

STATE OF MICHIGAN
COURT OF APPEALS

SOLUTION SOURCE, INC,

Plaintiff-Appellee,

v

LPR ASSOCIATES LTD and LPR LAND
COMPANY,

Defendants-Appellants,

and

MANUFACTURERS NATIONAL BANK,
a/k/a COMERICA BANK

Defendant-Appellee.

Before: Fitzgerald, P.J., and Cavanagh and N.J. Lambros,* JJ.

PER CURIAM.

Defendants LPR Associates and LPR Land Company appeal as of right the trial court's March 23, 1995, order denying defendants' motion for relief from judgment. We affirm.

Defendants raise three arguments in support of their claim that they were entitled to relief from judgment. All three arguments are based on MCR 2.612(C), which states:

(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.

* Circuit judge, sitting on the Court of Appeals by assignment.

UNPUBLISHED

December 13, 1996

No. 184798

LC No. 93-323182 CZ

(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.

First, defendants claim that they were entitled to relief from judgment on the basis of subrule (a), because they and the trial court had been acting under the mistaken impression that defense counsel was still representing them. We disagree. Relief from a judgment on the grounds of mistake will only be granted where the circumstances are extraordinary and the failure to grant the relief would result in substantial injustice. *Gillespie v Bd of Tenant Affairs of the Detroit Housing Comm*, 145 Mich App 424, 428; 377 NW2d 864 (1985).¹ Where a party seeking modification or his counsel made ill-advised or careless decisions, and then alleges mistake under this subrule, no relief can be granted. *Lark v Detroit Edison Co*, 99 Mich App 280, 283; 297 NW2d 653 (1980). The subrule was not intended to give parties a second chance to prevail in their cause. Accordingly, we find that the trial court did not abuse its discretion in holding that defendants' claimed "mistake" was not of the type contemplated by MCR 2.612(C)(1)(a).

Next, defendants assert that relief from judgment was warranted under MCR 2.612(C)(1)(d) because the default judgment and order were void, as they were entered at a time when defendants' counsel was suspended from the practice of law. Again, we disagree. A judgment is void when the court entering it lacked subject matter or personal jurisdiction in the action. See *Abbott v Howard*, 182 Mich App 243, 247-248; 451 NW2d 597 (1990). A "voidable" judgment is one characterized by procedural irregularities. *Id.* at 248. Defendants allege a procedural irregularity, not the trial court's lack of jurisdiction. According to the plain reading of the court rule, therefore, defendants have not shown entitlement to relief.

Furthermore, while defendants' counsel had an obligation pursuant to MCR 9.119 to apprise his clients and the court of his temporary suspension, and while the court would have been obligated, pursuant to MCR 2.503(F)(3), to grant a continuance had it found that defendants' counsel had been suspended from the practice of law, neither rule voids judgments entered under the circumstances of this case. Accordingly, the trial court did not abuse its discretion in refusing to grant relief from judgment under MCR 2.612(C)(1)(d).

Finally, defendants argue that they are entitled to relief under MCR 2.612(C)(1)(f), for "[a]ny other reason justifying relief from the operation of the judgment." Defendants state that their counsel

abandoned representation without their knowledge, and that a substantial injustice to defendants has resulted. However, before relief from judgment can be granted under this subrule, all of the following must be shown: 1) the reason for setting aside the judgment does not fall in any of the other subrules, 2) the substantial rights of the opposing party will not be detrimentally affected, and 3) extraordinary circumstances exist, mandating the setting aside of the judgment. *Lark, supra* at 284. In general, such relief is only granted when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. *Marshall v Marshall*, 135 Mich App 702, 712; 355 NW2d 661 (1984).

Defendants do not claim that the judgment in this case was obtained by plaintiff's improper conduct. Moreover, defendants' argument under this subrule is merely a reiteration of the arguments put forth under MCR 2.612(C)(1)(a) and (d). Relief pursuant to MCR 2.612(C)(1)(f) is prohibited where the basis for relief can be pursued under the other enumerated grounds. *Lark, supra* at 282. Accordingly, the trial court did not abuse its discretion in denying defendants' motion for relief from judgment.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros

¹ *Gillespie* and other cases cited herein were decided under GCR 1963, 528.3, the predecessor to MCR 2.612(C)(1). However, GCR 1963, 528.3 was substantially identical to MCR 2.612(C)(1), and we see no reason to apply the rules differently.