

STATE OF MICHIGAN
COURT OF APPEALS

DEPARTMENT OF TREASURY,

Plaintiff-Appellee,

v

GUSS LOWE,

Defendant-Appellant.

UNPUBLISHED

September 20, 2007

No. 273195

Wayne Circuit Court

LC No. 05-533524-CZ

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant, acting in propria persona, appeals as of right from a circuit court order granting plaintiff's motion for summary disposition and entering judgment in plaintiff's favor for \$156,986.17. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to collect unpaid individual income taxes, interest, and penalties of \$3,304.89, and unpaid motor carrier diesel fuel taxes, interest, and penalties of \$153,681.28. The complaint alleged that defendant failed to appeal the assessments within the time set by law. The complaint was supported by two sworn summary of claims, the first referencing the deficiencies in individual income tax for 1995, 1996, and 1997, and the second referencing the deficiencies in motor carrier diesel fuel tax for periods from 1997 to 2002.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (10), arguing that because defendant had not appealed the assessments, they were final and secure from collateral attack pursuant to MCL 205.22.

On June 16, 2006, the circuit court held a hearing on plaintiff's motion for summary disposition. Neither defendant nor defense counsel appeared. The court granted plaintiff's motion and entered judgment against defendant.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Defendant first argues that the circuit court should not have proceeded to hear plaintiff's motion for summary disposition because he was not given notice of the hearing. Assuming arguendo that defendant did not receive notice of the hearing, the lack of notice does not

necessarily entitle him to reversal. Oral argument is not a prerequisite to a valid ruling on a motion for summary disposition. See MCR 2.119(E)(3), and *Fast Air, Inc v Knight*, 235 Mich App 541, 550; 599 NW2d 489 (1999). Defendant does not dispute that he received notice of plaintiff's motion, and he does not claim that he was denied due process. Cf. *Lawrence v Dep't of Corrections*, 81 Mich App 234, 237-238; 265 NW2d 104 (1978). At most, he claims a procedural deficiency, but procedural deficiencies do not always mandate relief. See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 392; 651 NW2d 756 (2002) (summary disposition was proper despite the procedural deficiency that the motions were untimely filed.)

Under MCR 2.613(A), "[A]n error or defect in anything done or omitted by the court or by the parties is not ground for . . . disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." To the extent that the purported lack of notice of the hearing was prejudicial, it was because defendant lost an opportunity to argue an issue for the court's consideration. But defendant had ample opportunity to raise any issue by filing a response to plaintiff's motion in the three-month interval between the filing of the motion and the hearing on June 16, 2006. He failed to do so. The loss of the court's consideration of an issue prior to the ruling is attributable more to defendant's inaction than to the purported lack of notice of the hearing. Under the circumstances, affirmance of the trial court's order is not inconsistent with substantial justice.

Relying on *State Treasurer v Eaton*, 92 Mich App 327; 284 NW2d 801 (1979), defendant argues that the circuit court should not have proceeded with this case based on tax returns that were prepared by the state and in dispute before the Tax Tribunal.

Defendant first raised this issue (and presented his supporting evidence) in his "MOTION TO DISMISS CASE OR STAY THE TRIAL PENDING TAX TRIBUNAL DECISION," which the circuit court treated as a motion for reconsideration. Because the evidence that defendant was challenging the assessments was not presented to the circuit court before its ruling on the motion for summary disposition, this Court will not consider the evidence in evaluating the court's ruling. See *Maiden, supra*, p 126 n 9; *Quinto v Cross & Peters Co*, 451 Mich 358, 366 n 5; 547 NW2d 314 (1996). Therefore, we review the issue in terms of whether the circuit court abused its discretion by denying the motion for reconsideration.

This Court reviews for an abuse of discretion a trial court's decision on a motion for reconsideration. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). "The rule allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000). Although the trial court has considerable discretion in deciding a motion, this Court will not find an abuse of discretion in the denial of a motion for reconsideration that rests on a legal theory and facts that could have been pleaded or argued before the court's original order. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

In this case, defendant's argument and supporting evidence could have been raised and presented before the circuit court granted summary disposition to plaintiff. The attachments to defendant's motion indicate that defendant mailed the petition to the Tax Tribunal on May 8, 2006, more than a month before the circuit court decided plaintiff's motion. Moreover, the decision on which defendant relies, *State Treasurer, supra*, is inapposite. It addressed the proper

forum for collateral review of a tax assessment under the General Property Tax Act as provided by former MCL 211.66 and former MCL 211.76, which have since been repealed. There is no similar statute that authorizes collateral review of the assessments at issue here. Further, *State Treasurer* was decided before the provisions precluding collateral review were added to MCL 205.22 by 1986 PA 58.

Finally, defendant argues that the circuit court “abused its discretion when it refused to set aside the default judgment entered without notice on a tax liability in dispute in the Tax Tribunal.” He asserts that the circuit court entered a “default judgment” because he did not appear, that the motion to set aside was made pursuant to MCR 2.603(D), that he had a reasonable excuse for not appearing (i.e., he did not receive notice), and that he has a meritorious defense because of pending proceedings in the Tax Tribunal.

Assuming arguendo that the circuit court should have treated defendant’s motion as one to set aside a default judgment, defendant is not entitled to relief. The characterization of the circuit court’s order as a “default judgment” is inaccurate. There is no indication that the court entered judgment against defendant pursuant to MCR 2.603. A default had not been entered against defendant, plaintiff’s motion did not request a default judgment, and the circuit court did not refer to a “default judgment” at the hearing or in its order. Because there is no basis for concluding that the circuit court entered a default judgment pursuant to MCR 2.603, defendant’s reliance on MCR 2.603(D) as a basis for relief from the circuit court’s order is misplaced.

Moreover, there is no reason to assume that the court’s ruling was attributable to defendant’s absence at the hearing. Granting summary disposition against a party for non-appearance at a hearing is inappropriate; MCR 2.116 “is not a rule of sanction.” See *Brenner v Kolk*, 226 Mich App 149, 155; 573 NW2d 65 (1997). However, the court’s action in this case was appropriate in light of defendant’s failure to file any response to plaintiff’s motion for summary disposition. The evidence before the court included two sworn summary of claims that referenced the deficiencies in individual income tax for 1995, 1996, and 1997, and the deficiencies in motor carrier diesel fuel tax for periods from 1997 to 2002. Plaintiff persuasively argued that the assessments were conclusive pursuant to MCL 205.22. Absent any evidence or contrary argument by defendant, the circuit court properly granted summary disposition to plaintiff.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood