

STATE OF MICHIGAN
COURT OF APPEALS

DOROTHY FOWLER,

Plaintiff-Appellee,

v

SHEILA STANTON,

Defendant/Counter-Plaintiff,

and

ASSOCIATES HOME EQUITY SERVICES,
INC.,

Defendant-Appellant.

UNPUBLISHED

February 8, 2007

No. 265303

Wayne Circuit Court

LC No. 01-120570-CH

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant Associates Home Equity Services, Inc. (“defendant”) appeals by leave granted from a circuit court order denying its motion for relief from judgment. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews for an abuse of discretion a trial court’s decision on a motion to set aside a prior judgment, *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999), including a default judgment, *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003).

MCR 2.603(D)(1) governs the setting aside of a default judgment. *AMCO Builders, supra* at 95. The rule provides:

(1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

(2) Except as provided in MCR 2.612, if personal service was made on the party against whom the default was taken, the default, and default judgment if one has been entered, may be set aside only if the motion is filed

(a) before entry of a default judgment, or

(b) if a default judgment has been entered, within 21 days after the default judgment was entered.

(3) In addition, the court may set aside a default and a default judgment in accordance with MCR 2.612.

Although the rule indicates that relief may also be granted under MCR 2.612, in *Alken-Ziegler Inc v Waterbury Headers Corp*, 461 Mich 219, 234 n 7; 600 NW2d 638 (1999), the Court explained that the “any reason justifying relief” provision of MCR 2.612(C)(1)(f) “should not be read so as to obliterate” the “good cause” and “meritorious defense” requirements of MCR 2.603(D)(1) as analyzed in that case.

Here, defendant completely ignored MCR 2.603. It did not address “good cause,” which requires a party to establish (1) a substantial defect or irregularity in the proceeding upon which the default is based,” or (2) a reasonable excuse for failure to comply with the requirements that created the default” *AMCO Builders, supra* at 95 (citation and internal quotation marks omitted). Nor did it file “an affidavit of facts showing a meritorious defense” MCR 2.603(D).

Moreover, we are not persuaded by defendant’s claim that it established the requirements necessary for relief under MCR 2.612(C)(1)(f). *Heugel, supra* at 478-479. Defendant did not show “extraordinary circumstances” that “mandate setting aside the judgment to achieve justice.” Defendant argued below, and plaintiff conceded, that service did not comply with MCR 2.105(D). Although defendant complains that there has been no showing that the person who signed for the certified mail as defendant’s employee is known, defendant disregards that it, as the party seeking relief, bears the burden of establishing its entitlement to relief from the judgment. Mere assertions that certain facts are unknown do not satisfy that burden. Moreover, as noted by the trial court, MCR 2.105(J)(2) states that “[a]n action *shall not be dismissed* for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.” (Emphasis added.) This rule supports the trial court’s determination that improper service alone does not amount to “extraordinary circumstances” requiring a trial court to set aside a judgment under MCR 2.612(C)(1)(f). In the absence of evidence showing that the service did not provide actual notice, the trial court did not abuse its discretion in finding that the mere failure to comply with MCR 2.105(D) did not constitute an “extraordinary circumstance” requiring relief under MCR 2.612(C)(1)(f).

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio