

STATE OF MICHIGAN
COURT OF APPEALS

DANNY SHELTON KEMP and DR. PAMELA A.
WILKINS,

UNPUBLISHED
February 23, 2001

Plaintiffs-Appellees,

v

No. 217863
Oakland Circuit Court
LC No. 97-000376-CK

BOAT SALES, INC.,

Defendant-Appellant,

and

NBD BANK, N.A.,

Defendant-Appellee,

and

ANDERSON MARINE OF WATERFORD,
ANDERSON MARINE, THOMPSON BOAT
COMPANY, and TBC LIQUIDATING
COMPANY,

Defendants.

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Defendant Boat Sales, Inc. (defendant) appeals as of right the order denying its motion to set aside the default judgment entered in plaintiffs' favor. We affirm.

Defendant first contends that the circuit court lacked personal jurisdiction over it because of improper service of process and, therefore, the default judgment should have been set aside. 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 v*

Waterbury Header Corps, 461 Mich 219, 227; 600 NW2d 638 (1999); *Park v American Casualty Ins*, 219 Mich App 62, 66; 555 NW2d 720 (1996).

A trial court may be deprived of personal jurisdiction over a defendant and, therefore, without legal authority to render a judgment, where service of process is defective. *Alycekay Co v Hasko Construction Co*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989). MCR 2.105(D) sets forth four methods of effectuating service of process on corporations. *Bunner v Blow-Rite Insulation*, 162 Mich App 669, 672; 413 NW2d 474 (1987). The service of process rules are intended “to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses.” *Hill v Frawley*, 155 Mich App 611, 613; 400 NW2d 328 (1986).

Here, plaintiffs did not effectuate service of process in accordance with MCR 2.105(D). However, failure to comply with the service of process rule is not fatal. MCR 2.105(J)(3) states:

(3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

The record demonstrates that defendant had actual notice of the complaint and the default judgment. We are satisfied that plaintiffs’ failure to fully comply with MCR 2.105(D) constituted a technical defect in the manner of service as opposed to a complete failure of service. *Hill, supra* at 613-614; *Bunner, supra* at 670. Consequently, the circuit court did not lack personal jurisdiction over defendant and did not abuse its discretion in denying defendant’s motion to set aside the default judgment on this ground.

Defendant next asserts that the circuit court abused its discretion when it found that defendant did not show good cause or a meritorious defense that would justify setting aside the default judgment. Public policy in Michigan favors the meritorious determination of issues and encourages the setting aside of defaults. *Alken-Ziegler, supra* at 227; *Levitt v Kacy Mfg Co*, 142 Mich App 603, 607; 370 NW2d 4 (1985). MCR 2.603(D)(1) sets forth the standards for setting aside default judgments, and 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.

Although the strength of the proffered meritorious defense may affect the amount of good cause that must be shown, the good cause requirement and meritorious defense requirement are separate requirements. *Alken-Ziegler, supra* at 229.

Good cause sufficient to warrant setting aside a default judgment may be shown by a procedural defect or irregularity or a reasonable excuse for failure to comply with the requirements that created the default. *Alken-Ziegler, supra* at 233. To constitute good cause, the defendant must have been prejudiced by a substantial defect or irregularity. *Alycekay Co, supra*

at 506-507. We are satisfied that defendant was not prejudiced by substantial defects or irregularities sufficient to constitute good cause.

Because we are satisfied that defendant has failed to demonstrate good cause, it is unnecessary to determine whether defendant has established a meritorious defense. *Zaiter v Riverfront Complex Ltd*, ___ Mich ___; ___ NW2d ___ (Docket No. 116357, issued 1/18/01), slip op p 11, n 9.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald