STATE OF MICHIGAN

COURT OF APPEALS

JOHN ROMANIUK and COLENE M. ROMANIUK,

Plaintiffs-Appellees,

v

WILLIAM L. KENNEDY,

Defendant-Appellant.

UNPUBLISHED
November 1, 1996

No. 170299
LC No. 93-456588

Before: Corrigan, P.J., and Taylor and D.A. Johnston,* JJ.

PER CURIAM.

In this suit involving a land contract, defendant, acting *in propria persona*, appeals by right a default judgment entered against him in circuit court. We affirm.

Plaintiffs John and Colene Romaniuk entered into a land contract with defendant William Kennedy to purchase property owned by defendant in July 1992. Plaintiffs filed their complaint in June 1993, seeking specific performance of the terms of the land contract, a recordable lien upon the subject property, and attorney fees. The record reflects that defendant was personally served with a copy of the summons and complaint on August 3, 1993. Plaintiffs filed an entry of default against defendant on August 27, 1993. Plaintiffs thereafter moved for a default judgment for defendant's failure to appear, plead, or otherwise defend the lawsuit. The record contains a proof of service of this motion. At the default judgment hearing, which defendant did not attend, the trial court entered judgment for plaintiffs. Defendant failed to move to set aside the default judgment. Instead, he claimed an appeal to this Court.

Preliminarily, defendant has not preserved any issues for appellate review because he did not move to set aside the default judgment. *Adams v Perry Furniture Co (On Remand)*, 198 Mich App 1, 4-7; 497 NW2d 514 (1993); *Rutherford v DSS*, 193 Mich App 326, 330; 483 NW2d 410 (1992). Additionally, the only transcript before this Court is the hearing on the default judgment. In his lengthy appellate brief, defendant makes numerous assertions of fact that are unsupported in the record. MCR 7.212(C)(6). Moreover, he claims that the circuit court improperly granted a third party's motion

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

to intervene. The court, however, vacated its order granting intervenor status after it learned that defendant had filed a claim of appeal and deprived it of jurisdiction to rule on the motion to intervene.

Defendant first argues that the trial court lacked jurisdiction over him because he was not served with a copy of the complaint. The record does not support this contention. The circuit court file contains a sworn affidavit of the process server who served defendant. The process server swore that he personally served defendant at his home on August 3, 1993, at 8:30 p.m. The only evidence defendant offers in rebuttal is his unsupported allegation in his appellate brief that he was not served with a copy of the complaint.

Defendant next contends that he established "good cause" for setting aside the default judgment. Defendant's allegations regarding the timing of the hearing and the lack of notice to counsel are not established in the record before us.

Under MCR 2.603(D)(1), a motion to set aside a default or default judgment, except when grounded on lack of jurisdiction over the defendant, is to be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. *Gavulic v Boyer*, 195 Mich App 20, 24; 489 NW2d 124 (1992). Good cause sufficient to warrant the setting aside of a default or default judgment includes: (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 that created the default, or (3) some other reason showing that manifest injustice would result if the default and the resulting default judgment were allowed to stand. *Id.* at 24-25. Failure to notify a party of an entry of a default is sufficient to show a substantial defect in the proceedings. *Id.* at 25. Failure to notify a party entitled to notice of the impending entry of a default judgment also constitutes a substantial defect in the proceedings and, accordingly, good cause. *Id.* Defendant has not established good cause with the bare allegations in his appellate brief.

Next, defendant claims that he has a meritorious defense because plaintiffs were required to obtain title insurance and effectuate the closing on the subject property and they allegedly misled the trial court into believing that those responsibilities rested with him by withholding the documents entitled "Additional Conditions" and "Offer to Purchase" from the court. Defendant failed to submit a proper affidavit supporting this assertion. This Court is not the appropriate forum for such affidavits. *Wiand v Wiand*, 178 Mich App 137, 143; 443 NW2d 464 (1989). Moreover, the issue of which party had the obligation to obtain title insurance and effectuate the closing is utterly irrelevant. The trial court ruled that plaintiffs held the title in fee simple of the subject property and that plaintiffs had to submit to the trial court the outstanding balance owed on the land contract. Defendant was entitled to that sum provided he submitted to the court the DNR deed on the subject property and a warranty deed on the subject property, which deeded the property to plaintiffs in fee simple.

Affirmed.

/s/ Maura D. Corrigan
/s/ Clifford W. Taylor
/s/ Donald A. Johnston