STATE OF MICHIGAN

COURT OF APPEALS

INDIA JHONS,

Plaintiff-Appellant/
Cross-Appellee,

v

HOLLYWOOD VIDEO,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED
February 20, 2001

No. 219993
Wayne Circuit Court
LC No. 97-709421-NO

Before: Whitbeck, P.J., and Murphy and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order setting aside a default judgment previously entered in her favor. Defendant cross-appeals as of right from that part of the order denying defendant attorney fees and costs. This case addresses the question whether plaintiff 's personal service of a negligence complaint and summons on the purported manager of Hollywood Video constituted actual notice to the corporate defendant, Hollywood Entertainment Corporation. The trial court concluded that service was deficient. We affirm.

Plaintiff first argues that the trial court erroneously concluded that she failed to effectuate service of process and that it abused its discretion in setting aside the default judgment. We disagree. The decision whether to set aside a default judgment is within the sound discretion of the trial court and will not be reversed by this Court absent a clear abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers, Corp,* 461 Mich 219, 227; 600 NW2d 638 (1999).

Service of process on a corporation may be effectuated by following any of the four alternatives set forth in MCR 2.105(D)(2). *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669, 672; 413 NW2d 474 (1987), citing *Clayton v Ann Arbor Motor Inn, Inc*, 94 Mich App 370, 374; 288 NW2d 432 (1979). In this case, plaintiff chose to act under MCR 2.105(D)(2), which provides that service of process can be made by:

> serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation *and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation*; [emphasis added.]

Though plaintiff personally served a copy of the summons and complaint on the manager of an individual video store owned by defendant, she did not send the same by registered mail to the principal office of the corporation. Contrary to plaintiff's argument, this failure to fully comply with MCR 2.105(D)(2) constituted a complete failure of service of process, not merely a technical defect in the manner of service. *Holliday v Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991). Consequently, the trial court did not abuse its discretion in setting aside the default judgment as it lacked jurisdiction over defendant.

Plaintiff also contends that the trial court abused its discretion in setting aside the default judgment because defendant failed to (1) show good cause, and (2) provide the court with an affidavit of meritorious defense. However, MCR 2.603(D)(1), which sets forth the standards for setting aside default judgments, provides:

> A motion to set aside a default or default judgment, *except when grounded on lack of jurisdiction over the defendant*, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. [Emphasis added.]

Because the trial court lacked personal jurisdiction over defendant due to the complete failure of service of process, defendant was not required to show good cause or file an affidavit of meritorious defense. Furthermore, contrary to plaintiff's final argument, the trial court did not abuse its discretion when it failed to conclude that defendant's motion was untimely. Moving pursuant to MCR 2.612(C)(1)(d), defendant sought relief from the default judgment on the ground that the judgment was void because the trial court lacked personal jurisdiction over defendant. MCR 2.612(C)(2) requires only that such motions be made "within a reasonable time."

On cross appeal, defendant contends that the trial court's denial of costs and attorney fees was clearly erroneous because plaintiff's failure to stipulate to setting aside the default judgment was frivolous. We again disagree.

A trial court's determination whether a claim or defense was frivolous will not be reversed by this Court unless the determination is clearly erroneous. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). A finding is clearly erroneous when this Court is left with a definite and firm conviction that a mistake was made. *Id.*

A claim or defense is frivolous when the party's position is devoid of arguable legal merit. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267; 548 NW2d 698 (1996). However, a finding that a claim or defense is erroneous does not compel the conclusion that the claim or defense is frivolous. *Travelers Ins v U-Haul of Michigan, Inc*, 235 Mich App 273, 290; 597 NW2d 235 (1999). Here, though ultimately unsuccessful in defense of the motion, plaintiff was arguably reasonable in her belief that the default would not be set aside because defendant had failed to so move within one year of the judgment. Although our conclusion is based on a

different ground than cited below, we will not reverse when the trial court reaches the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ William C. Whitbeck
/s/ William B. Murphy
/s/ Jessica R. Cooper