

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF DETROIT,

Plaintiff- Appellee,

v

TRIGG WILLIAMS,

Defendant,

and

GREGORY J. REED & ASSOCIATES, P.C., NEW
NATIONAL PUBLISHING, G.J.R SCHOLARSHIP
FOUNDATION LTD., REED PRODUCTION CO.,
AND EQUESTRIAN ESTATES LIMITED
PARTNERSHIP,

Defendants- Appellants.

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

In this condemnation action, defendants appeal by right from a judgment in favor of defendant Gregory J. Reed & Associates on defendants' claims for just compensation under state law and relocation expenses under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 USC 4601 *et seq.* We reverse.

This action arises out of the condemnation of property for purposes of the Mid-City Rehabilitation Project. The project involved the construction of a hospital by the Department of Veterans Affairs (VA). Plaintiff, the City of Detroit, was the VA's agent for purposes of acquiring the necessary property and coordinating a relocation assistance program. The property at issue in this case was a Victorian mansion owned by Gregory and Verladia Reed, and purportedly occupied by, among

others, Gregory J. Reed & Associates, P.C.; New National Publishing; Gregory J. Reed Scholarship, Ltd.; Reed Production Co.; and Equestrian Estates Limited Partnership.

Title to the property vested in plaintiff by operation of law pursuant to the trial court order entered on June 5, 1991. The remaining issues involved relocation assistance under the URA and just compensation.¹ On December 10, 1993, the trial court entered a default against defendants because of Gregory Reed's repeated failure to attend his own deposition. The court subsequently decided the disputed issues of just compensation and relocation expenses in a nonjury hearing. The court treated all of defendants as one entity, and after subtracting prior payments made by plaintiff, awarded \$69,522 to defendant Gregory J. Reed & Associates.

Defendants initially contend that the trial court abused its discretion in entering a default judgment against them for Reed's failure to comply with discovery requests. We disagree. A trial court's decision to enter a default judgment against a party for the failure to comply with discovery requests is reviewed for an abuse of discretion. *Mink v Masters*, 204 Mich App 242, 244; 514 NW2d 235 (1994). If a party, or an officer, director, or managing agent of a party, fails to appear for his deposition after being served with a proper notice, the court may order such sanctions as are just, including rendering a judgment by default against the disobedient party. MCR 2.313(B)(2)(c); MCR 2.313(D)(1)(a). However, a default judgment is a drastic sanction that should be used with caution. *Mink, supra*.

In the present case, Reed either failed to attend or canceled five scheduled depositions over a period of eighteen months and did not timely respond to plaintiff's requests that he identify a date upon which he would be available for his deposition. Prior to entering the default, the trial court intervened in the discovery dispute and twice scheduled dates for the deposition. Given Reed's repeated failure to attend his deposition when scheduled by notice and order of the court, the trial court did not abuse its discretion in entering a default because Reed intentionally refused to facilitate discovery. Cf. *Chrysler Corp v Home Ins Co*, 213 Mich App 610, 612; 540 NW2d 485 (1995).

Defendants argue that even if entry of a default were proper, only Reed should have been defaulted. Again, we disagree. Under MCR 2.313(D)(1), sanctions may be imposed against a disobedient party for the failure of the party or an "officer, director, or managing agent of [the] party" to attend his own deposition. Here, the trial court did not exceed its authority in entering the default because Reed is either an officer or managing agent of every defendant.

Next, defendants contend that they were denied their right to a jury trial on the issue of damages when, after entering the default, the trial court determined the amount of just compensation in a nonjury hearing. The right to a jury trial in a condemnation proceeding is granted by statute, MCL 213.62(1); MSA 8.265(12)(1), not the Constitution of 1963. *Hill v State Hwy Comm*, 382 Mich 398, 406; 170 NW2d 18 (1969). Nevertheless, a default does not constitute a waiver of a party's properly preserved right to a jury trial. *Wood v DAIIE*, 413 Mich 573, 583; 321 NW2d 653 (1982). When a hearing is necessary on the question of damages, the trial court must accord the defaulted party his properly preserved demand for a jury trial. *Id.* at 585; see MCR 2.603(B)(3)(b).

A defaulted party's right to a jury trial on the issue of damages is not an equitable matter, but rather is secured by the Constitution and the court rules. The *Wood* Court's holding that a party's right to jury trial survived a default stemmed from its interpretation of Const 1963, art 1, § 14, and the applicable court rule, GCR 520, now MCR 2.603(B)(3)(b). The Court noted that the language of the court rule securing a party's right to a jury trial as "required by the Constitution" is but a circular reference because the constitutional provision dictates that the right is waived unless demanded in the manner prescribed by law, that is, the court rules. *Wood, supra*.

Plaintiff correctly notes that the application of the court rules to condemnation proceedings leads to a seemingly inconsistent result because, unlike other civil actions, the amount of damages is the only issue upon which the parties are entitled to a jury trial. MCL 213.56; MSA 8.265(6); MCL 213.62; MSA 8.265(12). However, in providing for a jury trial on the issue of damages after entry of a default, the court rules do not distinguish between types of actions. As such, a defaulted party in a condemnation action must be accorded his properly preserved demand for a jury trial when further proceedings are necessary to determine the amount of just compensation.

In this case, defendants preserved their demand for a jury trial by providing notice of it in the caption of their counter-complaint. See MCR 2.508(B)(1). Absent an express waiver, the trial court was obligated to honor defendants' right to a jury trial on the issue of damages. See *Mink, supra* at 247. A demand for trial by jury may not be withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys. MCR 2.508(D)(3). Upon review of the record, we find no express waiver of defendant's demand for a jury trial. Accordingly, we vacate the judgment and remand for a jury trial on the issue of just compensation.²

In addition, we direct that on remand the trial court shall dismiss defendants' URA claims because the circuit court does not have jurisdiction over them. We raise this issue sua sponte because the court must recognize its lack of jurisdiction no matter the stage of the proceeding. See *Fox v Bd of Regents of the University of Michigan*, 375 Mich 238, 242; 134 NW2d 146 (1965). An aggrieved party's right to judicial review of an agency's payment of relocation assistance is in the federal court under the Administrative Procedure Act (APA), 5 USC 551 *et seq.* *Ackerley Communications of Florida, Inc v Henderson*, 881 F2d 990, 991-993 (CA 11, 1989). The federal court's review under the APA is the exclusive remedy for alleged violations of the URA. *Id.* at 993. Defendants' URA claims must therefore be dismissed. See *Fox, supra* at 242.

Reversed and remanded for a jury trial on the issue of just compensation and the dismissal of defendants' URA claims. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh

¹ Another panel of this Court reversed the trial court's order of partial payment of defendants' relocation expenses under the URA because defendants failed to exhaust their administrative remedies before seeking judicial relief. See *Detroit v Reed*, unpublished opinion per curiam of the Court of Appeals, issued March 30, 1995 (Docket No. 167546).

² In light of our determination that this matter must be retried before a jury, we do not consider defendants' other challenges to the trial court's award of just compensation.