STATE OF MICHIGAN

COURT OF APPEALS

GRENVERE LANTIS and RAPID CONSTRUCTION,

Plaintiff-Appellees,

v

JAMES D. HANKINSON d/b/a HANKS AUTO REPAIR SERVICE,

Defendant-Appellant.

UNPUBLISHED
March 14, 1997

No. 187535
Montcalm Circuit Court
LC No. 94-0S0855-AV

Before: Taylor, P.J., and McDonald and C. J. Sindt,* JJ.

PER CURIAM.

Defendant appeals by leave granted from an order of the circuit court, reversing a previous order of the district court, which had granted defendant's motion to set aside a default judgment for plaintiff. We reverse and remand.

Plaintiff Lantis and defendant had a dispute regarding ownership of a 1968 Kenworth semi-tractor. After defendant removed the tractor from plaintiff's premises under claim of legal title and subsequently sold it, plaintiff brought this action for property damages. A default judgment in the amount of $22,497.24 was entered for plaintiff in the district court, but, owing to an error of the court, defendant did not receive notice of the default pursuant to subrule (B) of MCR 2.603 ("Default and Default Judgment"). The default was later set aside upon defendant's motion, and the district court thereafter granted summary disposition for defendant. Upon plaintiff's appeal as of right, the circuit court reinstated the default, ostensibly owing to the lateness of defendant's motion for relief from the default. Because we disagree with the circuit court that defendant's motion for relief was untimely, we reverse the circuit court order reinstating the default judgment. Furthermore, we affirm the decision of the district court granting summary disposition for defendant, and remand to the district court for entry of judgment for defendant.

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

I

A

The sole basis for the circuit court's ruling was its determination that defendant's motion for relief from judgment was untimely. The circuit court based this conclusion on the language of MCR 2.612(C)(2) ("Grounds for Relief from Judgment"), which states that motions made pursuant to "subrules (C)(1)(a), (b), and (c)" must be made "within one year after the judgment" from which relief is sought. However, defendant's motion for relief was made pursuant to subrule (C)(1)(f), to which the one-year limitation period does not apply. MCR 2.612(C)(2). Further, defendant's motion was otherwise "made within a reasonable time," *id*., because it was made less than six weeks after defendant received actual notice of the entry of default. We therefore believe that an unprejudiced person, considering the facts on which the circuit court relied, would conclude that there was no justification for the court's ruling, *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995), and that such ruling by the circuit court was an abuse of discretion. *Harvey Cadillac Co v Rahain*, 204 Mich App 355, 358; 514 NW2d 257 (1994). We note and reject plaintiff's argument that, since the district court admitted that it had made a mistake in failing to notify defendant of the default, subrule (C)(1)(a) was the presumptive basis for the district court's ruling, and that the matter should therefore be governed by that subrule and its applicable one-year limitation. The fact that the district court chose to admit that the omission of notice was the court's fault does not change the scenario to one of literal "mistake" as contemplated by subrule (C)(1)(a). Indeed, by its very nature, the mistake of failing to notify a party of a default against them could not possibly be acted on within any definitive time limit, but only when and if the mistake is discovered and rectified. In any case, where the literal application of subrule (C)(1)(a), (b), or (c) would result in a "compelling" inequity to the moving party, such a situation calls for the application of subrule (C)(1)(f) in the alternative. See 3 Martin, Dean & Webster, Michigan Court Rules Practice, (3rd ed), p 543.

B

We further note that plaintiff's substantial rights were not affected owing to the resolution of the case by summary disposition, since such is the equivalent of a trial on the merits, *Detroit v Qualls*, 434 Mich 340, 356, n 27; 454 NW2d 374 (1990), and that extraordinary circumstances existed to justify relief for defendant, i.e., the entry of default against defendant without notice to him, thereby precluding him the opportunity to contest it. Indeed, failure to comply with the mandatory notice provisions of MCR 2.603(B) constitutes a denial of due process of law for which a default judgment must be vacated. *Perry v Perry*, 176 Mich App 762, 770; 440 NW2d 93 (1989). Therefore, the district court's decision to set aside defendant's default was proper. *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992).[1]

II

The district court granted summary disposition for defendant.[2] The record reveals that defendant held a certificate of title to the tractor, validly issued by the Secretary of State, naming

defendant as the owner of the tractor. Furthermore, when confronted with a specific request by the district court, plaintiff offered no evidence to dispute the validity of defendant's title. See MCR 2.116(G)(4). Even granting the benefit of all reasonable doubt to plaintiff, we find that no record could have been developed upon which reasonable minds could have differed regarding the validity of defendant's title, and summary disposition was therefore proper. *Taylor v Lenawee Co Bd of Co Rd Comm'rs*, 216 Mich App 435, 437; 549 NW2d 80 (1996).

Moreover, it is of no moment that defendant's original motion for summary disposition was denied by the district court to allow additional discovery. Nothing in the order denying the initial motion for summary disposition, pending additional discovery, precluded summary disposition at some future date if appropriate. Finally, we find no merit to plaintiff's contention that the provisions of the motor vehicle code applicable to title transfers did not apply here because plaintiff did not intend to ever operate the tractor on the road. The motor vehicle code requires that a certificate of title be presented to the Secretary of State in order to effect a title transfer, *regardless* of whether the license plates are also being transferred (with the presentation of the registration certificate being an additional requirement when plates are being transferred as well). MCL 257.234(1); MSA 9.1934(1).

Reversed and remanded. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Gary R. McDonald
/s/ Conrad J. Sindt

[1] We acknowledge that relief pursuant to subrule (C)(1)(f) is generally only granted when the judgment is obtained by the improper conduct of the party in whose favor it was rendered, *Altman*, *supra*, at 478; however, such is not an absolute condition to relief, MCR 2.612(C)(1)(f), and, finding defendant's reasons for relief from default to have been meritorious, we would not have so limited relief in this case. The denial of due process of law to defendant requires such relief in any case. *Perry*, *supra*, at 770.

[2] Although the circuit court did not reach the merits of the district court's decision to grant summary disposition for defendant, our review thereof is not precluded. *Johnson v Wayne Co*, 213 Mich App 143, 160, n 1; 540 NW2d 66 (1995). Principles of judicial economy now make it appropriate for this Court to review the decision of the district court. See *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994).