

STATE OF MICHIGAN  
COURT OF APPEALS

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FLF COMPANY, INC.,

Plaintiff-Appellee,

v

ERIC PARRY and CREATIVE CONCRETE  
CONCEPTS, L.L.C.,

Defendants-Appellants.

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UNPUBLISHED

October 24, 2006

No. 264397

Kent Circuit Court

LC No. 05-000727-CH

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Defendants appeal as of right from a default judgment awarding plaintiff damages, interest, and costs totaling \$828,447.30, and specifying that any document, liens, security interests, or encumbrances created by defendants, or anyone acting on their behalf, were discharged. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As an initial matter, plaintiff's challenge to this Court's jurisdiction was previously addressed and rejected by this Court in an unpublished order, entered February 2, 2006 (Docket No. 264397). Plaintiff did not seek rehearing of that panel's decision and has not established any basis for this Court to revisit that decision. Under the law of the case doctrine, "a decision of an appellate court is controlling at all subsequent stages of the litigation as long as it is unaffected by a higher court's opinion." *McNees v Cedar Springs Stamping Co*, 219 Mich App 217, 222; 555 NW2d 481 (1996).

Turning to defendants' challenge to the trial court's denial of their pro se motion to set aside the default judgment, we review the trial court's decision for a clear abuse of discretion. *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). A motion to set aside a default judgment, "except when grounded on a lack of jurisdiction over the defendant, shall only be granted if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). To show good cause, a party must establish (1) a defect or irregularity in the proceeding underlying the default or (2) a reasonable excuse for not complying with the requirements that created the default. *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 95; 666 NW2d 623 (2003); *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 533; 672 NW2d 181 (2003).

Limiting our review to the arguments raised in defendants' pro se motion, the trial court did not clearly abuse its discretion in finding that defendants failed to show either good cause or a meritorious defense to set aside the default judgment. Parry's affidavit was insufficient to establish a meritorious defense, grounded on an oral contract, because a valid contract requires a meeting of the minds on all essential terms. *Kamalnath v Mercy Mem Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). Parry's affidavit does not indicate that he personally negotiated the terms of the alleged oral agreement or otherwise acquired personal knowledge that plaintiff agreed to pay anything directly to Creative Concrete Concepts, L.L.C., let alone the price used to file a lien for \$6,546.59. Further, the trial court was justified in finding that Parry's claims regarding his depression and various "entanglements" were insufficient to establish good cause to set aside the default judgment, particularly when Parry was able to make a pro se motion to set aside the default judgment and appear at the hearing to argue the motion.

Defendants' argument that "manifest injustice" existed for setting aside the default judgment is not properly before us because it was not raised in defendants' pro se motion to set aside the default judgment, but rather in the motion for reconsideration that was filed after defendants filed their claim of appeal. Moreover, defendants do not address the motion for reconsideration. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). See also *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (when an appellant does not fully recognize the basis of a trial court's decision and brief an issue that necessarily must be reached, appellate relief may be denied).

In passing, while there is merit to plaintiff's argument that the trial court lacked jurisdiction to consider the motion for reconsideration after defendants' claim of appeal was filed, MCR 7.208(A), we note that defendants misapply *Alken-Ziegler, supra* at 233, in arguing that manifest injustice exists to set aside the default judgment. Manifest injustice is not a discrete event, but rather a factor to be considered in the good cause and meritorious defense requirements. *ISB Sales Co, supra* at 531.

Additionally, defendants' argument confuses the liability and damages issues underlying the entry of a default judgment. Although a default settles liability issues, a trial court has discretion to hold further hearings to determine damages. MCR 2.603(B)(3), *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 78-79; 618 NW2d 66 (2000); *Michigan Bank-Midwest v D J Reynaert, Inc*, 165 Mich App 630, 649; 419 NW2d 439 (1988).

Defendants' argument regarding whether plaintiff sufficiently pleaded special damages for its slander of title count only affects the issue of damages. Defendants have failed to establish support for their claim that special damages were not pleaded. See MCR 2.112(I); 1 Longhofer, *Michigan Court Rules Practice* (5th ed), § 2112.11, p 311 (special damages are those which are unusual for a type of claim); *B & B Investment Group v Gitler*, 229 Mich App 1, 9; 581 NW2d 17 (1998) (special damages in a slander of title action may include litigation costs, impairment of vendibility, and loss of rent or interest). Further, defendants have not established that plaintiff was required to prove the amount of special damages alleged in its amended complaint. As previously indicated, the trial court had discretion under MCR 2.603(B)(3) to

determine if further proceedings were necessary to determine damages. Defendants did not raise any specific issue below concerning this discretion of the trial court, nor do they address this issue on appeal. Therefore, we do not consider it further. *Prince, supra* at 197.

We find no merit to defendants' claim that the trial court lacked subject-matter jurisdiction in this case. A challenge to a trial court's subject-matter jurisdiction can be raised at any time, even for the first time on appeal. *Midwest Energy Co-op v Pub Service Comm*, 268 Mich App 521, 523; 708 NW2d 147 (2005). The trial court's subject-matter jurisdiction is determined based on the allegations in the complaint. *Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 586; 644 NW2d 54 (2002).

"Circuit courts are courts of general jurisdiction, vested with original jurisdiction over all civil claims and remedies 'except where exclusive jurisdiction is given in the constitution or by statute to some other court . . .'" *Papas v Gaming Control Bd*, 257 Mich App 647, 657; 669 NW2d 326 (2003), quoting MCL 600.605. MCL 600.8301(1) provides that "[t]he district court has exclusive jurisdiction in civil actions when the amount in controversy does not exceed \$25,000.00." But MCL 600.8301 is limited by MCL 600.8315, which provides that a district court lacks jurisdiction in actions that are "historically equitable in nature." See *Paley v Coca-Cola Co*, 389 Mich 583; 593-594; 209 NW2d 232 (1973).

Here, the amended complaint sought special damages of \$800,000 and general damages greater than \$25,000 in the slander of title count, as well as equitable relief in the quiet-title count. Even without considering the quiet-title count, it is clear from the face of plaintiff's amended complaint that the trial court had subject-matter jurisdiction because the amount in controversy exceeded \$25,000.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens