

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES BLAKEMAN, JR., and TRACY
BLAKEMAN,

UNPUBLISHED
January 29, 2013

Plaintiffs/Garnishor-Plaintiffs-
Appellants,

v

No. 308739
Barry Circuit Court
LC No. 11-000228-CZ

LAVERNE P. BIVENS,

Defendant,

and

HASTINGS CITY BANK,

Garnishee-Defendant-Appellee.

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Plaintiffs/garnishor-plaintiffs Charles Blakeman, Jr., and Tracy Blakeman, appeal as of right the February 2, 2012, order, which directed garnishee-defendant Hastings City Bank (HCB) to garnish defendant Lavern P. Bivens's account, but denied plaintiffs' request for default, costs, and retroactive enforcement. We affirm.

Plaintiffs obtained a default judgment against defendant on August 18, 2011. To satisfy this judgment, plaintiffs filed a writ for nonperiodic garnishment with HCB on October 21, 2011. Plaintiffs provided HCB with defendant's first name, last name, middle initial, and address, but left portions of the writ requiring defendant's social security number and account number blank. HCB returned the writ to plaintiffs, stating that HCB needed a social security number, account number, or date of birth in order to process plaintiffs' writ. Plaintiffs resubmitted the writ to HCB near the end of November, 2011, again leaving the portions requiring defendant's social security number and account number blank. Once more, due to the missing information, HCB informed plaintiffs that HCB was unable to process the writ. The parties were unable to reach an agreement and plaintiffs moved for entry of a default judgment against HCB, requesting retroactive application of the writ, default, and costs. The trial court held that the language of MCR 3.101 requires that the bank be "provided with information sufficient to identify the

defendant,” and, therefore, it was plaintiffs’ responsibility to make sure the bank was provided with sufficient information. Plaintiffs provided a birth year at the motion hearing and the trial court ordered that HCB freeze defendant’s accounts. The trial court found that HCB “tried to comply as best they could” and declined to order a default judgment or costs. Plaintiffs appealed.

Plaintiffs argue that, under MCR 3.101, a social security number is not required to validate a nonperiodic bank garnishment and that plaintiffs provided information sufficient to identify defendant. Plaintiffs contend that HCB’s failure to comply with court rules and improper rejection of the writ entitled plaintiffs to a default judgment, equal to the amount in defendant’s account on the date of the first writ, and costs under MCR 3.101. We disagree.

“The interpretation of court rules and statutes presents an issue of law that is reviewed de novo.” *Muci v State Farm Mut Auto Ins Co*, 478 Mich 178, 187; 732 NW2d 88 (2007). “Court rules are to be interpreted to give effect to the intent of the Supreme Court, the drafter of the rules.” *Vyletel-Rivard v Rivard*, 286 Mich App 13, 21; 777 NW2d 722 (2009). “If the language of the rule is clear and unambiguous, then no further judicial interpretation is required or allowed.” *Id.* at 22. “We review for an abuse of discretion a trial court’s decision . . . whether to grant a default judgment.” *Huntington Nat Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). “An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Generally, garnishment actions are authorized by statute. MCL 600.4011(1). However, MCR 3.101 governs the procedural aspects of the process. *Royal York of Plymouth Ass’n v Coldwell Banker Schweitzer Real Estate Servs*, 201 Mich App 301, 305; 506 NW2d 279 (1993). MCR 3.101(E)(1) requires the writ of garnishment to include sufficient information to allow “the garnishee to identify the defendant, such as the defendant’s address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.” After receiving the writ, “[t]he garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the writ.” MCR 3.101(H). MCR 3.101(M)(1)-(2) governs disputes with regard to the garnishment:

(1) If there is a dispute regarding the garnishee’s liability or if another person claims an interest in the garnishee’s property or obligation, the issue shall be tried in the same manner as other civil actions.

(2) The verified statement acts as the plaintiff’s complaint against the garnishee, and the disclosure serves as the answer.

See *Admiral Ins Co v Columbia Cas Ins Co*, 194 Mich App 300, 309; 486 NW2d 351 (1992) (“The garnishment affidavit acts as the plaintiff’s complaint against the garnishee defendant, and the disclosure serves as the answer, thus framing the issues.”).

The evidence of record shows that, here, regardless of whether plaintiffs provided sufficient identifying information in their writ, HCB did not file the required verified statement or disclosure. MCR 3.101(H), (M). As such, plaintiffs were entitled to take a default against

HCB and could thereafter request a default judgment, “as in other civil actions.” MCR 3.101(S)(1). The proper procedure for obtaining an entry of default is found in MCR 2.603(A)(1):

(A) Entry of Default; Notice; Effect.

(1) If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.

After a default is entered under MCR 2.603(A)(1), the party requesting a default judgment may do so according to MCR 2.603(B). Therefore, “[t]he entry of a default provides the basis for the entry of a default judgment,” *ISB Sales Co v Dave’s Cakes*, 258 Mich App 520, 530; 672 NW2d 181 (2003) (citation omitted), and, as such, default must first be entered in order to obtain a default judgment. *Dundee Cement Co v Schupbach Bros, Inc*, 94 Mich App 277, 279; 288 NW2d 379 (1979) (“The default was not entered, therefore the default judgment was void ab initio. The entry of a default provides the basis for the entry of the default judgment.”). Because MCR 3.101(S)(1) requires plaintiffs who want to obtain a default judgment against a garnishee to do so “as in other civil actions,” plaintiffs, who argue that they were entitled to a default judgment, were required to first obtain an entry of default. *ISB Sales*, 258 Mich App at 530.

However, plaintiffs never obtained an entry of default against HCB because they did not show by “affidavit or otherwise” that HCB “failed to plead or otherwise defend as provided by these rules,” and the clerk did not enter a default. MCR 2.603(A)(1). Therefore, because they did not have the requisite entry of default, plaintiffs were not in a position to request a default judgment. *ISB Sales*, 258 Mich App at 530.

Even if plaintiffs obtained an entry of default, this would not entitle them to a default judgment against HCB. Ultimately, it is within the trial court’s discretion “whether to grant a default judgment.” *Ristich*, 292 Mich App at 383. Within this discretion, as stated in MCR 2.603(B)(3), the trial court may conduct hearings and investigate the matter, which is what happened at the motion hearing. Moreover, the remedy employed by the trial court, which allowed HCB more time to file the required disclosures, is expressly allowed by MCR 3.101(T) (“the court may by order extend the time for . . . the garnishee’s disclosure.”). Therefore, we find that the trial court did not abuse its discretion in refusing to grant a default judgment and costs to plaintiffs.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Michael J. Kelly