

STATE OF MICHIGAN
COURT OF APPEALS

OFFICER ROBERT WELLS,

Plaintiff-Appellee,

v

CLUB 007,

Defendant-Appellant,

and

KAREEN DESHAN HALL,

Defendant.

UNPUBLISHED

June 19, 2014

No. 315016

Wayne Circuit Court

LC No. 10-014738-NO

Before: O'CONNELL, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Defendant-appellant Club 007 appeals as of right the default judgment entered in favor of plaintiff. We vacate the default judgment and remand for further proceedings.

This case arose out of a complaint filed by plaintiff, a Detroit police officer, for injuries he allegedly sustained when he was dispatched to investigate a reported break-in at Club 007. The trial court entered a default and a default judgment in February 2012. A year later, after various motions by the parties, the trial court entered an opinion that set aside the judgment award but not the default. On the same date, the court entered an order establishing the amount of the judgment in favor of plaintiff. Club 007 now appeals.

We first address plaintiff's challenge to this Court's jurisdiction. Plaintiff contends that Club 007's appeal of the default judgment is untimely, on the ground that Club 007 did not appeal the February 2012 default judgment within the time required by MCR 7.104(A). According to plaintiff, Club 007's appeal can address only the amount of the award entered by the trial court in February 2013, not the judgment entered by the court in 2012. We disagree. Defendant timely filed a motion to set aside the 2012 default judgment. The subsequent proceedings in the trial court resulted in the February 2013 order, which was an appealable order in this case. Club 007's appeal of the February 2013 order was timely, and the appeal vests this

Court with jurisdiction to review the prior default judgment. MCR 7.202(6)(a)(i); see *Dean v Tucker*, 182 Mich App 27, 31; 451 NW2d 571 (1990).

We review for an abuse of discretion a trial court's decision on a motion to set aside a default judgment. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). A trial court abuses its discretion when the decision rendered is outside the range of principled outcomes under the circumstances. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

“A trial court's authority to enter a default or a default judgment against a party must fall within the parameters of the authority conferred under the court rules.” *Henry v Prusak*, 229 Mich App 162, 168; 582 NW2d 193 (1998). A default or dismissal is a drastic sanction that should be taken cautiously. *VandenBerg v VandenBerg*, 231 Mich App 497, 502; 586 NW2d 570 (1998). Before dismissing a claim or entering a default, “the trial court is required to carefully evaluate all available options *on the record* and conclude that the sanction is just and proper.” *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995) (emphasis added). A court that fails to evaluate other available options on the record abuses its discretion. *Id.* at 506-507.

In this case, the record is insufficient to indicate whether the trial court evaluated all available options for sanctions before entering the default judgment in February 2012. Moreover, the record does not indicate that the trial court complied with MCR 2.401(G)(2), which requires a court to excuse a party's failure to attend a settlement conference if the court finds that “(a) entry of an order of default or dismissal would cause manifest injustice; or (b) the failure was not due to the culpable negligence of the party or the party's attorney.” The trial court's February 2012 order states only that Club 007 failed to appear for a settlement conference and that the default judgment was entered. Neither the order nor the transcript of the settlement conference indicates the court's rationale for determining that a default judgment was just and proper under the circumstances. Without a record indicating the court's rationale, we must conclude that the court's entry of a default judgment was an abuse of discretion.

We vacate the default judgment entered February 7, 2012, and the judgment award entered February 8, 2013. We remand for the trial court to conduct further proceedings to consider whether a sanction for failure to appear at the settlement conference is appropriate under MCR 2.401(G), and if so, whether a default judgment is the appropriate sanction. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey