

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF GRAND RAPIDS,
Plaintiff-Appellee,

UNPUBLISHED
July 15, 2008

v

ERIC WARREN BRIGHT,
Defendant-Appellant.

No. 277604
Kent Circuit Court
LC No. 06-010515-CZ

Before: Murphy, P.J., and Bandstra and Beckering, JJ.

PER CURIAM.

Defendant appeals of right the trial court's corrected and amended default judgment granting relief in favor of plaintiff city of Grand Rapids (city). We affirm.

On October 18, 2006, the city filed a complaint regarding housing code violations arising from defendant's repeated failures to make necessary repairs to defendant's real property, a residential structure, as demanded by the city. The city requested various and alternative forms of relief, including an order to force defendant to make the repairs, authorization for the city to make the repairs or remove the structure, appointment of a receiver, and an order placing a lien on the property to cover the cost of any repairs made by the receiver. Subsequently, an order for alternate service was entered, alternate service was made, and thereafter a default was entered against defendant for failure to answer. The city then moved for entry of a default judgment, and the matter was set for hearing on January 19, 2007. On January 19, 2007, defendant filed a *pro per* appearance and a document entitled "affidavit," which indicated that he had just become aware of the lawsuit as he was now residing in Arizona and that the city was retaliating against him because of years of litigation between the parties. Defendant filed an accompanying motion to dismiss the case on the basis that it was vexatious, retaliatory, and barred by the doctrines of collateral estoppel and res judicata, and defendant additionally filed a motion to "quash entry of default judgment," asserting that the default was improper for want of jurisdiction.¹

¹ Along with these documents, defendant filed a notice of hearing on the two motions, with "oral argument not requested." The two motions do not make any reference whatsoever to MCR 2.603(D), which addresses the procedure and requirements with respect to setting aside a default
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On January 19, 2007, a hearing was held on the city's request for entry of a default judgment; defendant did not appear. On that date, a default judgment was entered against defendant, appointing a receiver who was given authority to make the necessary repairs, granting a lien against the property to secure the cost of repairs, and ordering defendant to pay the repair costs. The city then filed a motion to amend the default judgment because, on further inspection, it was discovered that the property required additional repairs to be made beyond those covered by the initial judgment. The motion and a notice of hearing were served on defendant in Arizona via first class mail. Defendant then sent an email to the trial court, which asked for a continuance, indicated that a motion for a stay of execution would be forthcoming, requested a ruling on the motion to dismiss, and which begged the court to reconsider its default judgment where the city's actions were contrary to Michigan's housing laws, a taking of private property without just compensation, a collateral attack on a judgment rendered in previous litigation, and unnecessary to protect the health, safety, and welfare of the public. The next day defendant faxed a copy of the letter to the court. A few days later a hearing was held on the city's motion to amend the judgment; defendant did not appear. The trial court entered an amended default judgment, followed by a corrected amended default judgment (hereinafter "default judgment"), granting plaintiff the relief requested. These judgments were served on defendant. Defendant later filed this appeal, after first improperly attempting to appeal straight to the Michigan Supreme Court. *Grand Rapids v Bright*, 479 Mich 867 (2007).

We first reject the city's jurisdictional argument that the trial court did not enter a final order or judgment under MCR 7.202(6), thereby depriving us of the ability to hear this appeal as of right under MCR 7.203(A)(1). The default judgment provides, "This Judgment does not resolve the last pending claim and does not close the case, since the Court retains jurisdiction to enforce the terms and conditions of this Judgment." Regardless of this statement, on review of the requested relief in the city's complaint and the relief actually granted in the default judgment, the judgment was final for purposes of MCR 7.203(A)(1)(appeal as of right), where it disposed of all the claims and adjudicated the rights and liabilities of all of the parties consistent with MCR 7.202(6)(a)(i)(defining final order or judgment). MCR 7.208(D), which addresses property being managed under court order, does not alter our conclusion because the court rule merely provides that the trial court "retains jurisdiction over the property pending the outcome of the appeal, except as the Court of Appeals otherwise orders." Obviously, if we were deprived of jurisdiction to hear the appeal, the quoted language would be meaningless and nonsensical. Further, the trial court's declaration that the default judgment was not final is irrelevant in light of MCR 7.202(6)(a)(i) and MCR 7.203(A)(1). See *Derbeck v Ward*, 178 Mich App 38, 40-42; 443 NW2d 812 (1989).

With respect to defendant's appellate arguments, he contends that the city failed to state a claim on which relief can be granted, MCR 2.116(C)(8), and that there is no genuine issue of material fact, MCR 2.116(C)(10); therefore, defendant is entitled to judgment as a matter of law. Defendant also argues that he is entitled to judgment as a matter of law under MCR 2.116(C)(6), which provides for summary disposition when "[a]nother action has been initiated between the same parties involving the same claim." Defendant's arguments entail claims about the

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or default judgment.

residential structure not being a dangerous building as determined in other litigation between the parties, about the proper interpretation of MCL 125.534 and MCL 125.535, and about the structure not being a threat to the health and safety of the public.

First, from simply a procedural posture, defendant's appeal fails.² Pursuant to MCR 2.603(A)(3), "[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." MCR 2.603(D)(1) provides that "[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." Here, assuming that the motion to "quash entry of default judgment" constituted a motion to set aside the default, the document entitled "affidavit" did not set forth "facts showing a meritorious defense" and the claimed affidavit contains no seal, no certificate of acknowledgment, and is not attested or notarized; it is simply signed by defendant. Therefore, it is not even a legally recognizable affidavit,³ and the motion itself makes no reference whatsoever to either MCR 2.603(D) or MCR 2.612 (relief from judgment). Accordingly, the matter was not properly before the trial court. Furthermore, the motion to dismiss filed by defendant was filed at a time when the default was in place, and thus it was not properly before the trial court under MCR 2.603(A)(3).⁴ Defendant has not preserved the issues raised on appeal, which essentially boil down to a claim that he is entitled to summary disposition, and thus the issues and arguments are not properly before us; therefore, we reject his arguments. See *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Moreover, defendant's substantive attack on appeal against the default judgment would necessarily require an argument that defendant was entitled to have the default and default judgment set aside. Defendant, however, makes no such argument, not once mentioning MCR 2.603, nor MCR 2.612. Again, defendant is simply arguing to us that the court should have granted him summary disposition. Reversal is unwarranted.

We would also state that, even were defendant's substantive arguments properly before us, they are wholly lacking in merit. The receivership was proper pursuant to MCL 125.534 and

² We find that there were no notice failures by the city under the court rules in regard to service of the pleadings and motions.

³ See MCR 2.119(B); *Apsey v Mem Hosp*, 477 Mich 120, 128; 730 NW2d 695 (2007) (an affidavit is a "notarial act" controlled by the Uniform Recognition of Acknowledgements Act (URAA), MCL 565.261 *et seq.*). The claimed affidavit woefully fails to comply with the URAA.

⁴ Moreover, while the court may dispense with or limit oral arguments on a motion, MCR 2.119(E)(3), "[u]nless excused by the court, the moving party *must appear* at a hearing on the motion," MCR 2.119(E)(4)(b)(emphasis added). Defendant's motions suggested that he would not be appearing for oral argument ("oral argument not requested"). This was not an appeal, and defendant's appearance at a hearing on the motions was required, absent a request to excuse his appearance, which was not made. Further, defendant's failure to appear, personally or through counsel, at the hearings on the motions to enter judgment additionally detracts from ruling in defendant's favor. Defendant's email and faxed letter to the trial court cannot be considered as they are unquestionably in conflict with the rules of procedure.

125.535, the city complied with the housing law of Michigan, MCL 125.401 *et seq.*, which was applicable, there was no claim by the city that the structure was a dangerous building under MCL 125.538, nor was it found to be a dangerous building, the relief awarded did not necessitate a finding that the structure was dangerous, *res judicata* and collateral estoppel have no relevance to the suit brought by the city, there was no unconstitutional taking, and the local housing code is legally sound.

Affirmed.

/s/ William B. Murphy
/s/ Richard A. Bandstra
/s/ Jane M. Beckering