

STATE OF MICHIGAN
COURT OF APPEALS

JOHN F. GILHOOL,

Plaintiff-Appellant,

v

AUTO CLUB INSURANCE ASSOCIATION,
d/b/a AAA OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED

January 24, 2003

No. 235239

Wayne Circuit Court

LC No. 01-102829-CK

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order modifying the default judgment entered in his favor. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this action to recover uninsured motorist coverage benefits under his automotive insurance policy. Plaintiff had obtained a default judgment of \$150,000 against the uninsured driver. Defendant insurer failed to timely answer this complaint, and plaintiff obtained a default. When defense counsel failed to appear for the default judgment hearing, the court entered judgment for \$100,000 for plaintiff. The court denied defendant's motion to set aside the default judgment, but ordered that the judgment be reduced to the policy limits of \$20,000.

A trial court's decision on a motion for relief from judgment is discretionary, and will not be reversed on appeal absent an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). In order for relief to be granted under MCR 2.612(1)(f), three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. *Id.*, 478-479. This court rule provides the court with a grand reservoir of equitable power to do justice in a particular case. *Id.*, 481.

In *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219; 600 NW2d 638 (1999), our Supreme Court strictly applied the good cause and meritorious defense requirements to a motion to set aside a default judgment. The Court noted that through MCR 2.603(D)(3), the standard of MCR 2.612(C)(1)(f) was available to prevent a manifest injustice. *Id.*, 234 n 7.

There is no showing that the trial court abused its discretion in amending the judgment. Defendant's liability for uninsured motorist coverage claims was limited by the policy to \$20,000. While plaintiff received a \$150,000 default judgment against the uninsured motorist, he has not provided a legal basis for recovering this amount from defendant. Bad faith failure to pay a contractual obligation is insufficient to establish an independent tort action. *Isagholian v Transamerica Ins Co*, 208 Mich App 9, 17; 527 NW2d 13 (1994).

Because plaintiff was entitled to no more than \$20,000 plus interest and fees on his uninsured motorist coverage claim, his substantial rights were not detrimentally affected when the judgment was modified. Circumstances supported granting relief from the default judgment.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot