STATE OF MICHIGAN

COURT OF APPEALS

DAN HERREMA and JOY HERREMA,

Plaintiffs/Counterdefendants,

v

PATRICIA REAGAN, FREDERICK M. VINCENT, SR., M.D., JERIANN BORK HOLLEMAN, STEVE BORKOWSKI, JUDY GOLCZYNSKI, ALBERT BORKOWSKI, JR., UNKNOWN HEIRS/DEVISEES OF ALYCE M. BORKOWSKI, UNKNOWN HEIRS/DEVISEES OF OTIS BAKER, and UNKNOWN HEIRS/DEVISEES OF NELL BAKER,

Defendants,

and

MELISSA O'BRIEN,

Intervenor/Counterplaintiff-Appellee,

and

JOSEPH O'BRIEN,

Counterdefendant-Appellant.

UNPUBLISHED
August 1, 2024

No. 364951
Kent Circuit Court
LC No. 20-003051-CH

Before: N. P. HOOD, P.J., and MURRAY and MALDONADO, JJ.

PER CURIAM.

Counterdefendant-appellant, Joseph O'Brien, appeals as of right the trial court's order quieting title in favor of intervenor/counterplaintiff-appellee, Melissa O'Brien. On appeal, Joseph challenges the trial court's amended opinion and order, following a hearing on remand, that denied the motion to set aside the default and default judgment. We affirm.

I. BACKGROUND

The present case is a quiet-title action involving 1100 McReynolds Ave in Grand Rapids. There were several parties named in the lower court action, including Joseph O'Brien and his niece, Melissa O'Brien. From the record it appears that, in 1977, brothers Joseph and John O'Brien (Melissa's father) purchased the property in question via a land contract. On December 21, 2017, John then conveyed the property to Melissa, retaining a life estate for himself. Joseph was not a party to the 2017 transfer. John died on December 22, 2017, the day after the transfer. In 2019, Melissa entered into a land contract to sell the property to plaintiffs Dan and Joy Herrema.

There were apparently several issues in the chain of title predating the O'Briens' 1977 purchase of the property, and on April 21, 2020, the Herremas filed an action to quiet title, naming nine defendants who were heirs or potential heirs of former owners of the property.

Relevant to the current appeal, Melissa intervened in the quiet-title action and filed a countercomplaint against Joseph, seeking to quiet title in her name. According to Melissa's countercomplaint, Joseph did not own an interest in the property because John purchased Joseph's share of the property in August 1983. Joseph vacated the property in the early 1980s, and Melissa and her father John had lived on the property since that time. Melissa maintained that the statute of limitations barred Joseph from now claiming an interest in the property. Melissa asked the court to declare that she was the record titleholder of the property. In an affidavit accompanying her countercomplaint, Melissa more specifically asserted that John paid $8,000 to Joseph in 1983 to purchase Joseph's interest in the property. Melissa also submitted a money order, dated August 15, 1983, for $8,000 with John as the "remitter" and Joseph listed as the "pay to the order of" individual.

On January 25, 2021, Joseph was personally served with Melissa's countercomplaint. Although his answer was due February 15, 2021, it was filed four days late, on February 19, 2021. The day prior, Melissa obtained entry of default against Joseph on the basis of his failure to answer. The default was served on Joseph's attorney on February 25, 2021.

Three months later, on April 27, 2021, Melissa moved for entry of default judgment, asking the trial court to quiet title in her favor. Joseph opposed the default judgment by denying the merits of Melissa's assertion that John paid Joseph for his interest in the property. Joseph's attorney (Joseph Gillard) also asserted that the answer was filed late because Gillard had been hospitalized with a severe kidney infection and was still recuperating at home when the answer was due. Following a hearing, on May 14, 2021, the trial court entered an order quieting title to the property in Melissa's name in fee simple.

On May 18, 2021, Joseph filed a motion to set aside the default and default judgment. In terms of good cause, Joseph asserted that his attorney, Gillard, was hospitalized on January 27, 2021, with a severe kidney infection that caused him to become septic. Gillard was released from the hospital on February 2, 2021. However, his doctor ordered him to recuperate from home over the next 7 to 14 days. During this time, he was taking high doses of medications and he was only "semi-ambulatory." Once Gillard fully returned to work, he promptly filed Joseph's answer on February 19, 2021. In terms of meritorious defenses, Joseph denied that John paid him $8,000 for his interest in the property. John asserted that the money order—which contained no information

about its purpose or whether Joseph even cashed it—was insufficient to establish a property transfer and that Melissa lacked personal knowledge because she was not born when the alleged transfer occurred. Joseph also maintained that the statute of frauds applied to the alleged transfer. In support of his motion, Joseph provided an affidavit from Gillard, detailing the facts surrounding his hospitalization and illness as it related to the good-cause question. Regarding meritorious defenses, Joseph also attached his own affidavit, denying that John paid him $8,000 for his interest in the property and denying that he ever signed any paperwork transferring his rights in the property.

In response, Melissa argued that the default and default judgment should not be set aside because Joseph failed to show good cause. Specifically, Melissa asserted that, during the time that he was recuperating from home, Gillard had participated in other court proceedings and filed pleadings in other cases, belying his assertion that he was too sick to work. Specifically, Gillard attended Zoom hearings on February 2, 5, 9, and 12, 2021. There were also documents filed in other cases bearing Gillard's signature. Melissa also noted that the answer in this case—though not filed until February 19, 2021—was dated January 26, 2021, meaning that Gillard drafted the document before he became ill. According to Melissa, Gillard's negligence did not constitute good cause. Melissa also argued that another attorney, Thomas Siver, was included as counsel in this case and that Siver could have filed an answer. In support of her argument, Melissa attached registers of actions for other cases as well as documents signed by Gillard in other cases.

On June 4, 2021, the trial court held a hearing on Joseph's motion to set aside the default and default judgment. The trial court specifically asked Gillard why he failed to file the answer in this case when he filed papers in other cases, to which Gillard stated: "There were new matters that were prepared for me by my secretary, [to] be signed. All I did was sign them. Basically, they were landlord-tenant matters." In contrast, Joseph's answer was something that he prepared before going to the hospital, and typically, Gillard files his own papers with the court; he did not file Joseph's answer because he was ill. According to Gillard, he was "just not used to being sick," and it was a "horrible experience."

Following the parties' arguments, the trial court denied the motion to set aside the default, reasoning:

> Well, Mr. Gillard, on behalf of [Joseph], you filed this motion to set aside the default and default judgment, and as you stated, MCR 2.603(D)(1) states that a motion to set aside shall be granted only if good cause is shown, and the statement of facts showing a meritorious defense is filed.
>
> I—I—I—I am not finding, given the fact that you were able and did participate in other court proceedings before this default was entered, and—and I too sympathize with your—with your health situation, but I don't find that you've shown good cause to set aside this default.
>
> And I—I'm not—I'm not addressing the meritorious defense. I—I—I'm not sure if there's a statute of limitations issue that's—that's there that can be overcome. I didn't hear any—any defense with respect to that, and I believe that's

> maybe the crux, mostly, the crux of [Melissa's] case . . . and I didn't hear any anything addressing that.
>
> So, even if I did find good cause, I—I don't find that a meritorious defense was stated either, so therefore, I'm denying the motion to set aside the default and the default judgment.

On June 23, 2021, the trial court entered a written ordering denying Joseph's motion to set aside the default and default judgment.

In a subsequent appeal of that order, this Court entered a peremptory order that vacated the trial court's order[1] denying the motion to set aside the default judgment, concluding that the trial court had not provided a complete analysis of the factors outlined in *Shawl v Spence Bros, Inc*, 280 Mich App 213; 760 NW2d 674 (2008):

> When concluding that counterdefendant failed to show good cause to set aside the default and default judgment, the trial court abused its discretion by failing to operate in the correct legal framework and to consider the totality of the circumstances as described in *Shawl v Spence Bros, Inc*, 280 Mich App 213, 237-239; 760 NW2d 674 (2008). On remand, the trial court shall consider and weigh the relevant factors outlined in *Shawl* and place its good-cause determination on the record. As necessary, the trial court shall also consider whether counterdefendant has a meritorious defense. See *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 390; 808 NW2d 511 (2011). [*Herrema v Reagan*, unpublished order of the Court of Appeals, entered March 14, 2022 (Docket No. 358907).]

The trial court held a hearing on remand, and after addressing each of the *Shawl* factors, again concluded that no good cause was established for filing the late answer, and that there was no "absolute" meritorious defense presented:

> In applying the *Shawl* factors to Counter-Defendant, (1) he missed the filing deadline; (2) he filed his Answer four days late; (3) he filed his Motion to Set Aside the Default Judgment on May 18, 2021, four days after Default Judgment was entered; (4) there was no defective process or notice; (5) Counsel for Counter-Defendant claims he went to the emergency room on January 26, 2021 and was subsequently admitted to the hospital for four days, but was back to work before the Answer was due and apparently forgot to file it (this is despite having prepared

[1] Joseph attempted to appeal the June 23, 2021 order denying his motion to set aside the default. This Court dismissed for lack of jurisdiction because the June 23, 2021 order was a postjudgment order, which was not appealable as of right. This Court noted that Joseph could have appealed the May 14, 2021 order quieting title in Melissa's favor because that was the final order in the case. However, his appeal of right—filed on August 10, 2021—was not timely. *Herrema v Reagan*, unpublished order of the Court of Appeals, entered August 17, 2021 (Docket No. 358125).

> the answer on January 25, 2021 [sic: January 26, 2021][)]; (6) counsel's late filing was not knowing nor intentional; (7) non-applicable; (8)[] there is no ongoing liability; (9) non-applicable.
>
> In applying these factors to the totality of the circumstances, this Court does not find good cause exists pursuant to MCR 2.603(D)(1) to support Counter-Defendant's Motion to Set Aside Default and Default Judgment. Therefore, this Court declines to consider any meritorious defenses. Furthermore, the only meritorious defense claimed by Counter-Defendant is not absolute.

II. ANALYSIS

In order to overturn a trial court order denying a motion to set aside a default judgment, the trial court must have committed an abuse of discretion. See *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233-234; 600 NW2d 638 (1999). This standard requires that we give deference to the trial court's decision if there is a reasonable and principled basis for the decision. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) ("[W]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment.") (quotation marks and citation omitted).

Here, the trial court held a hearing on remand, at the conclusion of which it went through each of the "good cause" factors outlined in *Shawl*, and again concluded that good cause had not been established. In doing so, it emphasized its disbelief that counsel's hospitalization precluded him from filing the answer, as he had been involved in several district court proceedings since being released from the hospital, including prior to the time that the answer was due.[2] The court also found that the answer (or at least minimally a draft) had been prepared prior to his four-day hospitalization, and yet he failed to file it. Additionally, the court highlighted the fact that a motion to set aside the default had not been filed, even though the default judgment was filed several months after the default was entered. The remaining factors, though discussed on the record, did not appear to influence the court's decision. The trial court's subsequently-issued opinion contained a similar analysis, though perhaps not as detailed as it provided on the record.

This brings us to whether Joseph O'Brien established a meritorious defense, which is an issue separate from good cause, though a finding of a meritorious defense could impact the findings on whether good cause was shown. See *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). A defendant has the burden of demonstrating good cause and a meritorious defense. *Saffian v Simmons*, 477 Mich 8, 15; 727 NW2d 132 (2007). The trial court's conclusions are somewhat contradictory, for at one point it concludes that because it did not find good cause, "it decline[d] to consider any meritorious defense." But in the very next sentence the court concluded that "the only meritorious defense claimed by Counter-Defendant is not absolute."

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[2] In the good-cause context, "[a] party is responsible for any action or inaction by the party or the party's agent." *Alken-Ziegler, Inc*, 461 Mich at 224. An attorney's negligence does not normally justify setting aside a default judgment. *Park v American Cas Ins Co*, 219 Mich App 62, 67; 555 NW2d 720 (1996).

The initial conclusion was in error—the court *was* required to consider the strength of the meritorious defense because it could impact its finding that no good cause existed. See *Shawl*, 280 Mich App at 237 ("[T]here is some interplay between the two: [I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice.") (quotation marks and citation omitted; second alteration in original).

In the end, however, it did consider the defense posited by O'Brien, both on the record and, albeit briefly, in its opinion. In both, the court concluded that the defense posited was not absolute, which under the law counsels *against* lowering the showing of good cause. *Id*. at 235, quoting *Alken-Ziegler, Inc*, 461 Mich at 233-234 ("[I]f a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent a manifest injustice."). Additionally, on the record, the court pointed out that the "money order defense" was complicated by several other issues, each of which were fact-intensive and diluted the strength of the proffered defense.

In considering the record on remand, it is clear that, in issuing its decision on remand, the trial court adhered to this Court's instructions by addressing each of the *Shawl* factors, including the strength of the meritorious defense. *Alken-Ziegler, Inc*, 461 Mich at 227 ("Where there has been a valid exercise of discretion, appellate review is sharply limited."). The result reached—that O'Brien did not have good cause in missing the filing deadline—was a reasoned outcome under the totality of the circumstances, particularly since there was no absolute defense offered. Once we conclude that the result reached by the trial court was one of several reasoned and principled outcomes, an abuse of discretion cannot exist.[3]

Affirmed.

/s/ Christopher M. Murray
/s/ Allie Greenleaf Maldonado

[3] We disagree with the dissent on two main points. First, the dissent's conclusion that the trial court abused its discretion by not stating on the record how it weighed each factor, has no support in the record or law. As for the law, it is well-settled that " 'the trial court should consider only relevant factors, and it is within the trial court's discretion to determine how much weight any single factor should receive.' " *Village of Edmore v Crystal Automation Sys, Inc*, 322 Mich App 244, 256; 911 NW2d 241 (2017), quoting *Shawl*, 280 Mich App at 238-239. As we said in *Shawl*, what a court must do is consider these and other relevant factors and then "base the final result on the totality of the circumstances." *Shawl*, 280 Mich App at 237. And as for the record, the trial court addressed the relevant factors, and then provided a conclusion that it stated was based on the totality of the circumstances. Nothing more is required by the court rules or caselaw. Second, the dissent's analysis seems to give insufficient weight to the policy of this state "against setting aside defaults and default judgments that have been properly entered." *Alken-Ziegler, Inc*, 461 Mich at 229, and that when there has been a valid exercise of the trial court's discretion, "appellate review is sharply limited," *id*. at 227.