

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

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CENTURY BANK & TRUST,  
Plaintiff-Appellee,

UNPUBLISHED  
July 29, 2008

v

No. 272088  
Branch Circuit Court  
LC No. 03-008498-CK

T & G GROUP, L.L.C., NAZAR GARMO,  
MILED GARMO, MCH STURGIS  
CORPORATION, JALAL YATOOMA and  
SUHAM YATOOMA,

Defendants,

and

SALEM GARMO,

Defendant-Appellant.

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Before: Jansen, P.J., and Zahra and Gleicher, JJ.

PER CURIAM.

In this contract action, defendant Salem Garmo appeals by leave granted the circuit court's order denying his motion to set aside a stipulated "order for money judgment" in plaintiff's favor. We reverse and remand for entry of an order granting Salem relief from the circuit court's August 30, 2004 order for a money judgment.

Plaintiff filed suit seeking to (1) recover approximately \$2 million, plus interest, representing a loan it made to defendant T & G Group, L.L.C., of which the individual defendants guaranteed repayment; (2) foreclose on a mortgage also given as security for the loan and sell the mortgaged property; and (3) appoint a receiver to protect plaintiff's mortgage-related interests. The parties agree that plaintiff never served Salem Garmo with the complaint and summons.

Notwithstanding plaintiff's failure to serve Salem Garmo with the summons and complaint, an attorney representing T & G Group, MCH Sturgis Corporation, Nazar Garmo, and Miled Garmo had appeared in the action nominally on Salem's behalf, as well. Therefore, by all appearances, Salem did participate in the circuit court proceedings during 2003 and 2004 through counsel. The proceedings eventually yielded two "Stipulation[s] and Order[s] for Money

Judgment[s],” which indebted all defendants, “jointly and severally,” to plaintiff in the amount of about \$1 million, as of August 2, 2004. The stipulation and order entered on August 30, 2004 purported to bind T & G Group, MCH Sturgis, Nazar Garmo, Miled Garmo and Salem Garmo.<sup>1</sup>

On March 1, 2006, Salem Garmo, through newly retained counsel, filed a motion to set aside the stipulation and order for money judgment under MCR 2.612, on the basis that he “was not informed or did not understand that he was a named defendant in the underlying action . . . , or even that his name had been signed to certain loan documents that gave rise to the action.” According to the motion, “Lisa Alteri, [original] attorney for Defendants, has stated that *she did not obtain authorization* to sign the Stipulation and Order . . . from” him, “but instead obtained permission to sign for Salem Garmo from his brother.”<sup>2</sup> (Emphasis in original). In a supplemental brief in support of the motion, Salem maintained that he “did not understand the significance of the judgment, or realize that he might need to take actions potentially adverse to his brothers, whom he believed to be handling the matter, until after plaintiff had filed . . . writs of garnishment . . . and obtained orders to seize [his] property.” Salem reasoned that because the stipulation and order for money judgment qualified as void, several February 14, 2006 default judgments against NNG, Inc., Seven Brothers, Inc. and Garmo Brothers Partnership, entities in which “he has, or may have, an interest,” likewise were unenforceable.

Plaintiff responded that Salem Garmo ratified the actions of Alteri by failing to promptly repudiate her representation, despite his July 2005 or August 2005 receipt of a subpoena for a debtor’s examination, which occurred on December 14, 2005. Plaintiff alternatively contended that Salem had untimely sought relief under MCR 2.612(B) or (C)(1)(a), (b) or (c), all of which require that a litigant request relief within one year after entry of a final judgment, which in this case occurred on August 30, 2004. Plaintiff added that although MCR 2.612(C)(1)(d) and (f) had to be invoked “within a reasonable time,” MCR 2.612(C)(2), Salem’s delay of a year-and-a-half did not meet the threshold of reasonableness.

On March 15, 2006, the circuit court explained as follows that it would deny Salem Garmo’s motion to set aside the stipulation and order for money judgment:

The Court takes into consideration the fact that [Salem Garmo] may not be sophisticated in the matters of litigation, may not have the English language as his first means of communication, and all of these issues do in fact concern the Court. The Court . . . sometimes finds ways of avoiding the niceties of statutes and court rules when it is appropriate in equity or otherwise to do so. In this case unfortunately, the Court does not find a mechanism for doing that. It would appear that while it has been less than a year since he appeared . . . incident to the

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<sup>1</sup> A September 2, 2004 stipulation and order indebted Jalal Yatooma and Suham Yatooma to plaintiff.

<sup>2</sup> In a supplemental brief, Salem included an affidavit of Lisa R. Alteri, which states in relevant part, “I did not speak directly to Salem Garmo about these stipulated orders, but instead obtained his permission to stipulate to these orders indirectly, from his brother, Nazar Garmo.”

discovery subpoena, . . . that really isn't the one year that the Court is compelled to recognize. The clock really started ticking at the very end of August of 2004. The motion in this case was filed in March of 2006. The fact is that under these circumstances, notwithstanding [sic] the sympathy the Court might have with Mr. Garmo, I really feel that the motion has not been brought timely within the requirements of statute and court rules; therefore, with a great deal of reluctance, the Court will deny the motion to set aside the stipulated money judgment.

On July 12, 2006, the circuit court denied Salem's motion for reconsideration.

Salem Garmo contends on appeal that because the circuit court never obtained personal jurisdiction over him, the stipulation and order for money judgment qualifies as void. We review for an abuse of discretion a circuit court's decision whether to set aside a judgment. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). A circuit court abuses its discretion when it makes a decision that falls beyond the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Pursuant to MCR 2.612(C)(1)(d), a circuit court may relieve a party from a "final judgment, order, or proceeding" if "[t]he judgment is void." "A judgment is 'void' only if it is beyond the power of the court to render. In general, that will be the case only if the court lacked jurisdiction over the person or over the subject matter of the action." 3 Dean & Longhofer, Michigan Court Rules Practice (4<sup>th</sup> ed), § 2612.13, p 479. A court usually obtains personal jurisdiction over a defendant "by service of process." *Isack v Isack*, 274 Mich App 259, 266; 733 NW2d 85 (2007). "[S]ervice of the summons is a necessary part of service of process," and if the plaintiff completely fails to ensure service of the summons, the court does not obtain personal jurisdiction over the defendant. *Holliday v Townley*, 189 Mich App 424, 426; 473 NW2d 733 (1991).

The record reveals, and the parties do not dispute, that plaintiff never gave Salem Garmo any form of service of the summons and complaint. Consequently, pursuant to the plain language of MCR 2.102(E)(1), "[o]n the expiration of the summons . . . the action is deemed dismissed without prejudice as to a defendant who has not been served with process as provided in these rules, unless the defendant has submitted to the court's jurisdiction." See *Peterson v Auto-Owners Ins Co*, 274 Mich App 407, 413; 733 NW2d 413 (2007) (agreeing that because the plaintiff "was not served before the expiration of the summons," "under MCR 2.102(E), when the action against [the plaintiff] was deemed dismissed, the Wayne Circuit Court did not have any pending action against [the plaintiff] that would allow a judgment to be entered").

Plaintiff insists that Salem Garmo "submitted to the court's jurisdiction," thus waiving any service of process objections, when attorney Alteri filed the appearance on his behalf, along with T & G Group, MCH Sturgis, Nazar Garmo, and Miled Garmo, and contested the cause of action on the merits.

Generally, any action on the part of a defendant that recognizes the pending proceedings, with the exception of objecting to the court's jurisdiction, will constitute a general appearance. Only two requirements must be met to render an act adequate to support the inference that there is an appearance: (1) knowledge of the pending proceedings and (2) an intent to appear. [*Penny v ABA*

*Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181-182; 511 NW2d 896 (1993), overruled in part on other grounds in *Al-Shimmari v Detroit Medical Ctr*, 477 Mich 280, 293; 731 NW2d 29 (2007).]

A party may appear through an attorney. MCR 2.117(B)(1).<sup>3</sup>

“It is a universal rule that an attorney-at-law is presumed to have authority to represent a party litigant for whom [s]he appears.” *August v Collins*, 265 Mich 389, 396; 251 NW 565 (1933). When a party disputes the attorney’s representative authority, “he must proceed promptly and unequivocally to repudiate the appearance and to permit no more acts thereunder. Failure to disapprove works ratification.” *Id.* But “[t]he party for whom the appearance has been entered, *if without knowledge of that fact*, may object at any time on being informed thereof, even after judgment.” *Id.* (emphasis added, internal quotation omitted).

With respect to the extent of Salem Garmo’s knowledge of the instant proceedings, Salem consistently denied that he knew of the lawsuit filed by plaintiff until after the circuit court entered the stipulation and order for money judgment. In an affidavit, Salem specifically averred, “I received my first clue that I had been sued by Century Bank and Trust on July 29, 2005 when I received [a] Subpoena . . . to produce documents” at a debtor’s examination, which he attended in December 2005.<sup>4</sup> According to the affidavit, “[J]ust before Christmas [2005] . . . did I learn that, on August 26, 2004, Ms. Alteri had signed a stipulated order of money judgment on my behalf (in part) without consulting me.”

Plaintiff’s claim that Salem Garmo knew of the proceedings, entered an appearance through Alteri, and contested the merits of the action through Alteri, rests on speculation. To establish that Salem knew of Alteri’s representation, plaintiff points to Alteri’s appearance and the answer, neither of which supports a reasonable inference that Salem knew of the lawsuit before July 2005. Additionally, Alteri’s affidavit statement that she represented Salem, along with his codefendants, is consistent with Salem’s averment that without informing him, his brother, Nazar, retained Alteri to represent Salem and his codefendants. And nothing in the record tends to support that Salem knew of Nazar’s action in hiring Alteri. We observe that Alteri easily could have obtained the information necessary to answer plaintiff’s complaint from Nazar; the answer minimally relates to Salem, it only specifically refers to Salem when admitting his address.<sup>5</sup>

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<sup>3</sup> If Salem Garmo appeared through Alteri, he waived any objections to service of process and to the circuit court’s jurisdiction over him because he did not raise these objections in his responsive pleading. MCR 2.116(D)(1); *Al-Shimmari, supra* at 291-292.

<sup>4</sup> In the affidavit, Salem explained the several month delay between the July 2005 subpoena and the December 2005 debtor’s examination as attributable to a heart catheterization operation he underwent “[i]n the fall of 2005.”

<sup>5</sup> While plaintiff argues that Salem must have provided information to Alteri to answer requests for admissions in this case, those requests and any answers to them do not appear in the circuit court record. We thus cannot conclude that Salem participated in the lawsuit by providing  
(continued...)

In summary, we reject plaintiff's assertion that Salem Garmo consented to the circuit court's jurisdiction through Alteri and waived any service of process objections. Salem never received service of process and, given his lack of knowledge of the proceedings until after the circuit court entered the order for money judgment, it cannot reasonably be inferred that he appeared through Alteri. *August, supra* at 396. Because the circuit court never obtained personal jurisdiction over Salem, we conclude that the August 30, 2004 stipulation and order for money judgment was void as to Salem. *Peterson, supra* at 413; *Holliday, supra* at 426.

We further find that Salem Garmo timely filed his motion seeking relief from the void judgment. "Though MCR 2.612(C)(2) requires that certain motions to set aside a judgment be brought within one year of the entry of judgment, a motion that seeks to set aside a judgment because it is void is not subject to the one-year requirement." *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 247; 687 NW2d 869 (2004). Instead, a motion challenging a judgment as void "may be heard by the trial court if it is brought within a reasonable time." *Id.* By applying a one-year requirement to Salem's motion, the circuit court erred as a matter of law, rendering its decision outside the range of principled outcomes. The circuit court thus abused its discretion in denying defendant's motion for relief from judgment. *Maldonado, supra* at 388.

Furthermore, in light of our review of the record, we find that Salem Garmo filed his motion for relief from judgment within a reasonable time. Salem filed the motion for relief 18 months after the circuit court entered the stipulation and order for money judgment, and *only six months after Salem first learned of the lawsuit*. See *Inverness, supra* at 247 (reasoning that "where the township trustees in office at the time the motion [for relief] was brought had only been aware of the terms of the [sealed] consent judgment for seven months, we cannot conclude that the trial court's finding that the motion was brought within a reasonable time" constituted an abuse of discretion). Within this six-month period, Salem's debtor's examination was adjourned several times until December 2005 because he underwent a heart catheterization procedure. During this six-month period, Salem also contacted two attorneys before finding counsel who agreed to represent him. Because Salem diligently brought this matter before the circuit court within a reasonable time after becoming aware of the judgment against him, he was entitled to relief from the void judgment.

Reversed and remanded for entry of an order granting Salem Garmo relief from the August 30, 2004 stipulation and order for money judgment. We do not retain jurisdiction.

/s/ Kathleen Jansen  
/s/ Elizabeth L. Gleicher

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(...continued)

answers to requests for admission, or that Salem had awareness of the lawsuit based on discovery proceedings. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005) (observing that a party may not expand the record on appeal).