

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SHANNON M. THERRIEN,

Plaintiff-Appellee,

v

CRYSTAL ADAMS-KREUGER, LASERGRAFT  
COSMETIC SURGERY CENTER and  
LAWRENCE D. CASTLEMAN, M.D.,

Defendants-Appellants,

and

F. DE LA CRUZ, M.D.,

Defendant.

---

UNPUBLISHED  
December 2, 2003

No. 241792  
Wayne Circuit Court  
LC No. 01-122844-NH

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendants appeal by leave granted from a trial court order granting plaintiff's motion to set aside a clerk's order of dismissal. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When a summons expires, the action is deemed dismissed as to any defendant not served with process. MCR 2.102(E)(1). The court clerk may then enter an order of dismissal "as to a defendant who has not been served with process or submitted to the court's jurisdiction." MCR 2.102(E)(2). A trial court has the authority to set aside an order entered under subrule (E) on stipulation of the parties or when all of the following conditions are met:

(1) within the time provided in subrule (D), service of process was in fact made on the dismissed defendant, or the defendant submitted to the court's jurisdiction;

(2) proof of service of process was filed or the failure to file is excused for good cause shown;

(3) the motion to set aside the dismissal was filed within 28 days after notice of the order of dismissal was given, or, if notice of dismissal was not given, the motion was promptly filed after the plaintiff learned of the dismissal. [MCR 2.102(F).]

The trial court's interpretation and application of a court rule is reviewed de novo on appeal. *Cranbrook Professional Bldg, LLC v Pourcho*, 256 Mich App 140, 142; 662 NW2d 94 (2003).

The summons in this case was valid through October 4, 2001. Although defendants Lasergraft, Adams-Kreuger, and De La Cruz were served before the summons expired, plaintiff failed to file a return of service for any of the defendants by that date and none of the defendants submitted to the court's jurisdiction.<sup>1</sup> The clerk therefore properly entered the order of dismissal. MCR 2.102(E). The returns of service on the aforementioned defendants were filed shortly thereafter. Thus, plaintiff met condition (1) as to those defendants, but not as to Robert C. Grafton and defendant Castleman. It further appears, and defendants do not dispute, that plaintiff met condition (2).

The crux of defendants' argument is that plaintiff failed to meet condition (3). We disagree. The record shows that the clerk sent plaintiff's counsel notice of entry of the order of dismissal on October 12, 2001, and that plaintiff did not file the motion until February 19, 2002. This was beyond the twenty-eight day limit expressed in the court rule. However, we note that the notice in this case failed to list all the defendants being dismissed. In fact, the only defendant listed on the notice, Robert Grafton, was *never* served. The other defendants who were in fact served were not listed on the notice. The trial court accepted the explanation of plaintiff's counsel regarding their confusion and apparently agreed that the notice of dismissal was defective. We find no error with the trial court's decision in this case. We defer to the trial court's discretion as to the appropriateness of the notice.

Similarly, we find that plaintiff timely filed its motion to set aside the dismissal after being notified of the dismissal by defendants. Plaintiff received correspondence from defendants regarding the dismissal on January 4, 2002, and filed a motion to set aside the dismissal on

---

<sup>1</sup> We note that there is nothing in the record to support plaintiff's contention that returns of service were mailed on October 3, 2001. Rather, the cover letter attached to the proofs of service was dated October 11, 2001. While the date October 3, 2005 appears on the returns of service, this date refers to the expiration of the notary public's commission.

February 19, 2002. We note that there is no indication that defendants were prejudiced by plaintiff's failure to file this motion until February. Accordingly, the trial court acted within its authority under MCR 2.102(E) when it set aside the order of dismissal in this case.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey