

STATE OF MICHIGAN
COURT OF APPEALS

GERALD E. PATERA,

Plaintiff-Appellee,

v

BRIDGESTONE CAPITAL GROUP, LLC, G.
WILLIAM HARRISON III, KATHLEEN M.
HARRISON, Trustee of the KATHLEEN M.
HARRISON TRUST, and DONALD R.
BERNIER,

Defendants-Appellants.

UNPUBLISHED
December 29, 2005

No. 256033
Oakland Circuit Court
LC No. 04-055913-CK

Before: Owens, P.J., and Saad and Fort Hood, JJ.

PER CURIAM.

Defendants appeal as of right from a circuit court order denying their motion to set aside a default judgment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion to set aside a default judgment is reviewed for an abuse of discretion. *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 97; 666 NW2d 623 (2003). An abuse of discretion requires more than a difference in judicial opinion. It will be found only if the trial court's ruling is so violative of fact and logic that it can be said to be the product of perversity of will or passion or bias rather than the exercise of reasoned judgment. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

A motion to set aside a default or default judgment shall be granted if the court did not obtain jurisdiction over the defendant. Otherwise, the motion 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).

Contrary to defendants' argument that the showing of a meritorious defense creating a factual issue for trial can constitute good cause, such is not the case. "Manifest 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." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000) (emphasis in original). As the Supreme Court explained in *Alken-Ziegler, supra*, while a showing of good cause is not excused if a meritorious defense is shown, "the strength of the defense obviously will affect the 'good cause' showing that is necessary. In other words, if a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent manifest injustice." *Alken-Ziegler, supra* at 233-234.

Defendants contend that the trial court erred in finding that they had not demonstrated good cause for setting aside the judgment because they had shown a reasonable excuse for failing to answer the complaint. Specifically, the good cause was that GW Harrison was ill in bed much of the day. When he was not ill in bed, he was working on documents for settling the arbitration proceedings and had been in contact with plaintiff's counsel to try to resolve the matter.

Assuming GW Harrison was ill in bed and incapable of doing anything during the month of February, that might excuse his failure to respond to the complaint. However, Harrison essentially admits that he was not bedridden the entire time; between bouts of illness, he was working on documents relating to the arbitration proceeding. If he was well enough to attend to the arbitration proceedings, he was well enough to either file an answer to the complaint or retain counsel to represent him. Finally, because Harrison did not contact plaintiff's counsel regarding possible settlement of the case until after the default had been entered, any discussions with plaintiff's counsel would not have excused the failure to file an answer. Because defendants failed to establish good cause for their failure to answer the complaint, the trial court did not abuse its discretion in denying their motion to set aside the default judgment.

Affirmed.

/s/ Donald S. Owens
/s/ Henry William Saad
/s/ Karen M. Fort Hood