

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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COLES VENTURES, L.L.C.,

Plaintiff-Appellant,

v

NOEL YUHANA and FARIS R. HORMOS,

Defendants,

and

ALL STAR AUTO GLASS,

Defendant-Appellee.

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UNPUBLISHED  
February 26, 2008

No. 275375  
Macomb Circuit Court  
LC No. 06-000394-CH

Before: Talbot, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from a circuit court order granting garnishee defendant All Star Auto Glass's motion to set aside a default judgment for \$47,336.65. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After plaintiff obtained a default judgment for \$97,476.43 against defendants Yuhana and Hormos, it served a writ of garnishment on All Star, Hormos' employer. All Star failed to respond as required by MCR 3.101(H). A default judgment was thereafter entered against All Star on November 15, 2006.

On November 29, 2006, All Star moved to set aside the judgment pursuant to MCR 2.612(C)(1)(a) and (f). It acknowledged that it did not have a proper procedure for processing writs of garnishment. It claimed that an employee was directed to deliver the writ to a bookkeeper and that the employee indicated that he had done so, but did not actually deliver the writ. In response, plaintiff argued that All Star made a conscious decision not to act and its carelessness did not warrant relief from judgment.

In granting All Star's motion to set the judgment aside, the trial court rejected plaintiff's argument that All Star consciously failed to fill out the disclosure, explaining:

Not on the part of the corporation consciously chose. Certainly the employee [sic, employer] that has responsibilities as the garnishee defendant to ensure their employee's following the requirement. But to impose a \$47,000 judgment because the employee didn't follow through with what she's supposed to do I think is not appropriate.

This Court reviews a trial court's decision on a motion to set aside a judgment for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). An abuse of discretion occurs when the trial court chooses an outcome that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

A court may relieve a party from a final judgment or order upon a showing of excusable neglect. MCR 2.612(C)(1)(a). Although plaintiff attributes All Star's failure to respond to the writ of garnishment as a conscious failure to act, rather than neglect, the trial court found that All Star did not consciously fail to respond to the writ of garnishment. Instead, an employee was directed to deliver the writ to a bookkeeper and the employee reported that he had done so, but did not actually deliver the document. Under the circumstances, we are not persuaded that the trial court abused its discretion in determining that All Star's failure to respond was excusable.

Plaintiff also argues that the trial court erred in accepting All Star's explanation for its failure to respond to the writ of garnishment because it failed to provide appropriate evidentiary support for the explanation. Because plaintiff did not raise this issue in opposition to All Star's motion below, we decline to consider this issue as a basis for granting appellate relief. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ Michael J. Talbot  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra