

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE'S BANK,

Plaintiff-Appellee,

v

SHOBHA K. GUPTA, a/k/a SHOBHA K.
KARWAN,

Defendant-Appellant.

UNPUBLISHED

September 19, 1997

No. 196105

Oakland Circuit Court

LC No. 95-495137-CZ

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right the Oakland Circuit Court's denial of her motion to set aside default judgment, entered because defendant had apparently failed to attend and participate in the mediation process pursuant to the trial court's order. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We reverse and remand.

The lower court record contains a scheduling order indicating that mediation would be conducted sometime in November, 1995. There are no further orders in the lower court record addressing the subject of mediation, other than a post-mediation order to show cause addressed to defendant concerning payment of the mediation fee and the default judgment entered on February 27, 1996.

The circuit court was thus laboring under the misapprehension that it had somehow ordered defendant to appear for mediation; there is, however, no written order in the lower court record and, therefore, for purposes of the present appeal, no such order exists. This Court assumes the trial court did not purport to enter the order because the order would facially be contrary to MCR 2.403(J)(1), which provides that a party has the right, but is not required, to attend a mediation hearing. As noted in 2 Martin, Dean & Webster, *Michigan Court Rules Practice*, p 443, discussing MCR 2.403, a party who fails to participate in mediation risks having the mediators render an award based on a one-sided presentation. The only penalty for failing to submit a written mediation summary and presentation is that specified in MCR 2.403(I)(2), a \$60 penalty to be paid at the time of the mediation hearing. Trial

courts are not authorized to expand upon these internal remedies. *Steward v Poole*, 196 Mich App 25, 29; 492 NW2d 475 (1992), rev'd on other grounds 443 Mich 863; 503 NW2d 76 (1993).

Indeed, even if the trial court were otherwise authorized to require defendant's appearance at the mediation hearing, because no order to that effect, signed by the trial judge, dated, and made part of the record exists, default judgment would be improper. *Rocky Produce, Inc, v Frontera*, 181 Mich App 516; 449 NW2d 916 (1989).

By failing to participate in the mediation process, defendant may have exposed herself to other mediation sanctions should the result at trial not reflect an improvement in her position as required by MCR 2.403(O)(3). Default judgment is not, however, an authorized sanction on this record.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski