STATE OF MICHIGAN

COURT OF APPEALS

CHARLEVOIX GOLF & COUNTRY CLUB, LLC, CHARLEVOIX CC FOOD & BEVERAGE, LLC, and DAVID J. MOCINI, Plaintiffs/Counter-Defendants-Appellees,	UNPUBLISHED January 24, 2012
v	No. 300892 Charlevoix Circuit Court
DOUGLAS A. TROSZAK, Defendant/Counter-Plaintiff-Appellant.	LC No. 09-075522-CZ

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this dispute over the management and ownership of two limited liability companies, defendant/counter-plaintiff Douglas A. Troszak appeals as of right the trial court's orders entering a default judgment in favor of plaintiffs/counter-defendants Charlevoix Golf & Country Club, LLC (Charlevoix Golf), Charlevoix CC Food & Beverage, LLC (Charlevoix Food & Beverage), and David J. Mocini, as to all the claims at issue. Under the facts of this case, we conclude that the trial court did not abuse its discretion when it denied Troszak's motion to adjourn the trial, ordered a partial default, and granted his trial lawyer's motion to withdraw. We also conclude that the trial court did not abuse its discretion when it refused to grant Troszak relief from the default and decided to enter a further default as to the remaining issues for trial. For these reasons, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In March 2009, Mocini and Troszak entered into operating agreements governing the operation of Charlevoix Golf and Charlevoix Food & Beverage. In the agreements, Mocini and Troszak apparently agreed that Mocini would have a 75% interest in each company and that Troszak would have the remaining 25% interest. However, there was a version of the operating agreement for Charlevoix Food & Beverage that listed the interests as 50% for Mocini and 50% for Troszak. According to the Charlevoix Golf agreement, Mocini made an initial capital contribution of $300,000 and Troszak made an initial capital contribution of a guarantee and a pledge of personal services. Later that same month, Charlevoix Golf and Charlevoix Food &

Beverage purchased the assets owned by a golf course from a holding company. Charlevoix Golf purchased the real property and Charlevoix Food & Beverage purchased the liquor license and business assets from a restaurant and bar on the golf course's property.

Soon after the formation of the companies, the relationship between Mocini and Troszak deteriorated. In September 2009, Mocini—along with Charlevoix Golf and Charlevoix Food & Beverage—sued Troszak for declaratory relief. In the complaint, Mocini and the companies alleged that Troszak had harmfully interfered with the day-to-day operations of the companies and failed to provide the services that he pledged to provide in exchange for his share of the companies. For that reason, they asked the trial court to declare that Troszak had forfeited his interest in the companies.

In November 2009, Troszak counter-sued. He alleged that he had a 50% interest in Charlevoix Food & Beverage, rather than a 25% interest. He also alleged that Mocini had breached various duties related to his handling of the operations of the companies and had made improper distributions to himself by causing the companies to execute promissory notes in Mocini's favor.

Mocini and the companies filed an amended complaint in that same month. They alleged that Troszak's real interest in Charlevoix Food & Beverage was 25% and that Troszak had breached various duties imposed by statute and under the operating agreements. Mocini also alleged that Troszak had slandered him and should be liable for the resulting damages.

The trial court commenced trial of the parties' claims without a jury on August 30, 2010. The trial began with testimony from Troszak, but the parties agreed to suspend his testimony in order to take a witness out of order. After that witness testified, the trial court adjourned the trial to September 20, 2010, by request of the parties.

On the Monday that the trial was to resume, Troszak's trial lawyer, Joseph Kwiatkowski, informed the court that his client had not shown for the trial. He explained that Troszak had called late on Thursday to say that he would not be able to attend trial on Monday because he was under a court order to attend to a matter at Oakland Circuit Court. Kwiatkowski explained that his client had told him that he was under a court's order to remove a structure from his property and that he had to do so within five days. Because the five-day span including the time set for trial, Troszak told him he would be unable to attend. Kwiatkowski, therefore, asked the trial court to adjourn the trial to a date when Troszak could participate.

The trial lawyer for Mocini and the companies, Edward Engstrom, objected to the adjournment. He stated that it was his understanding that the dispute over the structure had been ongoing for years and that anyone could have supervised the removal of the structure on Troszak's behalf. As such, he argued, the trial court should deny the motion to adjourn and enter a default against Troszak. Specifically, he asked the court to determine that Troszak only had a 25% interest in each company and to terminate his membership. He also asked the trial court to schedule a date to determine whether Troszak's 25% share had any value and to order Troszak to pay $400 in attorney fees.

Kwiatkowski also moved for permission to withdraw as Troszak's counsel. He explained that the attorney-client relationship had "diminished" as a result of some unauthorized communications by Troszak and a disagreement concerning the course of action. Kwiatkowski stated that Troszak was also not responding to his invoices and told him "to cease trial preparation." Despite Troszak's request that he stop preparing for trial, Kwiatkowski felt he had a duty to continue preparations whether he was "paid or not." Kwiatkowski also noted that Troszak had not attended the previous Wednesday settlement conference, although he was available by phone.

After hearing the parties' comments, the trial court noted that the matter in Oakland Circuit Court appeared to be long-standing and that Troszak had not provided a copy of the order that allegedly required him to miss trial. It also explained that the adjournment to the present day had actually been at Troszak's request so that he could review certain tax documents and to accommodate a possible resolution of the case. Given these facts, the trial court determined that there was insufficient basis to warrant an adjournment of the trial without a default on some liability issues. It then ordered an adjournment "on the basis of a default as to the membership . . . in the food and beverage entity." It also ordered Troszak to pay the requested $400 in attorney fees. The court ordered the continuation of the trial, for purposes of valuing the 25% interests, for November 9, 2010. The trial court also granted Kwiatowski's motion to withdraw along with his co-counsel. On the basis of the court's ruling, Engstrom stated that his client would agree to withdraw the slander claim subject to reinstatement should the trial court's ruling be set aside.

In a motion entered on September 27, 2010, Troszak's new trial lawyer asked the trial court to reconsider its decision to enter default. In support of his motion, Troszak submitted an order from the Oakland Circuit Court denying his motion to temporarily restrain Bloomfield Township from tearing down his shed and granting the township permission to commence demolition on Friday, September 17, 2010 "pursuant to the court's May 5, 2010 demolition order." He also submitted an affidavit in which he averred that he had to be present for the demolition to attend to the utilities and insurance.

In reply, Mocini and the companies argued that the trial court should not grant any relief from the default. They noted that Troszak had been ordered to remove the shed within 30 days of an order entered in May, but had failed to comply. As a result, the township was forced to demolish the shed on its own. They argued that Troszak misled the trial court in his affidavit by making it appear as though he had to be present to remove items, supervise the demolition, and turn off the power. In support, they submitted a report from the township that showed that the items from the shed had already been removed by the 17th and that the demolition was complete by the 18th. The contractor also noted in the report that the electrical connection had been severed, staked, and taped. He also indicated that he told the homeowner, presumably Troszak, that he should contact an electrician if he wanted a permanent disconnect

On October 4, 2008, the trial court signed an order setting Troszak's ownership interest at 25% in Charlevoix Food & Beverage and terminating his membership in both companies. It also ordered Troszak to pay $400 in attorney fees and dismissed Mocini's slander claim without prejudice. Finally, it set the date for determining the value of Troszak's 25% interest in both companies for November 9, 2010.

The trial court heard arguments concerning Troszak's motion for relief on October 8, 2010. At the hearing, the trial court stated that it thought Troszak's affidavit was "very deceiving" because, although he claimed that he had to miss the scheduled trial date to attend to the demolition, the demolition was actually "completed on the 18th and the trial was set for the 20th." Troszak's lawyer stated that it was his understanding that Troszak had to be present on the 20th for a final inspection and to ensure that the electricity was off.

The trial court did not accept Troszak argument that he had a valid reason for failing to show for trial and, accordingly, refused to grant relief from the default. In addition, the trial court found it troubling that Troszak had not fully disclosed the facts surrounding the demolition of his shed. And, because Troszak's misleading affidavit forced Engstrom to spend significant time investigating the actual circumstances, the trial court determined that it would be appropriate to order a default on the remaining issue of value and to order Troszak to pay the costs associated with the investigation.

The trial court entered a final order on October 8, 2010. In the order, the court provided that Troszak was in default as to all claims and that he would not be entitled to any compensation for his terminated interests in the companies. It also ordered Troszak to pay an additional $1,673 in attorney fees as a result of his failure "to properly disclose the true facts" concerning the demolition of his shed.

Troszak then appealed to this Court.

II. MOTION TO WITHDRAW

A. STANDARDS OF REVIEW

We shall first address Troszak's claim that the trial court abused its discretion when it allowed his trial lawyer, Kwiatkowski, to withdraw from representing him without granting a continuance. This Court reviews a trial court's decision to permit a lawyer to withdraw from representing his or her client for an abuse of discretion. *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999). This Court will not disturb a trial court's discretionary decision unless it falls outside the range of principled outcomes under the circumstances. *Taylor v Kent Radiology*, 286 Mich App 490, 524; 780 NW2d 900 (2009). However, this Court reviews de novo constitutional questions, such as whether the trial court's decision implicated Troszak's rights under Const 1963, art 1, § 13. See *Harvey v Michigan*, 469 Mich 1, 6; 664 NW2d 767 (2003).

B. UNPRESERVED CLAIM OF ERROR

On appeal, Mocini and the companies argue that Troszak did not properly preserve this claim of error. Specifically, they note that Troszak obtained a new lawyer within days after the trial court granted Kwiatkowski's motion to withdraw and filed a motion "for relief from proceedings" in which he challenged the trial court's decision to grant a partial default. However, he did not challenge the trial court's decision to permit Kwiatkowski to withdraw. For that reason, Mocini and the companies argue that this claim of error is unpreserved and ask this Court to decline to review it.

As our Supreme Court has explained, Michigan generally follows a raise or waive rule of appellate review. *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008). And although our Supreme Court has held that this Court must review unpreserved errors in criminal cases for plain error affecting the defendant's rights, see *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), it has not established a similar holding for civil cases. See *Walters*, 481 Mich at 387-388; see also *Johnson Family Ltd Partnership v White Pine Wireless, LLC*, 281 Mich App 364, 377-378; 761 NW2d 353 (2008) (stating that the failure to properly raise a claim of error before the trial court in a civil case normally constitutes a waiver of that claim and declining to exercise its discretion to review the unpreserved claim under the facts of that case). Nevertheless, this Court has the discretion to overlook preservation requirements. See *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006) (stating that this Court may overlook preservation requirements where the failure to consider the issue would result in a manifest injustice, or if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented). But this Court will exercise its discretion sparingly and only where exceptional circumstances warrant review. *Booth v University of Michigan Bd of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

In this case, Kwiatkowski moved for permission to withdraw on the date when trial was to resume. Although he stated that he notified Troszak of his intent to withdraw, Kwiatkowski knew that Troszak had no intention of being in court on that date. Under these circumstances Troszak did not have the ability to fully and properly contest the motion on the day that the trial court heard arguments on the motion, which was the best time to address the competing interests implicated by the motion. Under these circumstances, we elect to exercise our discretion and consider this claim of error even though Troszak did not challenge the trial court's decision in his subsequent motion for relief. *Foerster-Bolser*, 269 Mich App at 427.

C. THE RIGHT TO REPRESENTATION

Our constitution guarantees a suitor the right to "prosecute or defend his suit, either in his own proper person or by an attorney." Const 1963, art 1, § 13. And this Court has recognized that the right guaranteed by Const 1963, art 1, § 13 might be implicated in situations where a trial court permits a party's lawyer to withdraw. See *Bye v Ferguson*, 138 Mich App 196, 207-208; 360 NW2d 175 (1984).

In that case, the plaintiff sued the defendant for damages arising from a landlord-tenant relationship. *Id.* at 199. On the first day of trial, the defendant's lawyer informed the court that the defendant had not shown and asked for permission to withdraw from the case because the defendant had not paid his legal bills. *Id.* at 199-200. The trial court granted the motion to withdraw and then proceeded with the trial, which ended with a judgment in favor of the plaintiff. *Id.* at 200. On appeal, the defendant argued that the trial court abused its discretion when it denied his motion for relief from the judgment. *Id.* at 202. This Court held that the defendant had the right to expect his trial lawyer to defend his case or give notice of his intent to withdraw and ask for a continuance of the trial. *Id.* at 207. Given that the defendant had no notice and no opportunity to obtain new counsel, the Court held that the trial court abused its discretion when it permitted the defendant's trial lawyer to withdraw and then proceeded with the trial without the defendant. See *id.* at 207-208. The Court explained that the trial court's

decision effectively deprived the defendant of his constitutional right to representation in court. *Id.* at 208.

Here, Kwiatkowski, appeared before the court on the date set for the second day of trial and represented Troszak's interests. Although Kwiatkowski had already informed the court that he wanted permission to withdraw, he also recognized that the trial could not proceed without his client. Accordingly, he moved for a continuance on Troszak's behalf and argued that motion to the best of his ability given the information that Troszak had supplied. And the trial court did not orally grant Kwiatkowski's motion to withdraw until *after* it had determined to grant a partial default, which decision the trial court made despite Kwiatkowski's argument that it would be inappropriate to enter a default where Troszak could not attend as a result of another court's order. Because the default obviated the need for trial on the issue of the parties' ownership interests and whether either Troszak or Mocini engaged in wrongful conduct in the operations of the businesses, the trial court did not proceed to try those issues. That is, unlike the case in *Bye*, the trial court did not hold any substantive proceedings after permitting Kwiatkowski's withdrawal without giving Troszak the benefit of representing himself or obtaining new counsel to represent him. The trial court also rescheduled the trial for the remaining issue—the valuation of the businesses—with ample time for Troszak to secure a new lawyer. Consequently, Troszak had the benefit of his lawyer's representation for both the motion to adjourn and the opposing counsel's motion for partial default. Finally, although Troszak did not have the benefit of an advocate to oppose the motion to withdraw, Kwiatkowski informed the court that he did tell Troszak that he intended to move to withdraw from the case. As such, Troszak had some notice that his trial lawyer intended to withdraw from the case.[1] Cf. *Bye*, 138 Mich App at 207 (noting that there was no record evidence that the defendant in that case had received *any* notice that his lawyer intended to move for permission to withdraw). Under these facts, we cannot conclude that the trial court's decision implicated Const 1963, art 1, § 13.

D. THE MOTION TO WITHDRAW

Once a lawyer appears before the court on behalf of his or her client, the lawyer may not "withdraw from the action or be substituted" without permission from the trial court. MCR 2.117(C)(2). In analyzing whether a trial court has properly permitted a lawyer to withdraw from representing a client, this Court has held that it is logical to "consider the question of withdrawal within the framework of our code of professional conduct." *In re Withdrawal of Attorney*, 234 Mich App at 432. Under those rules, a lawyer may generally withdraw if his or her withdrawal can be "accomplished without material adverse effect on the interests of the client." MRPC 1.16(b). Even if the withdrawal might have an adverse effect on the client's interests, a lawyer may still withdraw where, in relevant part, the client insists on pursuing a repugnant or imprudent objective, the client fails to fulfill an obligation to the lawyer regarding the lawyer's services, the representation will result in an unreasonable financial burden on the

[1] On appeal, Troszak concedes that Kwiatkowski "indicated a desire to withdraw" from the case. However, he claims that Kwiatkowski only told him "one business day" before the trial date. As such, he further maintains, the notice was not reasonable or sufficient.

lawyer or has been rendered unreasonably difficult by the client, or for other good cause. MRPC 1.16(b)(3),(4), (5), and (6). This Court has also held that a lawyer has good cause to withdraw where there has been a breakdown in the attorney-client relationship. See *Ambrose v Detroit Edison Co*, 65 Mich App 484, 488; 237 NW2d 520 (1975).

As noted above, the trial court did not authorize Kwiatkowski to withdraw from representing Troszak until after it had made its decision to deny Kwiatkowski's motion for an emergency adjournment and to enter a partial default against Troszak. And Kwiatkowski represented Troszak with regard to both the motion to adjourn and Mocini's motion for entry of a partial default to the best of his ability given the circumstances. Any deficiency in Kwiatkowski preparedness was occasioned by Troszak's failure to keep Kwiatkowski fully and timely informed about the events leading to his apparent inability to attend trial and his failure to send him the necessary documentation to support his need for an adjournment. As such, the trial court's decision to ultimately permit Kwiatkowski and his co-counsel to withdraw did not implicate either the trial court's decision to deny the motion to adjourn or to enter a default. Moreover, although Troszak now claims that the trial court should not have permitted Kwiatkowski to withdraw without granting a continuance to allow him time to obtain a new lawyer and prepare for trial, the court *did* grant a continuance: it adjourned the trial to November 9 in order to give Troszak "sufficient time . . . to retain substitute Counsel . . . " to handle the remaining issue for trial.

The record also supports the trial court's conclusion that there had been "a breakdown of the attorney/client relationship in several different areas . . . ." Kwiatkowski told the court at the hearing that he had developed a difference of opinion with Troszak that "diminished" the attorney-client relationship: "it was primarily because [Troszak] was seeking a course that we did not recommend and did not support jointly as his attorneys." Despite his misgivings, Kwiatkowski continued to prepare for trial because he felt that there was "evidence that we felt would compel us to either try to settle or go to trial." Kwiatkowsi even continued to prepare for trial after Troszak ordered him to cease trial preparations a week before the first day of trial and stopped paying Kwiatkowski's invoices. He also related that Troszak had made some communications that he had not supported or authorized.

This record plainly supported the conclusion that there had—at a minimum—been a breakdown in the relationship between Troszak and Kwiatkowski, [2] which constituted good cause for permitting Kwiatkowski to withdraw. *Ambrose*, 65 Mich App at 488; MRPC 1.16(b)(6). Further, the trial court's decision to grant the motion came after it had made its decision to enter a default against Troszak and after it granted a significant continuance in order to give Troszak time to secure new representation and prepare for trial on the remaining issues. Hence, in addition to there being good cause to grant the motion, the facts show that the trial court's decision to grant the motion did not have a "material adverse effect" on Troszak's interests. MRPC 1.16(b). Consequently, under these circumstances, we cannot conclude that the

[2] Although Kwiatkowski prudently avoided getting into details, his statements also implicated several other grounds for withdrawal. See MRPC 1.16(b)(3),(4), and (5).

trial court's decision to permit Kwiatkowski to withdraw fell outside the range of principled outcomes. *Taylor*, 286 Mich App at 524.

III. THE DEFAULT SANCTION

A. STANDARDS OF REVIEW

Troszak next argues that the trial court abused its discretion when it decided to enter a partial default against him as a sanction for failing to show for trial. He also contends that the trial court further abused its discretion when it denied his motion for relief from the partial default and imposed a complete default. This Court reviews a trial court's decision to order default as a sanction for a party's failure to attend trial for an abuse of discretion. See *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). This Court likewise reviews a trial court's decision to deny a motion to set aside a default or default judgment for an abuse of discretion. *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003).

B. THE PARTIAL DEFAULT

Under the court rules, a trial court may enter judgment by default against a party that fails to attend trial pursuant to a subpoena. MCR 2.506(F)(6); *Zerillo*, 191 Mich App at 230. Further, the trial court is not required to give notice to the party against whom the default is entered, if the "default is entered for failure to appear for a scheduled trial . . . ." MCR 2.603(B)(1)(d). On appeal, Troszak acknowledges that the trial court had the authority to enter a judgment of default under the court rules as a sanction for his failure to comply with the subpoena. Nevertheless, he argues that the trial court necessarily abused its discretion when it decided to enter a default without first analyzing the factors set forth by the Court in *Vicencio v Ramirez*, 211 Mich App 501; 536 NW2d 280 (1995).

In *Vicencio*, the trial court decided to proceed with trial immediately after a settlement conference in which the parties were unable to agree on a final settlement. However, because the plaintiff was not present for the settlement conference, the trial court sanctioned the plaintiff by dismissing the case. *Id.* at 503-504. On appeal, this Court held that the notice of the settlement conference was not adequate to constitute notice of the trial. Accordingly, the trial court did not have the authority to dismiss the case as a sanction for the plaintiff's failure to attend. *Id.* at 504-506.

Although the holding in *Vicencio* was founded on the lack of notice, the Court went on to note that—even if the notice had been adequate—it would still conclude that the trial court abused its discretion when it dismissed the case. The court explained that dismissal was a "drastic step that should be taken cautiously." *Id.* at 506. And, for that reason, the trial court must "carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper." *Id.* Because the trial court had not evaluated its options on the record, the court in *Vicencio* concluded that the trial court necessarily abused its discretion. *Id.* at 507.

Even if the trial court had considered all its options, the court in *Vicencio* also stated that it would still have concluded that the trial court abused its discretion. The court suggested that, before resorting to dismissal as a sanction, trial courts should normally consider a non-exhaustive list of factors:

> (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. [*Id.*]

Analyzing these factors, the court in *Vicencio* concluded that dismissal was clearly an inappropriate sanction under the facts of that case:

> Here, it is unclear whether plaintiff's absence at the settlement conference was wilful or accidental. However, plaintiff did not have a history of refusing to comply with previous court orders. Moreover, defendant was not unduly prejudiced by plaintiff's absence. There was no record evidence that plaintiff failed to comply with other parts of the court's order. If plaintiff's absence required a sanction, a lesser sanction than dismissal would have better served the interests of justice. Under these circumstances, the trial court abused its discretion in imposing the harsh sanction of dismissal. [*Id.*]

We do not believe that the court in *Vicencio* established a formulaic approach that must be strictly adhered to before a trial court may impose the sanctions of default judgment or dismissal. Rather, in light of the severity of the sanction, the court explained that the trial court must make a sufficient record to justify its decision to impose the sanction; the trial court must evaluate its options and must conclude that dismissal was "just and proper" under the totality of the circumstances. Because there are no specific procedures that the trial court must follow in every case, if it is clear that the trial court understood the gravity of the sanction and imposed it only after considering the circumstances giving rise to the sanction, then the trial court has complied with the requirement that it "evaluate all available options on the record and conclude that the sanction of dismissal is just and proper."[3] *Id.* at 506.

Before analyzing the trial court's decision, we reiterate that the court's decision must be evaluated in context. Here, the trial court did not impose default as a sanction for a mere discovery violation. The parties had already commenced trial and undertaken all the

[3] Our Supreme Court has also not imposed any formulaic requirements on a trial court's decision to impose dismissal as a sanction; rather, even after this Court's decision in *Vicencio*, it has reviewed such decisions to determine whether the imposition of the sanction fell outside the range of principled outcomes under the totality of the circumstances. See *Oram v Oram*, 480 Mich 1163; 746 NW2d 865 (2008). Indeed, at least one Justice has opined that the qualifications on the trial court's authority stated in *Vicencio* have no basis in the law. *Id.* at 1164 (opinion by Corrigan, J.).

concomitant preparations and incurred the associated expenses. Additionally, Troszak was an essential witness and it was plain that the parties intended to continue his testimony on the second day of trial. As such, this was not a situation where the trial could proceed without Troszak or where the parties might otherwise easily mitigate the harm caused by his decision not to attend.

It must also be remembered that the trial court did not impose the default as a sanction for the failure to attend a trial for which Troszak had had no notice. Troszak clearly had notice of the trial. Indeed, he attended the first day of trial and testified at length. He also helped select the date for the resumption of the trial after the trial court agreed to adjourn the trial so that he could review some tax documents. Moreover, it is undisputed that he was served with a subpoena to attend on the date that the trial was set to continue. The trial court also made its decision in light of the fact that Troszak's failure to appear was apparently the last of a series of acts that caused his trial lawyer to seek permission to withdraw, which included his failure to show in person at the agreed upon settlement conference and his failure to fully and timely inform his lawyer about the events that were proceeding in Oakland Circuit Court.

Finally, the trial court's decision must be understood in light of the arguments that Mocini's trial lawyer, Engstrom, made in support of his motion for default. Engstrom argued that trial should not be further postponed to accommodate Troszak because it had already been postponed once in the hope that Troszak might be willing to settle after reviewing the companies' tax returns. He also explained that the matter involving the structure on Troszak's property was apparently "several years old" and that Troszak could have complied with the requirements of the order that he cited as an excuse for not showing by having "someone else do it" or by having "done it last week."

With this background in mind, it is clear from the record that the trial court understood the gravity of the sanction and decided to impose it because the sanction was just under the totality of the circumstances. In making its decision, the trial court explained that Troszak had not supplied a copy of the order that he contended compelled him to miss trial and, as a result, the court was left only with his lawyer's statements on the record. The court also noted that there was reason to believe that the "matter in Oakland County may be a matter of long duration" and that the original adjournment was—in part—to accommodate Troszak's review of "tax information" and to further the potential for settlement at the conference that Troszak did not physically attend. Given these facts, the trial court determined that it would not be just to adjourn the trial without "entry of default as to certain liability issues . . . ." Thus, the trial court plainly rejected Troszak's reason for failing to appear and implicitly found that his decision to miss the trial was willful.

Despite this determination, the trial court did not order a default against Troszak on every claim and issue. The court determined that it would enter a judgment of default as to whether Troszak owned 25% of Charlevoix Food & Beverage and whether he should be terminated as a member of both companies. The trial court also did not enter a default against Troszak as to the claim that he slandered Mocini and it did not enter a default on the value that should be attributed to Troszak's interest in each company. Likewise, the trial court did not address the parties' claims to the extent that they requested damages for misconduct in the operations of the companies, but implicitly determine that there would be no damage claims against either Mocini

or Troszak. The trial court then determined that there should be a trial to determine the value of the companies for purposes of compensating Troszak for his interests. Accordingly, it rescheduled the trial for a later date that gave Troszak sufficient time to hire a new lawyer and prepare. It, however, ordered Troszak to pay $400 to Engstrom and reserved the right to enter further default if Troszak did not pay the ordered fee.

It is clear from the trial court's decision to order a partial default on a limited subset of issues without imposing personal liability for damages, that the court understood the gravity of its decision and tailored it to the circumstances of the behavior giving rise to the default. It also carefully crafted the default to protect Troszak's potential pecuniary interest in the companies and to avoid making Troszak liable for damages that were not found after a trial on the merits. Under these facts, we cannot conclude that the trial court's decision fell outside the range of principled outcomes. Therefore, the trial court did not abuse its discretion when it entered the initial partial default against Troszak. *Taylor*, 286 Mich App at 524.

We also do not agree with Troszak's contention—to the extent that he made such a contention—that the trial court abused its discretion when it entered a further default on the valuation of his 25% interest in the companies after the hearing on October 8, 2010. On appeal, Troszak does not specifically challenge this decision except to note in passing that the trial court did not discuss the *Vicencio* factors on October 8, 2010. Rather, his argument focuses on whether the trial court should have granted his motion for relief from the earlier decision to enter a partial default judgment. Accordingly, we conclude that he has abandoned any claim of error that the trial court abused its discretion when it entered a further default. See *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 173; 721 NW2d 233 (2006). In any event, even if we were to consider the trial court's decision to enter a further default on the valuation, we would conclude that the trial court did not abuse its discretion.

As already noted, the trial court entered the partial default with the understanding that it reserved the right to enter a further default if Troszak failed to comply with its order to pay $400. In response, to the trial court's initial partial default, Troszak hired a new lawyer and immediately moved for relief from the partial default. Troszak alleged in his motion that he had to miss the scheduled trial date because, in order to comply with the Oakland Circuit Court's order, he had to be "at his residence during the demolition process" and the "demolition process" was not complete until the Wednesday after the trial was to resume. In support of his motion, Troszak attached the Oakland Circuit Court's order permitting the township to start demolition on September 17, 2010 pursuant to the court's order of May 5, 2010. He also attached an affidavit in which he averred that the demolition was set for September 17, 2010 "with five days to complete." He also averred that his "presence" was required "during this period" to attend to the shed's contents, utilities, and insurance issues.

At the hearing on Troszak's motion for relief from the partial default, the trial court noted that this affidavit was "deceptive" and stated that it "troubles the court." When his affidavit is read in light of other known facts about the demolition of his shed, it is clear that Troszak omitted certain key details about the events. Troszak implied that he missed the trial scheduled for September 20 because the demolition ordered by the circuit court was to begin on September 17 and would take five days to complete. But he failed to state that the township's contractors actually completed the demolition by September 18, 2010. He also averred that his "presence"

was required to attend to the contents, utilities, and insurance. Yet a report filed by the contractors showed that the shed was ready for demolition and that demolition began on September 17. It also showed that the utilities were adequately safeguarded after the demolition. Hence, it appears that Troszak deliberately framed his averments in such a way as to make it appear that he was compelled to miss the September 20, 2010 trial date as a result of the Oakland Circuit Court's order even though the order merely gave the township permission to proceed with the demolition. A full and fair representation of the facts showed that the demolition ultimately did not conflict with the September 20 trial date and that any additional requirements attendant to the demolition could have been handled by third parties or scheduled around the trial date.

Accordingly, we agree with the trial court that, when Troszak's motion for relief is read as a whole and in light of his averments, it appears that he chose to present the facts in a false light. Under those circumstances, we cannot conclude that the trial court abused its discretion by amending its earlier partial default. *Zerillo*, 191 Mich App at 230.

C. RELIEF FROM THE DEFAULT

This Court's review of a trial court's decision to grant a default judgment is sharply limited where the trial court has validly exercised its discretion. *AMCO*, 469 Mich at 94, quoting *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). A motion to set aside a default "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). A party may show good cause by establishing that there was a substantial defect or irregularity in the proceeding that led to the default or that there was a reasonable excuse for the failure to comply with the requirements which created the default. *Alken-Ziegler*, 461 Mich at 230.

On appeal, Troszak contends that the trial court should have set his default aside because there was a clear irregularity in the entry of the default; namely, that the trial court erred when it entered default without considering the factors identified under *Vicencio*. However, as we already determined, the trial court's initial decision to enter a partial default against Troszak was within the range of principled outcomes under a totality of the circumstances and the trial court's statements on the record in support of its decision minimally complied with the requirements under *Vicencio*. As such, that argument is unavailing. He also claims that he had a reasonable excuse for missing the scheduled trial date. But, even if one were to conclude that Troszak fully and fairly presented the facts that led him to miss the September 20, 2010 trial date, it is plain that Troszak failed to carry his burden to show good cause for relief from the default. See *AMCO*, 469 Mich at 94-95. Therefore, the trial court did not abuse its discretion when it denied Troszak's motion for relief from the default judgment.

There were no errors warranting relief.

Affirmed. As the prevailing parties, Charlevoix Golf, Charlevoix Food & Beverage, and Mocini may tax their costs. MCR 7.219(A).

/s/ David H. Sawyer
/s/ William C. Whitbeck
/s/ Michael J. Kelly