

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SULLIVAN, WARD, BONE, TYLER & ASHER,  
P.C.,

UNPUBLISHED  
August 10, 1999

Plaintiff-Appellee,

v

DARRALYN BOWERS,

No. 207181  
Oakland Circuit Court  
LC No. 96-530728 CK

Defendant-Appellant.

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Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying defendant's motion to set aside a default judgment. We affirm.

On January 9, 1997, the trial court entered an order granting summary disposition pursuant to plaintiff's uncontested motion brought under MCR 2.116 (C)(9) and (10). Defendant failed to file an answer to plaintiff's motion or to appear at the motion hearing. On February 12, 1997, Defendant filed a motion to set aside a default judgment with an affidavit setting forth a meritorious defense and claiming good cause for delay because defendant never received plaintiff's motion. The court heard arguments on February 26, 1997, and denied defendant's motion because defendant's affidavit was conclusory and failed to establish a meritorious defense.

Defendant's motion to set aside default judgment was inappropriate because a default was never entered by the trial court.<sup>1</sup> The trial court granted summary disposition on plaintiff's unopposed motion brought pursuant to MCR 2.116(C)(9) and (10). A party cannot move to set aside a default judgment when a default judgment has not been entered. Therefore, we find that the trial court properly denied defendant's motion to set aside default judgment.

Further, the trial court properly granted plaintiff's motion for summary disposition. Plaintiff filed suit seeking judgment on an account stated pursuant to MCL 600.2145; MSA 27A.2145, which requires the defendant to file an affidavit denying the indebtedness with the answer to the complaint in order to avoid judgment in the amount of the account stated.

Here, defendant failed to file an affidavit denying the indebtedness with her answer to the complaint. Nor did defendant respond to plaintiff's motion for summary disposition.<sup>2</sup> Because defendant's answer failed to properly raise a question of fact, the trial court properly granted plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(9).

Affirmed.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Jeffrey G. Collins

<sup>1</sup> At the motion to set aside default judgment, defendant's counsel stated that a default was entered against defendant for her failure to appear at the hearing on the motion for summary disposition. However, neither the transcript of the motion hearing, or the order granting summary disposition reflect that a default was entered. Rather, the transcript and order indicate that the trial court granted plaintiff's motion based on the merits.

<sup>2</sup> At the motion to set aside default judgment, defendant's attorney argued that there was no proof of service in the file showing that he had been served with the motion. However, the file does contain a proof of service indicating that the motion was served upon defendant, prior to the attorney's appearance being filed with the court, at the address defendant listed in her pro se answer.