STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW AJDARI,

Plaintiff/Counter-Defendant-Appellant,

v

NASRIN AJDARI,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
June 28, 2002

No. 230426
Ingham Circuit Court
LC No. 99-011218-DO

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment of divorce. The trial court entered a default judgment against plaintiff for failure to appear at the bench trial, and awarded defendant the proceeds of the sale of the parties' marital home in satisfaction of the antenuptial agreement.[1] We reverse and remand.

The parties were married in Iran on October 19, 1996, and eventually immigrated to the United States. Plaintiff filed for divorce in 1999 and defendant filed a counter-complaint for divorce in 2000. During the majority of the divorce proceedings plaintiff was in Iran. While he was out of the country, plaintiff had only intermittent contact with his attorney. As a consequence, plaintiff's attorney withdrew from the case on June 29, 2000, with the trial court's permission. On September 25, 2000, plaintiff faxed a letter to the trial court from Iran requesting a postponement of the September 29, 2000 trial on the grounds that he was not free to leave Iran. The trial court declined to accept this letter as a properly filed motion for adjournment and entered a default judgment on defendant's counter-claim.

Plaintiff initially argues that the trial court erred when it proceeded to trial while defendant was detained in a foreign country. We disagree. We review a trial court's decision to

[1] Defendant estimated the proceeds from the home at between $17,000 and $18,000. This money was held in an account kept by plaintiff's attorney.

grant an adjournment for an abuse of discretion. *Soumis v Soumis*, 218 Mich App 27, 32; 553 NW2d 619 (1996). However, "[t]he construction and interpretation of court rules is a question of law that we review de novo." *Barclay v Crown Building & Development, Inc*, 241 Mich App 639, 642; 617 NW2d 373 (2000).

A motion for adjournment must be based on good cause as shown by the party, and a court may grant an adjournment to promote the cause of justice. MCR 2.503(B)(1) and (D)(1); *Soumis, supra* at 32. When reviewing a trial court's denial of a motion to adjourn, we consider the length of the trial, the number of past continuances, the failure of the movant to act dilligently, and the lack of injustice to the movant. *Rosselott v Muskegon Co*, 123 Mich App 361, 371; 333 NW2d 282 (1983).

It is undisputed that both parties were notified of the date set for trial. See MCR 2.501(A), (C). However, after plaintiff filed his complaint he left for Iran and neglected to keep in contact with his attorney. As a result, plaintiff's counsel filed and received an extension to answer discovery. Six months later, plaintiff's counsel withdrew from representation following an additional period of non-communication. At the time plaintiff's counsel withdrew, the trial date was adjourned until September 29, 2000. Thus, there was a clear history of adjournments due to plaintiff's actions or inactions. More importantly, plaintiff's last-minute letter to the trial court failed to meet the requirements of MCR 2.503 and therefore did not amount to a proper motion to adjourn.

We also note that the trial court declined to consider plaintiff's allegations that defendant's legal actions in Iran prevented him from attending trial. Clearly, the trial court could not adjudge whether plaintiff's assertions concerning the Iranian proceedings were valid or unfair. Thus, even if plaintiff's letter could be viewed as a proper motion to adjourn under MCR 2.503, it failed to show good cause. MCR 2.503(B)(1). On this record, we find that the trial court did not abuse its discretion in proceeding with the trial and entering a default judgment against plaintiff. See *Barclay*, supra at 642.

Plaintiff further claims that the trial court failed to provide him with the proper notice that a default judgment was entered against him. We agree.

Pursuant to MCR 2.603(A)(1), the court clerk is required to enter a default when "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . ." However, the court rules also state that "[t]he court clerk must promptly mail notice of entry of a default judgment to all parties." MCR 2.603(B)(4). A party may defeat a default judgment by moving in the trial court to set it aside under MCR 2.603(D), or by moving for relief from judgment under MCR 2.612.[2]

A review of the record indicates that plaintiff did not receive notice of the default judgment. Regardless of whether the trial court properly entered judgment by default under

[2] We note that plaintiff failed to pursue either of these options, apparently because he was unaware that the judgment was taken in default.

MCR 2.506(F)(6), the notice procedure under MCR 2.603 is still required.[3] See *McGee v Macambo Lounge, Inc*, 158 Mich App 282, 285-286, 404 NW2d 242 (1987). The failure to give the required notice of entry of a default judgment is considered good cause for setting aside a judgment. *Bradley v Fulgham*, 200 Mich App 156, 158-159; 503 NW2d 714 (1993). Indeed, plaintiff could have filed for relief in the trial court had he known the judgment was by default. See, e.g., *Koski v Allstate Ins Co*, 456 Mich 439, 446-447; 572 NW2d 636 (1998). Because plaintiff was not notified of the default judgment, we are compelled to set it aside.[4]

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Jessica R. Cooper

[3] If the trial court clerk could not decipher the address on plaintiff's letter, the clerk should have sent the notice to his last known address. MCR 2.603(B)(4).

[4] In light of our decision, we need not address plaintiff's remaining issue on appeal.