

STATE OF MICHIGAN
COURT OF APPEALS

KEY WEST ASSOCIATES, INC.,

Plaintiff-Appellant,

v

THIRTY-SEVENTH DISTRICT COURT,

Defendant-Appellee.

UNPUBLISHED

June 28, 2012

No. 299109

Macomb Circuit Court

LC No. 2009-005278-CZ

Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

In this action seeking declaratory relief, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). Because the trial court reached the right result, we affirm.

Plaintiff is in the business of collecting checks given to payday lenders in exchange for loans made by the payday lender. A payday lender loans a customer a specified amount of money in exchange for a check in repayment of the loan. The payday lender retains the customer's check for a period of time before presenting it to the bank for payment, and charges a fee for the service. Payday lending is regulated by the Deferred Presentment Service Transactions Act (DPSTA), MCL 487.2121 *et seq.*

As the assignee of debt from payday lender companies, plaintiff filed collection actions on any check returned for nonsufficient funds (NSF). Plaintiff filed numerous actions involving NSF checks in defendant district court. Defendant developed a process whereby following entry of a default in a case involving a payday lender, the case was scheduled for a hearing prior to entry of a default judgment.

Plaintiff filed this action for declaratory relief claiming that it filed approximately 20 civil suits to recover monies owed to it, and that defendant either failed and refused to enter default judgments as required by the court rules, or failed and refused to enter consent judgments entered into between the parties for a sum certain.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) (failure to state a valid defense to a claim), and (C)(10) (no genuine issue of material fact and moving party entitled to judgment as a matter of law). Defendant filed a cross-motion for summary disposition was brought under MCR 2.116(C)(4) (lack of jurisdiction over the subject matter), (C)(8) (failure

to state a claim), and (C)(10). The trial court granted defendant's motion for summary disposition and dismissed plaintiff's claim for declaratory relief, finding that MCR 2.603(B)(2) was unambiguous, that defendant's clerk could schedule entry of judgment for a hearing rather than being required to enter a default judgment, and that plaintiff's allegation that defendant was failing to comply with court rules was without merit. The trial court did not specify under which court rule it decided the motion; however, following a review of the opinion and order, we find that the motion was decided under MCR 2.116(C)(10).

We review the grant or denial of a motion for summary disposition de novo. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007).

We hold that the trial court should have dismissed plaintiff's action pursuant to MCR 2.116(C)(4). Plaintiff filed suit under MCR 2.605(A), seeking a declaratory judgment that defendant's clerk of the court was required to sign a properly applied for and filed default judgment, and that defendant must enter a consent judgment as presented. However, plaintiff's complaint for declaratory relief was inappropriate. The relief being requested could only be properly awarded in the context of a complaint for superintending control.

In *In re Lafayette Towers*, 200 Mich App 269, 272; 503 NW2d 740 (1993), this Court stated:

Superintending control is the proper vehicle to challenge the general practices of an inferior court. *Bd of Library Comm'rs v Judges of the 70th Dist Court*, 118 Mich App 379; 325 NW2d 777 (1982); *Automatic Music & Vending Corp v Liquor Control Comm*, 141 Mich App 458, 463; 367 NW2d 413 (1985), rev'd on other grounds 426 Mich 452; 396 NW2d 204 (1986). See also *Detroit Recorder's Court Judge*, 85 Mich App 284, 289; 271 NW2d 202 (1978) (superintending control is proper avenue for relief where challenge is to the defendant's method of conducting general court proceedings in all cases that present a common legal and factual situation). Superintending control is also proper where the court committed an error of law. *Wayne Co Prosecutor v Recorder's Court Judge (On Remand)*, 167 Mich App 282, 284; 421 NW2d 665 (1988).

Plaintiff challenged defendant's method of handling collection action defaults involving payday lenders. The challenged practice involved cases presenting a common legal and factual situation. *Detroit Recorder's Court Judge*, 85 Mich App at 288-289. Thus, superintending control, not a complaint seeking declaratory judgment, was the proper vehicle to challenge such practices. *Bd of Library Comm'rs*, 118 Mich App at 392; *Automatic Music & Vending Corp*, 141 Mich App at 463.

Accordingly, rather than addressing the parties' arguments regarding defendant's procedure for entering default judgments, the trial court should have dismissed the case based on a lack of jurisdiction. MCR 2.116(C)(4); *In re Lafayette Towers*, 200 Mich App at 272. We therefore uphold the lower court's dismissal of the case, even though it reached the right result for the wrong reason. *Klooster v Charlevoix*, 488 Mich 289, 310; 795 NW2d 578 (2011).

Affirmed.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly