STATE OF MICHIGAN

COURT OF APPEALS

MAE CRAWFORD, Plaintiff-Appellee,	UNPUBLISHED June 14, 2012
v	No. 303501 Oakland Circuit Court
RONALD KRAFT, Defendant-Appellant.	LC No. 2010-114021-NZ

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

MEMORANDUM.

Defendant appeals by right from a default judgment entered in favor of plaintiff in the amount of $14,000. We affirm.

We review a trial court's denial of a motion to set aside a default for a clear abuse of discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220; 760 NW2d 674 (2008). "[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). "The policy of this state is against setting aside defaults and default judgments that have been properly entered." *Thomas v Jones*, 120 Mich App 191, 192; 327 NW2d 433 (1982).

The trial court did not abuse its discretion when it refused to set aside the properly entered default. *Shawl*, 280 Mich App at 220. "A motion to set aside a default or default judgment . . . 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). For purposes of setting aside a default, good cause can be established 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 (further citations omitted).

Here, defendant asserts that he took steps to have the answer properly filed by hiring a reputable service to assist him with the e-filing. However, he failed to present documentary evidence to support his assertions. Moreover, defendant was served with the complaint on October 26, 2010 and did not properly file an answer to the complaint until March 3, 2011. More importantly, defendant's motion to set aside the default was not filed until March 11, 2011, almost two months after defendant received the default and affidavit in support of default. Even if he attempted to e-file an answer for the second time after receiving the default, this would not

have cured the problem. The default had to be set aside, and defendant failed to explain the two-month delay in seeking relief. "The carelessness or neglect of either the litigant or his attorney is not normally grounds for granting a belated application to set aside a default regularly entered." *White v Sadler*, 350 Mich 511, 522; 87 NW2d 192 (1957). Defendant also failed to file an affidavit of facts to support a meritorious defense despite the fact that MCR 2.603(D)(1) provides that a motion will be granted "only if" an affidavit is filed.

Irrespective of the failure to file an affidavit, there was no abuse of discretion in the conclusion that defendant failed to establish meritorious defenses. *Shawl*, 280 Mich App at 220. Although MCR 9.119(F) allows for a suspended attorney to be "compensated on a quantum meruit basis for legal services rendered and expenses paid by him or her prior to the effective date of the" suspension, in this case defendant failed to timely notify plaintiff of the suspension as required by MCR 9.119(A). Moreover, he continued to represent plaintiff after his suspension in violation of MCR 9.119(E)(1).

"[Q]uantum meruit recovery of attorney fees is barred when an attorney engages in misconduct that results in representation that falls below the standard required of an attorney (e.g., disciplinable misconduct under the Michigan Rules of Professional Conduct) or when such recovery would otherwise be contrary to public policy." *Reynolds v Polen*, 222 Mich App 20, 26; 564 NW2d 467 (1997). Defendant's argument that plaintiff "was of advanced age and would have been [e]xtremely agitated and depressed if she had to seek the services of another attorney when her case was on the verge of settlement" is not an exception to MCR 9.119(A). Defendant admitted that he did not inform plaintiff of his suspension and that he continued to represent her in violation of MCR 9.119(E)(1). Under these circumstances, it was reasonable to conclude that payment to defendant from the proceeds of the settlement secured after his suspension would be contrary to public policy. The trial court therefore did not abuse its discretion in holding that defendant had not raised a meritorious defense with respect to the attorney fee. *Shawl*, 280 Mich App at 220.

Regarding the $6,000 withheld by defendant, he asserts that it was to be held in escrow to pay plaintiff's medical lien holders per the settlement statement and that it is not plaintiff's money. However, the money was apparently not in an independent escrow account, and defendant presented no evidence to this effect. Moreover, it was not defendant's money. Further, the settlement statement notes that the $6,000 in liens may be reduced by negotiation with the lien holders. Because defendant would be unable to negotiate on behalf of plaintiff to reduce the amount owed, turning the money over to plaintiff so that she could negotiate and make the payments was not an unreasonable result. Thus, while it would be preferable that defendant be expressly held harmless for the medical bills, the trial court did not abuse its discretion in concluding that this was not a meritorious defense. *Shawl*, 280 Mich App at 220.

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood