

STATE OF MICHIGAN
COURT OF APPEALS

In re FORFEITURE OF PROPERTY AT 4010
CRAWFORD RD CASS CITY, MI

PEOPLE OF MICHIGAN, TUSCOLA
PROSECUTING ATTORNEY, and THUMB
NARCOTICS UNIT,

UNPUBLISHED
December 13, 2011

Plaintiffs-Appellees,

v

No. 300552
Tuscola Circuit Court
LC No. 10-026000-cf

4010 CRAWFORD ROAD CASS CITY MI, and
\$177,

Defendants,

and

PATRICK ANDREW MCDONALD,

Claimant-Appellant.

Before: MURPHY, C.J., and JANSEN and OWENS, JJ.

PER CURIAM.

Claimant Patrick Andrew McDonald appeals as of right from an order of the circuit court denying his motion to set aside a default judgment against him. We affirm.

On April 12, 2010, members of the Thumb Narcotics Unit (TNU) used a confidential informant to conduct a controlled purchase of marijuana from claimant at his residence. As a result of the controlled buy and subsequent search, plaintiff sought forfeiture of defendant's property. On June 4, 2010, the parties' counsel entered into an agreement to extend the time for claimant to file an answer to the summons and complaint from June 7, 2010 to June 28, 2010. Claimant failed to file an answer by the new deadline, and on July 27, 2010, plaintiff sought and obtained a default forfeiture of claimant's property from the Tuscola County Clerk's Office. Plaintiff thereafter filed a motion for default judgment under MCR 2.603(B), and claimant moved to set aside the default. The circuit court granted the former and denied the latter. We

now review the trial court's decision for an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

MCR 2.603(D)(1), which governs the setting aside of defaults, provides, "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." Good cause and a meritorious defense should be considered separate inquiries. *Alken-Ziegler*, 461 Mich at 229. Good cause may be shown through "(1) a substantial procedural defect or irregularity or (2) a reasonable excuse for the failure to comply with the requirements that created the default." *Koy v Koy*, 274 Mich App 653, 658; 735 NW2d 665 (2007). Further, "if a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice." *Alken-Ziegler*, 461 Mich at 233-234.

Claimant argues that the failure to comply with the deadline for filing a response was the result of a computer crash that destroyed his counsel's upcoming calendar. Claimant asserts that this presents a reasonable excuse for failure to comply with the requirements that created the default. That claimant's counsel allegedly lost computer records on June 15, 2010 does not present a reasonable excuse for failure to file an answer before the June 28, 2010 extended deadline. The alleged computer failure occurred well in advance of the deadline, allowing claimant more than sufficient time to address the problems the event posed in order to successfully meet his obligations with respect to this significant litigation. Moreover, claimant still had failed to file an answer as of July 27, 2010, the date on which plaintiff sought entry of default. Given this continuing failure to file in response to the requested forfeiture, the trial court was soundly within its discretion in finding that the alleged computer crash did not represent a reasonable excuse and, consequently, good cause for setting aside the default.

While we need not reach the issue, we also conclude that claimant also failed to establish a meritorious defense. Claimant's property was potentially subject to forfeiture under MCL 333.7521(1)(f), which states in relevant part that the following is subject to forfeiture:

Any thing of value that is furnished or intended to be furnished in exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article that is traceable to an exchange for a controlled substance, an imitation controlled substance, or other drug in violation of this article or that is used or intended to be used to facilitate any violation of this article including, but not limited to, money, negotiable instruments, or securities. .

..

Our state Supreme Court has held that "real property which has allegedly been used to facilitate a violation of the controlled substances act[, MCL 333.7101 *et seq.*,] may only be forfeited if the party seeking forfeiture establishes that there was a 'substantial connection' between the realty and the underlying illegal transaction." *In re Forfeiture of \$5,264*, 432 Mich 242, 262; 439 NW2d 246 (1989).

A search of claimant's residence following the controlled buy uncovered 22 suspected marijuana plants, several pills suspected to be Alprazolam, several bags of marijuana, marijuana

roaches, marijuana plant material, a digital scale, a box of plastic baggies, lights and other growing equipment, and \$177 in U.S. currency. This evidence tends to show a substantial connection between claimant's residence and the underlying illegal transaction.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Donald S. Owens