNTHIA CHANDANAIS,

Plaintiff-Appellant,

v

BERNICE COATES,

Defendant-Appellee.

UNPUBLISHED
January 8, 2004

No. 242666
Genesee Circuit Court
LC No. 01-070792-NO

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order denying his motion for relief from judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court granted defendant's motion for summary disposition. The plaintiff moved to set aside the order granting the motion, contending that his attorney never received notice of the motion or the hearing date. The trial court found that service was made and denied the motion. The trial court's ruling on a motion for relief from judgment is reviewed for an abuse of discretion. *Jones v Enertel, Inc,* 254 Mich App 432, 434; 656 NW2d 870 (2002).

On motion and just terms, the court may relieve a party from a final judgment or order on the grounds of mistake, inadvertence, surprise, or excusable neglect. MCR 2.612(C)(1)(a). A motion on such grounds is limited to extraordinary circumstances where the failure to set aside the order will result in substantial injustice. *Lark v Detroit Edison Co,* 99 Mich App 280, 283; 297 NW2d 653 (1980). A showing that a party lacked notice of the hearing of a motion because the documents were lost in the mail may be grounds for relief. Cf. *Kuikstra v Cheers Good Time Saloons, Inc,* 187 Mich App 699, 703; 468 NW2d 533 (1991), rev'd in part on other grounds 441 Mich 851 (1992); *Reno v Gale,* 165 Mich App 86, 94-95; 418 NW2d 434 (1987).

A copy of a motion must be delivered to a party's attorney or sent to him at his last known business address by first class mail. Service by mail is complete upon mailing. MCR 2.108(C)(3). The proof of service for the motion for summary disposition shows that the motion and notice of hearing were sent to plaintiff's counsel's business address by first class mail on May 7, 2002. Documents properly addressed and placed in the mail are presumed to reach their destination. *Crawford v Michigan,* 208 Mich App 117, 121; 527 NW2d 30 (1994). "This

presumption may be rebutted by evidence, but whether it was is a question for the trier of fact." *Stacey v Sankovich*, 19 Mich App 688, 694; 173 NW2d 225 (1969). Plaintiff denied receipt of the papers but presented no evidence to rebut the presumption of receipt. The mere denial of service is insufficient to rebut the presumption. Cf. *Ins Co of North America v Issett*, 84 Mich App 45, 49; 269 NW2d 301 (1978); *James v James*, 57 Mich App 452, 454; 225 NW2d 804 (1975). Under the circumstances, we find that the trial court did not abuse its discretion in denying plaintiff's motion.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen