

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK MORANT,

Plaintiff-Appellant,

v

G & S TRANSPORTATION, INC.,

Defendant-Appellee.

UNPUBLISHED

February 8, 2007

No. 268503

Wayne Circuit Court

LC No. 04-421256-NI

ON REMAND

Before: Davis, P.J., and Cooper and Borrello, JJ.

PER CURIAM.

Our original opinion in this matter, issued August 17, 2006, resolved the appeal in plaintiff's favor, reversing the trial court's grant of defendant's motion for summary disposition under MCR 2.116(C)(7), based on the statute of limitations. We reasoned that the three-year statute of limitations was tolled from at least August 22, 2000, to May 20, 2004, and that plaintiff therefore timely refiled his action on July 13, 2004.

The Supreme Court's order remanding the case directed us to review three court rules: MCR 2.603(D)(1) – (3), 2.612(C)(1) and (2), and 2.119(D)(3).¹ Upon review of these rules, we remand to the trial court to apply these rules and to make a record of the reasoning underlying its decision with respect to setting aside the default judgment.

MCR 2.603(D) 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.

¹ MCR 2.119 (D)(3) provides: "If the parties have stipulated to the entry of a proposed order or waived notice and hearing, the court may enter the order. If the court declines to enter the order, it shall notify the moving party that a hearing on the motion is required. The matter then proceeds as a contested motion under subrule (E)." In light of our dispositive ruling on 2.612(C), we do not reach that rule.

(2) Except as provided in MCR 2.612 [concerning relief from judgment], 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.

In this case, the default judgment entered on June 11, 2001, and was set aside on May 20, 2004, nearly three years later, as opposed to the 21 days allowed by MCR 2.603(D)(2)(b).

However, per MCR 2.603(D)(2) and (3), MCR 2.612 may provide alternative grounds for setting aside a judgment. MCR 2.612(C) provides:

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) 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.

(f) Any other reason justifying relief from the operation of the judgment.

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

From review of the record, it is clear that only MCR 2.612(C)(1)(f), “[a]ny other reason justifying relief from the operation of the judgment,” might apply. However, even if there exists a reason justifying relief, another consideration is whether the three-year delay exceeds the “reasonable time” limit imposed by MCR 2.612(C)(2).

Plaintiff’s motion to set aside the default judgment alleged that defendant G & S Transportation, Inc., “appear[ed] to be uncollectible and uninsured due to the insolvency of the . . . insurance company: Reliance Insurance.” The motion further alleged that because “plaintiff’s original attorney failed to notify the now-insolvent insurance carrier of the filing and service of the suit before a Default Judgment was taken, plaintiff is precluded from availing himself of the benefits of the Michigan Property & Casualty Guaranty Association (MPCGA).” Plaintiff

requested the default judgment be set aside and the case re-opened so that he might make a claim against the MPCGA.

The trial court's order granting the motion stated:

Plaintiff having moved to re-open the claim and set aside the default judgment against defendant G & S Transportation, Inc., only, and notice having been given to that party,

IT IS ORDERED THAT plaintiff's Motion to Re-Open Case and Set Aside Default Judgment as to Defendant G & S Transportation, Inc., Only is GRANTED;

IT IS ORDERED THAT the re-opened case against G & S Transportation, Inc., Only is dismissed WITHOUT PREJUDICE.

It is unclear from this record whether the lower court specifically considered and applied MCR 2.612(C). Although MCR 2.612(C)(1)(f) appears to give the trial court wide latitude, there is no record of a hearing or other determination as to whether "[a]ny other reason" justified relief from the default judgment. In addition, there is no record of any specific determination of the issue of whether the three-year delay exceeds the "reasonable time" limit imposed by MCR 2.612(C)(2).

Given the deference due the trial court, and the discretion afforded the trial court under the court rules identified by our Supreme Court as relevant here, we remand this matter to the trial court to make a determination, on the record, as to the application of these court rules on plaintiff's motion to set aside the default judgment.

Remanded. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Jessica R. Cooper

/s/ Stephen L. Borrello