

STATE OF MICHIGAN
COURT OF APPEALS

ORLEANS TOWNSHIP, LONG LAKE
IMPROVEMENT BOARD, LEONARD E.
SHEPARD, GARY L. COON, DEBORAH A.
COON, MARVIN KUIEK, GWEN KUIEK,
ISABELLE WILSON, COLLEEN PIERCE, DON
THELEN, GEORGENE THELEN, ROBERT
HOFFMAN, ROBERT CLARK, ESTHER CLARK,
GEORGE MILLER, and NANCY MILLER,

Plaintiffs-Appellees,

v

ROBERT G. CUSACK and BEVERLY J. CUSACK,

Defendants-Appellants.

UNPUBLISHED
September 18, 1998

No. 201492
Ionia Circuit Court
LC No. 95-016905 CZ

DEPARTMENT OF NATURAL RESOURCES,

Plaintiff-Appellee,

v

ROBERT G. CUSACK and BEVERLY J. CUSACK,

Defendants-Appellants.

No. 202185
Ionia Circuit Court
LC No. 95-016901

Before: Hood, P.J., and Griffin and O'Connell, JJ.

MEMORANDUM.

Defendants appeal by right the default judgment entered in favor of plaintiffs by the circuit court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A default order was entered by the trial court when defendants failed to appear for a scheduling conference set for September 10, 1996. Defendants moved to set aside the default, asserting that they did not receive notice of the hearing. Plaintiffs moved for entry of a default judgment and for sanctions. After a hearing, the trial court granted defendants' motion to set aside the default, conditioned on defendants' payment of costs and attorney fees to the opposing parties. Counsel for plaintiffs each provided estimates of their expenditures. The court ordered defendants to pay \$3,000 to the Long Lake Improvement Board, \$2,000 to Orleans Township, and \$1,000 to the Department of Natural Resources by January 16, 1997, as a condition for setting aside the default. Defendants did not object to the date or the amount of the payment.

The court entered a second default, based on defendants' failure to fully answer interrogatories, and entered a default judgment when defendants failed to pay the sums necessary to set aside the default.

The question whether a default or a default judgment should be set aside is within the sound discretion of the trial court, and will not be reversed on appeal absent an abuse of that discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). A motion to set aside a default generally may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. *Id.*; MCR 2.603(D)(1). An order setting aside a default must be conditioned on the party against whom the default was taken paying the taxable costs incurred by the other party in reliance on the default. The order may also impose other conditions the court deems proper, including a reasonable attorney fee. MCR 2.603(D)(4).

There is no showing that the trial court abused its discretion in requiring defendants to pay costs and attorney fees as a condition for setting aside the default. Plaintiffs' counsel presented evidence as to their fees, which defendants did not contest. The trial court properly granted a default judgment when defendants failed to meet the required conditions.

Affirmed.

/s/ Harold Hood

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell