

STATE OF MICHIGAN
COURT OF APPEALS

WEXFORD PARKHOMES CONDOMINIUM
ASSOCIATION

UNPUBLISHED
February 9, 2010

Plaintiff-Appellee,

v

BRENDA L. EDWARDS,

No. 288862
Oakland Circuit Court
LC No. 2008-090593-CH

Defendant-Appellant.

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying her motion to set aside the default judgment. For the reasons set forth in this opinion, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On June 27, 2008, defendant was served with a complaint for foreclosure of a condominium association lien and for money damages and unpaid assessments. Defendant's first filing in this case was a pro se motion on July 23, 2008, requesting an extension of time to file an answer. The hearing on that motion was scheduled for August 6, 2008, but was not conducted because defendant had not filed a proof of service with the court. Instead, the motion was denied on August 6 due to the lack of service. The trial court also made the notation "too late" on the order of denial. Defendant objected to that denial and a hearing concerning her objection was heard on September 10, 2008.

At the September 10, 2008 hearing, plaintiff told the court that, despite being served with defendant's motions requesting an extension of time and objecting to the court's denial of that motion, it never received notice of the hearings related to those motions. The trial court denied defendant's objection to the denial of her extension request, stating that "when you [defendant] brought your motion, you didn't include a proof of service. That's why the Court wouldn't deal with it. You have to notify the other side. And maybe you did notify the other side, but you have to show proof of that to the Court before the Court will proceed to hear something."

Defendant filed her answer to the complaint on September 30, 2008—three months after she was initially served. Before that, plaintiff had filed an entry of default on August 7, 2008. The trial court entered a default judgment on October 1, 2008, which was the final order and which closed the case.

Two weeks later, defendant filed a motion to set aside the entry of default and default judgment. At that time, defendant also filed a notarized document titled “Meritorious Defense.” At the conclusion of a hearing, the trial court denied defendant’s motion, finding that she did not show good cause or provide a meritorious defense to set aside the default judgment.

A trial court’s decision on a motion to set aside a default is reviewed for an abuse of discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220; 760 NW2d 674 (2008). Such decision

should only be reversed on appeal when there is a *clear* abuse of that discretion. An abuse of discretion involves far more than a difference in judicial opinion. Rather, an abuse of discretion occurs only when the trial court’s decision is outside the range of reasonable and principled outcomes. Moreover, although the law favors the determination of claims on the merits, it has also been said that the policy of this state is generally against setting aside defaults and default judgments that have been properly entered. [*Id.*, 220-221 (emphasis in original, internal citations omitted).]

A motion to set aside a default or default judgment for reasons other than 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.” MCR 2.603(D)(1).

The following factors are to be considered when determining if a party has established good cause for the purpose of setting aside a default judgment.

(1) whether the party completely failed to respond or simply missed the deadline to file;

(2) if the party simply missed the deadline to file, how long after the deadline the filing occurred;

(3) the duration between entry of the default judgment and the filing of the motion to set aside the judgment;

(4) whether there was a defective process or notice;

(5) the circumstances behind the failure to file or file timely;

(6) whether the failure was knowing or intentional;

(7) the size of the judgment and the amount of costs due under MCR 2.603(D)(4);

(8) whether the default judgment results in an ongoing liability (as with paternity or child support); and

(9) if an insurer is involved, whether internal policies of the company were followed. [*Shawl*, 280 Mich App at 238.]

The statute for setting aside a default requires that both good cause and a meritorious defense be shown. MCR 2.603(D)(1).

In determining whether a defendant has a meritorious defense, the trial court should consider whether the defendant's affidavit of meritorious defense contains evidence that:

(1) the plaintiff cannot prove or defendant can disprove an element of the claim or a statutory requirement;

(2) a ground for summary disposition exists under MCR 2.116(C)(2), (3), (5), (6), (7), or (8); or

(3) the plaintiff's claim rests on evidence that is inadmissible. [Shawl, 280 Mich App at 238.]

"[T]he negligence of either the attorney or the litigant is not normally grounds for setting aside a default regularly entered." *Id.* at 223. Additionally, a pro se defendant is not excused from following the court rules. *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973).

In this case, the default was entered because defendant did not timely file an answer after being served with the complaint on June 27, 2008. Defendant did not actually file her answer until September 30, 2008—more than three months after she was served with the complaint. Her motion for an extension of time to answer was filed on July 23, 2008, and denied on August 6, 2008, because she did not provide any proof of service with her filing. Accordingly, the trial court's denial of defendant's request for an extension of time to file an answer based on her failure to follow procedural rules was not a substantial defect or irregularity in the proceedings underlying the default.

Similarly, defendant did not provide a reasonable excuse for not complying with the procedural requirements. A pro se litigant is required to follow the court rules and a litigant's negligence is not normally grounds to set aside a default. *Shawl*, 280 Mich App at 223; *Bachor*, 49 Mich App at 512.

Defendant did respond to the complaint, but it was in a procedurally defective manner. The notice of hearing was defective on her initial motion for an extension of time and on subsequent motions as well. Despite being able to file a motion for extension of time to answer within 28 days after receiving the complaint and following up on that with other motions and objections, defendant did not file her answer until three months after initially being served. Defendant's motion to set aside the default was filed two weeks after the default judgment was entered.

The trial court's determination that defendant failed to show good cause to set aside the default was not outside the range of reasonable and principled outcomes and therefore was not an abuse of discretion. Even if the *Shawl* factors related to good cause could have been resolved in defendant's favor, there is a second part of the court rule that must be satisfied.

To set aside a default, the defendant must show both good cause and a meritorious defense. MCR 2.603(D)(1). Defendant's notarized document titled meritorious defense did not offer a defense to her lack of payment of condominium association fees. Defendant did not provide any facts to show that she did not owe the fees, but rather defendant alleged that she, a condominium owner, was forced into a contract with the condominium association. Defendant also alleged that plaintiff's bylaws were deficient. Nothing in defendant's meritorious defense suggests or supports a position that non-payment of association dues was appropriate or justified. Accordingly, defendant has not shown the existence of a meritorious defense, and the trial court's decision was not an abuse of discretion.

Defendant's due process argument is also without merit. Defendant argues that she has been denied due process because she was not allowed to argue the merits of her case before a judge or jury. Procedural due process requires that "interested parties are given notice through a method that is reasonably calculated under the circumstances to apprise them of proceedings that may directly and adversely affect their legally protected interests and afford them an opportunity to respond." *Wortelboer v Benzie Co*, 212 Mich App 208, 218; 537 NW2d 603 (1995). The file and history of this case, with all of plaintiff's filings and appearances in the trial court, plainly show that defendant was apprised of the proceedings directly and adversely affecting her interests. Further, defendant did in fact respond and appear before the trial court at multiple hearings.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello