

STATE OF MICHIGAN
COURT OF APPEALS

DANIELA CRESCENTINI,

Plaintiff-Appellee,

and

RECEIVER SANDRA USER GREEN,

Appellee,

v

MARCELLO CRESCENTINI, MAURIZIO
CRESCENTINI, ROCHESTER
CONSTRUCTION COMPANY, and TITANO,
LLC,

Defendants-Appellants.

UNPUBLISHED

August 19, 2014

No. 315904

Oakland Circuit Court

LC No. 2008-746242-DO

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

Marcello Crescentini, Maurizio Crescentini, Rochester Construction Company, and Titano, LLC appeal as of right the trial court's order that entered default judgment against them. We affirm.

The trial court entered a judgment of divorce pertaining to Daniela and Marcello Crescentini. Thereafter, the trial court entered multiple orders compelling Marcello to make past due spousal support payments as required by the judgment of divorce. The trial court eventually appointed attorney Sandra User Green as a receiver to oversee enforcement of the support obligations contained in the judgment of divorce. Green served Marcello, Maurizio, Rochester Construction, and Titano, LLC with interrogatories and requests for the production of documents. After Marcello, Maurizio, Rochester Construction, and Titano, LLC failed to respond, Green filed a motion in the trial court to compel them to answer the discovery requests. On June 14, 2012, the trial court entered a stipulated order requiring Marcello, Maurizio, Rochester Construction, and Titano, LLC to provide answers to the interrogatories and to produce the requested documents by June 20, 2012. On June 18, they provided their answers and objections to the requests. Believing that Marcello, Maurizio, Rochester Construction, and

Titano, LLC's answers were insufficient, Green requested that the trial court enter an order of default and sanctions against them. The trial court entered an order of default against Marcello, Maurizio, Rochester Construction, and Titano, LLC. Marcello, Maurizio, Rochester Construction, and Titano, LLC filed a motion for reconsideration,¹ which the trial court denied. Green thereafter filed a motion for entry of default judgment. The trial court granted the motion for entry of default judgment. Marcello, Maurizio, Rochester Construction, and Titano, LLC now appeal, arguing that the trial court improperly entered the order of default and default judgment.

We find that the issue presented on appeal is not properly before this Court and therefore we decline to address it. Pursuant to the court rules, “[o]nce the default of a party has been entered, that party may not proceed with the action until the default has been set aside by the court in accordance with subrule (D) or MCR 2.612.”² Marcello, Maurizio, Rochester Construction, and Titano, LLC challenged the trial court's order entering default by filing a motion for reconsideration,³ in which they argued that the trial court abused its discretion in granting the default. At the time the motion for reconsideration was filed by Marcello, Maurizio, Rochester Construction, and Titano, LLC, the default remained in place because they never moved to set it aside. As such, the challenge to the entry of the order of default was never properly before the trial court.⁴

Moreover, the relevant court rule 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.”⁵ Here, Marcello, Maurizio, Rochester Construction, and Titano, LLC never moved to have the default or default judgment set aside below, which would have required certain showings. Additionally, on appeal, Marcello, Maurizio, Rochester Construction, and Titano, LLC argue only that they complied with discovery and the trial court followed improper procedures in entering the default. They do not argue that the default and default judgment could or should be set aside pursuant to the court rule. Thus, Marcello, Maurizio, Rochester Construction, and Titano, LLC have failed to meet their burden of showing that they followed the requisite procedures and made a sufficient

¹ MCR 2.119(F).

² MCR 2.603(A)(3).

³ MCR 2.119(F).

⁴ MCR 2.603(A)(3).

⁵ MCR 2.603(D)(1).

record to entitle them to the relief of this Court.⁶ Accordingly, we decline to address the issue on appeal.⁷

Affirmed.

/s/ William B. Murphy
/s/ William C. Whitbeck
/s/ Michael J. Talbot

⁶ *Saffian v Simmons*, 477 Mich 8, 15; 727 NW2d 132 (2007) (“As the defaulting party, the burden of demonstrating good cause and a meritorious defense to set aside the default fell on defendant.”).

⁷ *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 513; 667 NW2d 379 (2003) (“[T]his issue was not addressed by the trial court and is not properly before this Court.”).