

STATE OF MICHIGAN
COURT OF APPEALS

T. QUADRI, B.S. ALLI, R. ALLI and BEN ALLI,

Plaintiffs-Appellants,

V

DIXIE ELLEN RANDOCK, STEVEN KARL
RANDOCK, SR., CHILDREN FUTURE TRUST,
AEIT, A+ INSTITUTE, RICHARD JOHN
NOVAK and HEIDI KAE LORHAN,

Defendants-Appellees,

and

KENNETH WADE PEARSON, BLAKE ALAN
CARLSON, AMY LEAN HENSLEY and
ROBERTA LYNN MARKISHTUM,

Defendants.

UNPUBLISHED
September 13, 2012

No. 304554
Wayne Circuit Court
LC No. 10-001000-NZ

Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Plaintiffs appeal as of right a default judgment in the amount of \$40,000 entered against defendants. Because the trial court entered the default judgment without addressing defendants' outstanding motions, we vacate the default judgment and remand for further proceedings.

This case arises out of a fraudulent diploma business that defendants created in 1999 whereby defendants sold fraudulent diplomas to customers over the Internet. According to plaintiffs, defendants, without plaintiffs' knowledge or consent, listed plaintiffs as the Board of Directors on the Articles of Incorporation for James Monroe University, a fraudulent university incorporated in Liberia, Africa, and used by defendants in their fraudulent diploma business. The fraudulent business was uncovered in 2005, and defendants were prosecuted. Between 1999 and 2005, defendants made \$6,282,679 from the business, a portion of which was forfeited pursuant to defendants' plea agreements to federal criminal charges.

Plaintiffs filed this action against defendants, claiming damages as a result of defendants' use of plaintiffs' names in the illegal business. Plaintiffs requested at least half of defendants' profits from the business as damages. In lieu of filing an answer to plaintiffs' complaint, defendants filed a motion to dismiss on the basis that the court lacked personal jurisdiction over them. Despite defendants' motion, a default was entered against them because of their failure to appear, plead, or otherwise defend against the action. The entry of a default was improper because defendants were entitled to file their motion to dismiss in lieu of filing an answer to plaintiffs' complaint pursuant to MCR 2.108(A)(1), MCR 2.108(B), and MCR 2.108(C)(1). See *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 387-388; 808 NW2d 511 (2011); *DeCaminada v Coopers & Lybrand, LLP*, 232 Mich App 492, 494-496; 591 NW2d 364 (1998). On May 6, 2010, the trial court denied defendants' motion to dismiss and directed them to file "answers, plea or defense" within 30 days or the court would enter a default judgment against them.

On June 24, 2010, defendants filed several motions, including a motion for reconsideration of the May 6, 2010, order, a motion to remove the action to federal court, a motion to allow hearings by telephonic conference, a motion to dismiss on the basis of the statute of limitations, and a demurrer to the complaint. Thereafter, plaintiffs filed a motion for a default judgment on the basis that defendants failed to answer the complaint and failed to comply with the trial court's May 6, 2010, order. On September 24, 2010, the trial court entered a default judgment against defendants in the amount of \$10,000 each for each plaintiff, or \$40,000.

Plaintiffs argue that the trial court erred by entering a default judgment against defendants in the amount of \$40,000 because plaintiffs were entitled to at least half of the \$6,282,679 in profits that defendants made in their fraudulent diploma business. We review for an abuse of discretion a trial court's decision granting a default judgment. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). "A trial court abuses its discretion when it reaches a decision that falls outside the range of principled outcomes." *Id.*

The trial court abused its discretion by entering the default judgment without addressing defendants' outstanding motions. The trial court's May 6, 2010, order directed defendants to file "answers, plea or defense" within 30 days or the court would enter a default judgment against them. Thereafter, defendants timely filed several motions, including a demurrer to the complaint, but the trial court failed to acknowledge the motions before it granted plaintiffs' motion for a default judgment. We therefore vacate the default judgment and remand this case to the trial court for the court to address and decide the outstanding motions.

Further, we note that if the trial court grants a default judgment on remand, the court must determine the appropriate amount of damages. MCR 2.603(B)(3) provides that if, in order for the court to enter a default judgment, it is necessary to determine the amount of damages, "the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution." Throughout the proceedings, plaintiffs filed several extensive pleadings, but offered minimal evidence or legal support for their claim, specifically with respect to damages. Plaintiffs presented no evidence regarding the amount of damages that they incurred and merely asserted an entitlement to half of the \$6,282,679 in profits that defendants made in the fraudulent diploma business. Although the trial court ruled that plaintiffs were not entitled to the profits made in the fraudulent diploma

business, it nevertheless granted plaintiffs a default judgment in the amount of \$40,000. The trial court did not articulate the basis for this amount, which was purely arbitrary. Therefore, if the court enters a default judgment against defendants on remand and awards damages to plaintiffs, the court must determine the appropriate amount of damages to which plaintiffs are entitled.

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Pat M. Donofrio