

STATE OF MICHIGAN  
COURT OF APPEALS

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ROLAND COLLINS and VENERA COLLINS,

Plaintiffs-Counter-Defendants-Appellees,

v

MARY MODZGVRESCHVILI,

Defendant-Counter-Plaintiff-Appellant.

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UNPUBLISHED

January 13, 1998

No. 197329

Oakland Circuit Court

LC No. 94-483988 CK

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

This appeal as of right arises as a consequence of defendant's failed attempt to convince the trial court to set aside a default and a default judgment entered following the failure of defendant and defense counsel to appear in court on the date and at the time scheduled for the beginning of trial. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant has failed to demonstrate good cause to set aside the default. MCR 2.603(D)(1); *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1992); *Marposs Corp v Autocam Corp*, 183 Mich App 166, 171; 454 NW2d 1 (1990). The record indicates that defense counsel failed to exercise reasonable diligence in ascertaining whether trial had been scheduled in this matter. Counsel's negligence is attributable to defendant and does not establish a ground to set aside the default. *Pascoe v Sova*, 209 Mich App 297, 298-299; 530 NW2d 781 (1995); *Yenglin v Mazur*, 121 Mich App 218, 222; 328 NW2d 624 (1982). Moreover, defendant's failure to file an affidavit setting forth facts showing a meritorious defense is fatal to her attempts to upset the default. *Perry v Perry*, 176 Mich App 762, 769; 440 NW2d 93 (1989).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly