

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JENNIFER ANN BANNERTON,

Plaintiff-Appellee,

v

SCOTT TERRY BANNERTON,

Defendant-Appellant.

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UNPUBLISHED

April 9, 2020

No. 350931

Macomb Circuit Court

Family Division

LC No. 2018-003891-DM

Before: TUKEL, P.J., and MARKEY and SWARTZLE, JJ.

PER CURIAM.

Defendant appeals as of right the trial court’s entry of a default judgment of divorce. We affirm.

**I. FACTUAL BACKGROUND**

Plaintiff and defendant were married in 2014 and are the parents of two minor children. After plaintiff filed a complaint for divorce on November 29, 2018, the parties litigated the physical and legal custody of the minor children, employing the services of the Friend of the Court (FOC). On January 22, 2019, the FOC filed its final recommendation with the trial court, recommending a parenting-time schedule and that defendant make monthly child-support payments. On January 28, 2019, the trial court entered an order adopting the FOC’s final recommendation and ordered that the parties only communicate through Family Wizard.<sup>1</sup> On February 14, 2019, defendant’s counsel filed a motion to withdraw, which the trial court granted. Defendant lacked legal counsel until July 31, 2019.

On February 14, 2019, plaintiff filed a motion to show cause, arguing that defendant violated the trial court’s order that the parties only communicate through Family Wizard; she

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<sup>1</sup> Family Wizard is a platform through which separated parents can communicate and manage expenses and schedules related to their children.

attached text messages that defendant sent her to prove her allegations. The text messages were aggressive, threatening, and included racial slurs. The trial court scheduled a hearing on plaintiff's motion, but, for reasons that are unclear from the lower court record, the motion was dismissed.

On March 7, 2019, defendant was scheduled for a FOC custody interview. The interview was adjourned because court officers had to restrain and physically remove defendant from the courthouse. Defendant then failed to appear at an April 18, 2019 settlement conference. When defendant also failed to appear at the June 11, 2019 trial, the trial court granted plaintiff's request for the entry of a default. Soon after, plaintiff filed a motion for entry of the default judgment of divorce. After the trial court held a hearing and took proofs, it entered the default judgment of divorce.

Defendant then filed a motion to set aside the default judgment of divorce, arguing that his failure to appear at the April 18, 2019 settlement conference and June 11, 2019 trial were because of his unfamiliarity with the legal process. Defendant averred that he lacked the funds to obtain legal counsel that would have advised him of his court appearances. Defendant obtained new legal counsel shortly before filing the motion to set aside the default judgment of divorce. At the hearing on defendant's motion to set aside the default judgment, defendant claimed that, in his unrelated pending criminal case, he was ordered to undergo an examination regarding "his mental faculties." Defendant did not provide further details regarding his mental health or the status of his criminal case. The trial court denied defendant's motion to set aside the default judgment of divorce, concluding that defendant failed to establish good cause. This appeal followed.

## II. ANALYSIS

Defendant argues that the trial court abused its discretion when it denied his motion to set aside the default judgment of divorce because, at the time of the default judgment's entry, defendant "was of questionable mental capabilities and was later deemed incompetent to stand trial in a criminal proceeding." We disagree.

This Court reviews a trial court's decision on a motion to set aside a default or a default judgment for an abuse of discretion. *Koy v Koy*, 274 Mich App 653, 657; 735 NW2d 665 (2007). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). While the law favors the determination of claims on the merits, setting aside defaults and default judgments that have been properly entered is generally disfavored. *Shawl v Spence Bros*, 280 Mich App 213, 221; 760 NW2d 674 (2008). This Court's review is "sharply limited" absent a clear abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999).

A motion to set aside a default judgment in a domestic relations case “shall be granted only . . . if good cause is shown.” MCR 3.210(B)(6)(a).<sup>2</sup>

“Good cause” can be shown by: (1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand.” *Shawl*, 280 Mich App at 221 (citations and quotation marks omitted).]

Defendant seemingly argues that the state of his mental health at the time of the default judgment’s entry constitutes a reasonable excuse for his failure to appear at two court appearances, violations of the trial court’s communication order, and forceful removal from a FOC custody interview. Defendant proffers no documentation or other evidence regarding his mental-health status between the March 7, 2019 FOC custody interview and the June 11, 2019 trial, nor does he provide proof that he was, in fact, declared incompetent to stand trial in a criminal proceeding. Defendant similarly failed to identify a particular diagnosis, describe the extent of his purported illness, or explain how his purported illness affected his behavior between March and June. Defendant simply fails to provide any evidence substantiating his claim that a mental illness or deficiency was responsible for his failure to attend two court appearances, violations of the trial court’s communication order, and forceful removal from the March 7, 2019 custody interview. Moreover, while an issue regarding defendant’s mental health was raised at the hearing to set aside the default judgment of divorce, defendant primarily argued below that his failure to attend court proceedings was because of his lack of legal counsel and unfamiliarity with the legal system, not because of any problems with his mental health.

The trial court followed proper procedure when it entered the default judgment of divorce. Upon plaintiff’s motion, the trial court entered a default after defendant was forcefully removed from a FOC custody interview and failed to appear at the April 18, 2019 settlement conference and June 11, 2019 trial. There is no evidence that defendant was unaware of these hearings. Plaintiff promptly filed a motion for entry of the default judgment of divorce and provided defendant with the requisite notice. Even after the entry of the default, defendant failed to appear for a July 17, 2019 hearing for his own motion. Defendant also violated the trial court’s order to communicate with plaintiff through Family Wizard by sending her dozens of threatening text messages. The trial court ultimately determined that defendant intentionally failed to participate in the divorce proceedings and that he failed to establish good cause to set aside the default judgment of divorce. The trial court’s conclusion that defendant failed to demonstrate the requisite good cause necessary to warrant setting aside the default judgment did not fall outside of the range

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<sup>2</sup> A motion to set aside a default judgment may also be granted if the motion is “grounded on lack of jurisdiction over the defendant, lack of subject matter jurisdiction, failure to serve the notice of default as required by subrule (B)(2)(b), or failure to serve the proposed default judgment and notice of hearing for the entry of the judgment under subrule (B)(4).” MCR 3.210(B)(6)(a). Defendant does not raise any of these grounds on appeal.

of reasonable and principled outcomes. Accordingly, the trial court did not abuse its discretion when it denied defendant's motion to set aside the default judgment of divorce.

Affirmed.

/s/ Jonathan Tukel  
/s/ Jane E. Markey  
/s/ Brock A. Swartzle