STATE OF MICHIGAN

COURT OF APPEALS

WAYNE COUNTY EXECUTIVE, COUNTY OF WAYNE, WAYNE COUNTY PROSECUTOR, MAYOR OF DETROIT, and CITY OF DETROIT,

Plaintiffs-Appellees,

v

526 EDGEWOOD, 527 EDGEWOOD, 6100 GRAYTON, 4244 HARVARD, 4414 KENSINGTON, 15915 RUTHERFORD, 4414 THREE MILE DRIVE, 4618 THREE MILE DRIVE, 4715 THREE MILE DRIVE, and 128 WOODLAND,

Defendants,

and

BANK OF NEW YORK,

Appellant.

UNPUBLISHED
May 5, 2009

No. 282749
Wayne Circuit Court
LC No. 07-702597-CH

Before: Beckering, P.J., and Talbot and Donofrio, JJ.

PER CURIAM.

This appeal involves appellees' complaint against property known as 4715 Three Mile Drive in Detroit, Michigan under Wayne County's nuisance abatement program. Appellant Bank of New York, as trustee for certificate holders CWABS, Inc., asset-backed certificates series 2005-9, owned the property at the time appellees filed their complaint. The trial court entered a default judgment declaring the property to be a nuisance and transferring its title to Wayne County "in order to abate the nuisance in accordance with Wayne County Enrolled Ordinance 2005-095, and in order to equitably defray the cost of abatement of the nuisance, as well as actual attorney fees and costs." Angela Crowder thereafter purchased the property from Wayne County for $7,100. Appellant later moved to set aside the default judgment, alleging that it did not receive proper notice of the nuisance abatement action, the trial court lacked personal jurisdiction over it, and it had sold the property to an innocent purchaser, Hugh Bazzi. In an order dated December 4, 2007, the trial court set aside the default judgment, required appellant to pay $7,100 to Crowder, and declared its order a final order disposing of all claims and dismissing

the case.[1] Appellant appeals as of right, seeking relief from the trial court's order only with respect to the required payment of $7,100 to Crowder. In other words, appellant agrees with that part of the December 4 order that sets aside the default judgment, but contests the court's imposition of a $7,100 payment to Crowder. Due to the inability to discern from the record either the grounds upon which the trial court set aside the default judgment or the basis for its imposition of a payment to Crowder, we must vacate the December 4, 2007, order in its entirety and remand for further proceedings.

A trial court's decision regarding a motion to set aside a default or default judgment under MCR 2.603(D) is reviewed for a clear abuse of discretion. *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003); *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220-221; 760 NW2d 674 (2008). The imposition of other conditions for setting aside a default or default judgment, being permissive under MCR 2.603(D)(4), is also reviewed for an abuse of discretion. See generally *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001) (court rules are construed in the same manner as statutes); *Johnson v Johnson*, 276 Mich App 1, 8; 739 NW2d 877 (2007) (as a matter of statutory construction, the permissive word "may" should ordinarily be given its plain and accepted meaning unless doing so would clearly frustrate the legislative intent). But "[a] judge may properly attach only those conditions necessary to prevent advantage to the tardy defendant and to relieve the plaintiff of prejudice attributable to defendant's delay in answering . . . ." *Bigelow v Walraven*, 392 Mich 566, 574; 221 NW2d 328 (1974). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

After considering the parties' arguments, we conclude that it is necessary to vacate the trial court's order in its entirety and remand for further proceedings.[2] Rather than decide whether the nuisance abatement action should be reopened because of appellant's claim of defective service of process[3] or the other grounds raised in the motion, the trial court focused on the

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[1] The order also required all parties to execute any and all documents necessary to carry out and effectuate the order, released the Lis Pendens, and required that the order be recorded with the Wayne County Register of Deeds.

[2] Although not an issue on appeal, we note that the trial court's written order is inconsistent with its oral ruling. It is apparent from the trial court's oral ruling that it intended a conditional order directed at the competing titleholders of the property, neither of whom were parties to the action. The court agreed to "grant the motion to set aside the default, upon payment by your third party purchaser [appellant's purchaser] to your third party purchaser [Wayne County's purchaser] of 71 hundred dollars," which it determined "concludes the matter." However, the court's written order contains no conditional language and substitutes appellant for its third-party purchaser, thus making appellant responsible for paying $7,100 to Crowder. Generally, a trial court speaks through its written orders, and not its oral pronouncements. *Tiedman v Tiedman*, 400 Mich 571, 576; 225 NW2d 632 (1977).

[3] Although appellant also argued that personal jurisdiction was lacking, we note that deficient service and personal jurisdiction present separate aspects of due process. See generally MCR 2.105(J)(1) (service of process rules are intended to satisfy due process notice requirements, and not to limit or expand a court's jurisdiction over a defendant); *Krueger v Williams*, 410 Mich

(continued…)

competing claims of two nonparties and which of them should be accorded superior title rights. Unlike an action to quiet title, where a court decides which party has a superior right or title to property, *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999), a nuisance abatement action requires a nuisance in need of abatement. *Ypsilanti Twp v Kircher*, 281 Mich App 251, 270; 761 NW2d 761 (2008).

On appeal, appellees appear satisfied with the trial court's decision that Wayne County's purchaser be paid $7,100. But, the effect of the trial court's decision granting appellant's motion to set aside the default judgment and dismissing the case leaves appellees without any declaration that the property constituted a nuisance, and without title to the property or any other judicial remedy concerning the alleged nuisance. Further, when examined as a conditional ruling, the effect of the trial court's oral ruling leaves Bazzi–the only apparent party left in the chain of title–responsible for paying the $7,100. Logically, if the trial court's intent was to undo the title of Wayne County and its purchaser, Wayne County–the recipient of the $7,100 purchase price–would be the proper party to return the money.

Regardless, a motion to set aside a default judgment is not intended to resolve the merits of a claim. Absent an order providing for Bazzi to be substituted for appellant under MCR 2.202(B),[4] based on evidence that appellant transferred whatever interest it had in the property to Bazzi, a principled approach would have required a decision on whether appellant established grounds for reopening the nuisance abatement action under MCR 2.603(D) and, if so, whether costs or other conditions should be imposed under MCR 2.603(D)(4), consistent with the purpose to "prevent advantage to the tardy defendant" and relieve appellees of prejudice attributed to the delay. *Bigelow*, *supra* at 574. Because the trial court failed to properly exercise its discretion, we vacate its order setting aside the default judgment in its entirety and remand the case to the trial court for further consideration of the motion, including resolution of any factual issues necessary to decide whether appellant demonstrated grounds to set aside the default judgment.

The trial court's order setting aside the default judgment is vacated and the case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Pat M. Donofrio

(…continued)

144, 157-158; 300 NW2d 910 (1981) ("To assert jurisdiction sufficient minimum contacts must exist between the forum, the defendant and the subject matter of the litigation so as not to offend traditional notions of fair play and justice").

[4] MCR 2.202(B) provides that "[i]f there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. . . ."