

STATE OF MICHIGAN  
COURT OF APPEALS

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ST. IGNACE TOWNSHIP,

Plaintiff-Appellee,

v

DONALD E. BENSON FAMILY, LLC,

Defendant-Appellant.

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UNPUBLISHED

August 11, 2005

No. 254020

Mackinac Circuit Court

LC No. 03-005756-CC

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff filed a complaint for condemnation of a strip of defendant's land necessary for expansion of a sanitary sewer system. MCL 213.55. Defendant appeals as of right from the trial court's entry of default and default judgment against it for failure to appear or otherwise defend against plaintiff's complaint for condemnation.<sup>1</sup> MCR 2.603(A)-(B). We affirm.

Defendant's position is that the trial court abused its discretion when it denied defendant's motion to set aside the default, and entered plaintiff's requested default judgment against defendant. "A motion to set aside a default or a 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." MCR 2.603(D)(1). Good cause may be shown by demonstrating: (1) a procedural irregularity or defect; or (2) a reasonable excuse for failing to comply with the requirements from which the default arose. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999).

Defendant first asserts that, because the appraisal underlying the condemnation valuation was completed approximately eleven months before the condemnation complaint was filed, plaintiff violated MCL 213.70(3). From this, defendant alleges that this procedural irregularity constituted good cause for setting aside default. However, the statute states that the date of valuation of the property is the date of condemnation for the purpose of determining the condition and the market value of the property; it does not state that the appraisal itself must be

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<sup>1</sup> Defendant also asserts that plaintiff did not establish the necessity of the sanitary sewer for which the subject property was condemned. This Court lacks jurisdiction to consider the issue of necessity in this appeal. MCL 213.56(6) & (7).

conducted at that time. MCL 213.70(3). Defendant offered no evidence showing that the valuation was stale. Therefore, defendant has failed to establish that plaintiff's valuation was procedurally defective, and has thus failed to establish good cause on this basis.

Defendant also fails to establish good cause based upon a reasonable belief in an ongoing course of conduct with plaintiff. It is true that a course of conduct after the filing of a complaint that lulls a party into a false sense of complacency may, in some circumstances, constitute good cause. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 536-537; 672 NW2d 181 (2003). Here, though, there was no mutual course of conduct between the parties after the filing of the complaint, and plaintiff did nothing to mislead defendant into believing that it did not have to respond to the complaint. Because defendant has failed to establish that it had good cause to have the default and default judgment set aside, we do not reach the question of whether defendant presented a meritorious defense.

Finally, defendant contends that, despite the default entered against it, the trial court abused its discretion by failing to hold a hearing under MCR 2.603(B)(3)(b)(ii) on the issue of what constituted just compensation. "While the question of a defendant's liability is cemented by a default, a defendant has a right to participate where further proceedings are necessary to determine the amount of damages." *Midwest Mental Health Clinic, PC v Blue Cross & Blue Shield of Michigan*, 119 Mich App 671, 675; 326 NW2d 599 (1982), citing *Wood v Detroit Automobile Inter-Ins Exchange*, 413 Mich 573; 321 NW2d 653 (1982). Defendant, however, has failed to establish that further proceedings were necessary to determine the amount of damages, and its claim must therefore fail.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Donald S. Owens