

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE P. HANSON, P.C.,

Plaintiff-Appellee,

v

JANICE TEMPLE,

Defendant-Appellant.

UNPUBLISHED

October 11, 2005

No. 256922

Presque Isle Circuit Court

LC No. 04-002589-CH

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right the circuit court’s order denying her motion to set aside the default and default judgment entered against her. We affirm.

Plaintiff represented defendant in a real estate partition matter and filed this subsequent cause of action in the circuit court to collect outstanding attorney fees. The parties’ fee agreement also specifically provided plaintiff with a lien on the property to secure any unpaid fees. Plaintiff’s complaint sought \$4,254.45 for unpaid attorney fees stemming from the partition matter, plus interest, costs, and attorney fees incurred in this matter. It also requested foreclosure of plaintiff’s lien to execute any judgment in its favor. A default and default judgment were entered against defendant for failing to timely answer plaintiff’s complaint. The circuit court denied defendant’s motion to set aside the default and default judgment because defendant failed to file an affidavit of meritorious defense as required under MCR 2.603.

Defendant first argues that the circuit court lacked subject-matter jurisdiction over the instant action because the amount in controversy did not exceed \$25,000. We disagree. Whether a trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo. *Polkton Charter Twp v Pellegroni*, 265 Mich App 88, 98; 693 NW2d 170 (2005). Subject-matter jurisdiction is “a court’s power to hear and determine a cause or matter.” *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Property Taxes*, 265 Mich App 285, 291; 698 NW2d 879 (2005), citing *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d 568 (1992).

Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state. [MCL 600.605.]

“Thus, circuit courts are presumed to have subject-matter jurisdiction unless jurisdiction is expressly prohibited or given to another court by constitution or statute.” *In re Petition by Wayne Co Treasurer, supra* at 291.

Defendant relies on MCL 600.8301, which set the monetary jurisdictional limit for district courts. It is true that “MCL 600.8301 provides the district court with exclusive jurisdiction over civil actions where the amount in controversy does not exceed \$25,000.” *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 473; 628 NW2d 577 (2001). Nevertheless, while the monetary amount in controversy in this case did not exceed \$25,000, there was more at stake in this case than money. Plaintiff also sought to foreclose on its attorney lien against defendant’s real property. Attorney liens are historically equitable in nature, *George v Sandor M Gelman, PC*, 201 Mich App 474, 476; 506 NW2d 583 (1993), so they are specifically excluded from the jurisdiction of district courts. MCL 600.8315. When such a conflict exists, we presume that the Legislature did not intend to divest the circuit court of jurisdiction, regardless of the monetary value of the particular claim. *Paley v Coca Cola Co*, 389 Mich 583, 593-594; 209 NW2d 232 (1973). Therefore, plaintiff properly brought its action in circuit court, and the trial court did not err by exercising jurisdiction over the claim.

Defendant next argues that the trial court abused its discretion when it denied her motion to set aside the default and default judgment because she failed to file an affidavit of facts setting forth a meritorious defense. We disagree.

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. [MCR 2.603(D)(1).]

Our Supreme Court has stated that the filing of the affidavit of meritorious defense is a condition precedent to setting aside a default. *Feierabend v Manistee Circuit Judge*, 253 Mich 115, 116; 234 NW 148 (1931). Therefore, the circuit court did not abuse its discretion when it based its denial of defendant’s motion on the absence of an affidavit of meritorious defense. Defendant’s remaining issues were not raised before the circuit court, and we are not persuaded that justice requires their review on appeal. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ Peter D. O’Connell
/s/ David H. Sawyer
/s/ William B. Murphy