

STATE OF MICHIGAN
COURT OF APPEALS

JAMES L. PAXTON, PHYLLIS PAXTON, and
INNOVISIONS, INC., d/b/a UNITED PHANTOM
SLEEPER,

UNPUBLISHED
April 23, 2002

Plaintiffs-Appellants,

v

JAMES D. HOWARD and AFSC, INC.,

No. 228749
Oakland Circuit Court
LC No. 96-534959-CZ

Defendants-Appellees.

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting defendants' motion for a new trial. We affirm.

The trial court may grant a new trial whenever a party's substantial rights are materially affected by an irregularity in the proceedings of the court or an order of the court or abuse of discretion which denied the moving party a fair trial or by an error of law in the proceedings. MCR 2.611(A)(1)(a), (g). The trial court's decision on a motion for a new trial is reviewed for an abuse of discretion but any questions of law that arise are reviewed de novo. *Kelly v Builders Square, Inc.*, 465 Mich 29, 34; 632 NW2d 912 (2001).

The trial court granted the motion for a new trial, finding that it erred in issuing a default judgment regarding the issue of liability for defendants' failure to appear for trial. While the court properly proceeded with the trial due to defendants' refusal to appear, the absence of a subpoena or court order compelling their attendance at trial precluded the court from refusing to allow them to oppose plaintiffs' claims or entering a default judgment. MCR 2.506(F)(4), (6); *Rocky Produce, Inc v Frontera*, 181 Mich App 516; 449 NW2d 916 (1989). Although defendants admitted liability regarding plaintiffs' forcible ejection claim, they did not admit liability for tortious interference with business relations, which provided the basis for the majority of plaintiffs' damages. The default judgment materially affected the defendants' substantial rights and denied them a fair trial because it eliminated the need for plaintiffs to prove liability regarding that claim and thus precluded defense counsel from defending against the issue of liability. We find no abuse of discretion.

* Circuit judge, sitting on the Court of Appeals by assignment.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth