

STATE OF MICHIGAN
COURT OF APPEALS

NORTHLAND TOWERS ASSOCIATES, L.P.,

Plaintiff-Appellant,

v

CHRISTIAN TELEVISION NETWORK, L.
PLUMMER COMMUNICATIONS and GLENN
PLUMMER,

Defendants,

and

AMBASSADORS FOR CHRIST CHURCH,

Garnishee Defendant-Appellee.

UNPUBLISHED

February 8, 2011

No. 294936

Oakland Circuit Court

LC No. 2004-056584-CK

Before: K. F. KELLY, P.J., AND GLEICHER AND STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting garnishee defendant Ambassadors for Christ Church's (Ambassadors) motion to set aside the default judgment. We reverse.

This case involves an underlying action between plaintiff and defendant, Glenn Plummer. Plummer signed a promissory note on behalf of defendants, Christian Television Network and L. Plummer Communications, for leased space. Both corporations defaulted on the lease payments, and plaintiff eventually issued a writ of garnishment against Ambassadors to garnish Plummer's income. However, for reasons discussed below, Ambassadors failed to answer the writ of garnishment, and plaintiff obtained a default judgment against Ambassadors for the full amount due to plaintiff by Plummer. Ambassadors filed a motion to set aside the default judgment, which the trial court granted. On appeal, plaintiff first argues that the trial court abused its discretion in setting aside the default judgment as void because service of process was proper. We agree.

"The question whether a default or default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of that

discretion.” *Park v American Cas Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). “An abuse of discretion occurs when the trial court’s decision is outside the range of reasonable and principled outcomes.” *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). Whether the court rules authorize the setting aside of a default judgment under particular circumstances involves a question of law, which this Court considers de novo. *CAM Const v Lake Edgewood Condo Ass’n*, 465 Mich 549, 553; 640 NW2d 256 (2002). “A trial court’s finding of fact will not be set aside unless it is clearly erroneous.” *Nat’l Car Rental v S & D Leasing, Inc*, 89 Mich App 364, 369; 280 NW2d 529 (1979).

MCR 2.612(C)(1)(d) provides that a party is entitled to relief from a final order or judgment when “[t]he judgment is void.” “A judgment is generally ‘void’ when the trial court lacked jurisdiction over the person or over the subject matter of the action.” 3 Dean & Longhofer, *Michigan Court Rules Practice*, pp 478-479. A court usually obtains personal jurisdiction over a defendant “by service of process.” *Isack v Isack*, 274 Mich App 259, 266; 733 NW2d 85 (2007). “[S]ervice of the summons is a necessary part of service of process,” and if the plaintiff completely fails to ensure service of the summons, the court does not obtain personal jurisdiction over the defendant. *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991).

“The overriding purpose of service of process rules is to ensure actual notice and opportunity to defend.” *H & L Heating Co v Bryn Mawr Apartments of Ypsilanti, Ltd*, 97 Mich App 496, 502-503; 296 NW2d 354 (1980). MCR 3.101(F), which provides the rules for service of writs of garnishment, states:

- (1) The plaintiff shall serve the writ of garnishment, a copy of the writ for the defendant, the disclosure form, and any applicable fees, on the garnishee within 91 days after the date the writ was issued in the manner provided for the service of a summons and complaint in MCR 2.105.
- (2) The garnishee shall within 7 days after being served with the writ deliver a copy of the writ to the defendant or mail a copy to the defendant at the defendant’s last known address by first class mail.

MCR 2.105(D), which sets forth the rules for service of process upon domestic and foreign corporations, provides:

[s]ervice of process on a domestic or foreign corporation may be made by

- (1) serving a summons and a copy of the complaint on an officer or the resident agent;
- (2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;
- (3) serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do

business by failing to keep up its organization by the appointment of officers or otherwise, or whose term of existence has expired;

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Corporation and Securities Bureau if (a) the corporation has failed to appoint and maintain a resident agent or to file a certificate of that appointment as required by law; (b) the corporation has failed to keep up its organization by the appointment of officers or otherwise; or (c) the corporation's term of existence has expired.

These court rules reflect the discretionary nature of service of process upon a registered agent of a corporation. While MCL 450.2241¹ and MCL 450.2246² require that a corporation appoint a registered agent who may be served on behalf of the corporation, MCR 3.101(F) and MCR 2.105(D) make clear that service of process upon the corporation may be made through either the corporation's registered agent, or an officer of the corporation. Thus, a creditor is not required to serve a writ of garnishment upon a garnishee defendant's registered agent, but such

¹ MCL 450.2241 provides:

[e]ach domestic corporation and each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state: (a) A registered office which may be the same as its place of business. (b) A resident agent, which agent may be either an individual resident in this state whose business office is identical with the corporation's registered office, a domestic or domestic business corporation, or a foreign or foreign business corporation authorized to conduct affairs or transact business in this state and having a business office identical with the corporation's registered office.

² MCL 450.2246 provides:

(1) The resident agent so appointed by a corporation is an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) A person, whether a resident or nonresident of this state, by acceptance of election, appointment, or employment as a director or officer of a corporation organized under this act or in existence on the effective date of this act, by such acceptance is held to have appointed the resident agent of the corporation as the person's agent upon whom process may be served while the person is a director or officer, in any action commenced in a court of general jurisdiction in this state, arising out of or founded upon any action of such a domestic corporation or of such person as a director or officer of the domestic corporation. Upon accepting service of process, the resident agent shall promptly forward it to the director or officer at the director or officer's last known address.

service would generally be considered proper and confer the trial court jurisdiction over the garnishee defendant. See *Isack*, 274 Mich App at 266.

The issue in this case arises because the writ of garnishment to garnish Plummer's income from Ambassadors was served upon Plummer, who is both an employee and the registered agent of Ambassadors. Defendant argues that this situation is analogous to the facts in *John W Masury & Son v Lowther*, 299 Mich 516; 300 NW 866 (1941). We disagree. In *Lowther*, the writ of garnishment was served upon an employee of the foreign corporation defendant. The employee was an agent of the defendant only by virtue of his employment. The Court found that the inherent conflict between the employee's acceptance of service on behalf of his employer and his own interest in evading the underlying judgment rendered the service nugatory. *Id.* at 517-519, 524. In contrast, Plummer was a designated resident agent for service of process. He was selected by defendant to receive service of process in accordance with a detailed system for serving corporations developed by the Supreme Court long after the 1941 ruling in *Lowther*. He was, in fact, defendant's fiduciary. While his failure to deliver the papers to the appropriate person may have been due to mistake or even excusable neglect, his status as the chosen party for receipt of service distinguishes this case from *Lowther*.

Plaintiff is correct in its argument that service of process upon Plummer met the letter of the law. While there were several other agents of Ambassadors that plaintiff could have easily served instead of Plummer, or plaintiff could have mailed service of process to Ambassadors, it is wholly inappropriate to ask a plaintiff to investigate which of those agents had a conflict. See MCR 3.101(F) (1); MCR 2.105(D). The trial court abused its discretion in finding that service of process was insufficient and the default judgment was void.

We note that Ambassadors argues for the first time on appeal that the default judgment entered against it was also illegal under various state and federal laws. We decline to address this issue because it was not properly preserved. *Walters v Nadue*, 481 Mich 377, 387; 751 NW2d 431 (2008).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens