STATE OF MICHIGAN

COURT OF APPEALS

JOHN EDWARD KAPPLER,

Plaintiff-Appellant,

v

MARY LOUISE KAPPLER,

Defendant-Appellee.

UNPUBLISHED
April 10, 2003

No. 243535
Houghton Circuit Court
LC No. 00-011270-DO

Before: Jansen, P.J., and Kelly and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a divorce judgment. We affirm. This appeal is being decided without oral argument pursuant MCR 7.214(E).

Plaintiff first argues that defendant failed to present good cause or a meritorious defense to set aside a default judgment the trial court had entered against her, and that the trial court, therefore, erred in setting aside the default judgment. Good cause includes a reasonable excuse for the failure to comply with requirements that created the default. *Alken-Ziegler, Inc v Waterbury Headers Corp,* 461 Mich 219, 233; 600 NW2d 638 (1999). We find no abuse of discretion in the finding that counsel had a reasonable excuse for waiting to answer where he was waiting to see if a potential conflict would resolve. See *Park v American Casualty Ins Co,* 219 Mich App 62, 66; 555 NW2d 720 (1996). Moreover, in the context of a divorce case, the term "meritorious defense" can only be construed to mean a meritorious position regarding the division of assets and like issues. The trial court properly exercised its discretion in setting aside the default where it determined that it wanted the benefit of having both parties' positions fully developed.

Plaintiff next argues that an ex parte motion to compel payment of the parties' monthly mortgage payment should have been dismissed because it was procedurally inadequate under MCR 3.207(B). However, the trial court did not act on this motion ex parte. Plaintiff filed a written response and the court held a hearing. Since it was not decided ex parte, there is no basis for asserting that MCR 3.207(B) controlled.

Finally, plaintiff argues that the trial court erred in enforcing a settlement that had been reached at a deposition and was transcribed, but was not reduced to a writing signed by plaintiff. We find no error in the trial court's conclusion that plaintiff did not "deny" the agreement within the meaning of MCR 2.507(H), and that the agreement was therefore enforceable. Unlike the

defendant in *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480; 637 NW2d 232 (2001), plaintiff did not claim that the agreement was invalid due to the rights of a third party not being taken into account or for any other reason. Unlike the appellant in *Metropolitan Life Ins Co v Goolsby*, 165 Mich App 126, 128-129; 418 NW2d 700 (1987), plaintiff did not deny that his acceptance was unconditional and coextensively, and did not maintain that conditions were never met. Unlike the defendant in *Brunet v Decorative Engineering, Inc*, 215 Mich App 430; 546 NW2d 641 (1996), plaintiff did not claim that there was no meeting of the minds. Rather, akin to the plaintiff in *Thomas v Michigan Mutual Ins Co*, 138 Mich App 117; 358 NW2d 902 (1984), plaintiff's acceptance was absolute and unconditional. In *Thomas*, this Court held that the plaintiff did not have the option of breaching such a binding contract "up until the time that it is entered upon the court record." *Thomas, supra,*138 Mich App 120. Plaintiff is similarly bound.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood