

STATE OF MICHIGAN
COURT OF APPEALS

SYED LATAFAT HUSA HAMZAVI,

Plaintiff-Appellee,

v

SIRAJUDDIN AHMAD, d/b/a CRESCENT
BUILDERS, and CRESCENT BUILDERS, INC.,

Defendants-Appellants.

UNPUBLISHED

July 30, 1996

No. 179155

LC No. 93-463545 CK

Before: O’Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

In this action to enforce an arbitration award, defendant failed to file a brief in opposition to plaintiff’s motion for summary disposition and failed to appear at the hearing on plaintiff’s motion. Judgment was subsequently entered in favor of plaintiff. Defendant moved for relief from judgment, but the motion was denied. Defendant now appeals as of right. We vacate the “Judgment of Summary Disposition for Plaintiff.”

Defendant failed to respond to plaintiff’s motion for summary disposition because, relying on the oral statements of two circuit judges, defendant believed the case to have been reassigned. Further, both the judge to whom the case was originally assigned and the judge to whom the case was reassigned issued orders indicating that the case had, in fact, been reassigned, but the former order was subsequently set aside and the latter was never filed.

As set forth in MCR 2.612(C)(1)(a) and (f), relief from judgment may be granted where the judgment was entered because of a party’s excusable neglect or for any reason justifying relief from judgment. A trial court’s decision to grant or deny relief based on this court rule is discretionary and will not be disturbed absent an abuse of discretion. *Huber v Frankenmuth Mutual Ins Co*, 160 Mich App 568, 576; 408 NW2d 505 (1987). Given the manifest confusion below, we find defendant’s failure to respond to plaintiff’s motion to constitute excusable neglect. See *Haefele v Meijer, Inc*, 165

* Circuit judge, sitting on the Court of Appeals by assignment.

Mich 485, 493; 418 NW2d 900 (1987) (discussing GCR 1963, 528.3, the predecessor of MCR 2.612[C][1][a]), remanded on other grounds 431 Mich 853 (1988). More generally, we find the situation to justify relief from judgment. Therefore, the court abused its discretion in denying defendant's motion for relief from judgment.

We vacate the order granting summary disposition in favor of plaintiff and remand for a hearing on plaintiff's motion for summary disposition.

Vacated.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Timothy P. Pickard