

STATE OF MICHIGAN
COURT OF APPEALS

DOMESTIC UNIFORM RENTAL,

Plaintiff- Appellee,

v

LEEMON BUSSELL, Individually and d/b/a
STONE CREEK AUTO PARTS,

Defendant,

and

EXETER AUTO PARTS, INC.,

Garnishee Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 211555

Oakland Circuit Court

LC No. 96-514015-CZ

Before: O'Connell, P.J., and Meter and T. J. Hicks*, JJ.

PER CURIAM.

Garnishee defendant Exeter Auto Parts, Inc. ("Exeter"), appeals as of right from the trial court's order denying its motion to set aside a default judgment. We affirm, deem the instant appeal vexatious, and remand this case to the trial court for a determination of actual damages. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Domestic Uniform Rental ("Domestic") obtained a judgment against defendant Leemon Bussell, individually and doing business as Stoney Creek Auto Parts. Domestic requested a writ of garnishment on Exeter, on the ground that Exeter was indebted to Bussell. The writ was issued by the court on July 9, 1997 and served on Exeter that same day; however, the process server mistakenly noted July 8, 1997 as the date of service on the return. An amended proof of service stating the correct date of service was later filed. When Exeter did not respond, a default judgment was entered.

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

Exeter argues that it was entitled to have the default judgment set aside. A motion to set aside a default or a default judgment is to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1). We review a trial court's decision on a motion to set aside a default or a default judgment for an abuse of discretion. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

Exeter contends that the writ of garnishment was invalid - and that the default judgment should have been set aside - because the writ was improperly served prior to its issuance by the court. MCR 3.101(F); MCR 2.105. We disagree. While a substantial irregularity or defect in the proceedings can constitute good cause for setting aside a default or a default judgment, *Reed v Walsh*, 170 Mich App 61, 64; 427 NW2d 588 (1988), no such irregularity or defect existed in the instant case. The record demonstrated that the writ was served *after* it was issued by the court. The trial court did not abuse its discretion by denying Exeter's motion to set aside the default judgment.

We decline Domestic's request to impose sanctions on Exeter for a vexatious appeal, however, since to do so would essentially endorse Domestic's failure to file an amended proof of service until May 27, 1998, after Exeter had already filed its claim of appeal.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks