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STATE OF MICHIGAN

COURT OF APPEALS

DAVID LEE SHATTUCK,

Plaintiff,

and

COREY MAY SHATTUCK,

Plaintiff-Appellee,

v

MARK SHATTUCK, MICHELLE SHATTUCK, and LYONS STONE & GRAVEL,

Defendants-Appellants.

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No. 377653
Ionia Circuit Court
LC No. 2023-035800-CH

Before: O'BRIEN, P.J., and CAMERON and MALDONADO, JJ.

PER CURIAM.

Defendants[1] appeal as of right the trial court's order finalizing the specifics of the easement awarded to plaintiff.[2] We affirm.

[1] Although Lyons Stone & Gravel was named as a defendant, the actions and arguments relevant to this appeal concern Mark Shattuck and Michelle Shattuck. For simplicity, this opinion refers to Mark and Michelle as "defendants."

[2] The original plaintiff in this action was David Shattuck, Corey's father and Mark's brother. Corey was substituted as plaintiff after David died. This opinion refers to "plaintiff" as an individual when the arguments are discussed, and will only specify David and Corey by name when necessary to avoid confusion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The parties own adjoining parcels. In addition to their residence, defendants' parcel also contains a gravel mine subject to federal regulations. Plaintiff alleged that, when the parties purchased the properties in 1987, plaintiff had the right to access a gravel-driveway easement across defendants' property to reach the main road. According to plaintiff, plaintiff used this easement for 35 years until defendants obstructed it during construction. Plaintiff has a separate driveway that exits onto the main road, but plaintiff claimed that driveway was unsafe to use.

As a result of defendants' obstruction, plaintiff filed suit, asserting claims of adverse possession, acquiescence, quiet title, interference with an easement, and declaratory judgment seeking either a prescriptive easement or an easement by necessity. Plaintiff also filed an ex parte motion for a preliminary injunction. At the hearing on the motion, Mark appeared *in propria persona*; Michelle did not attend. Mark disputed plaintiff's claim that his driveway was unsafe, asserting that plaintiff could and did use this driveway. Mark attempted to challenge the allegations in the complaint, but the trial court stopped him, explaining that the hearing concerned plaintiff's motion for a preliminary injunction. The court told Mark that there would "be a date and time" for addressing the complaint itself.

After taking testimony from Mark and David, the trial court denied plaintiff's motion because the record was insufficient for the court to make an informed decision. The court nevertheless ordered Mark to maintain the status quo and refrain from further work in the area until the case was decided. The court instructed plaintiff's counsel to schedule the next hearing and discussed the fact that defendants had not yet filed an answer but the filing deadline had not passed. The trial court ultimately concluded the hearing by saying: "Okay. Well, that will conclude the matter. Thank you."

Defendants never filed an answer. At plaintiff's request, the court clerk entered a default against defendants for failing to plead or otherwise defend. Plaintiff later moved for entry of a default judgment. Mark and Michelle appeared at the resulting hearing again *in propria persona*. They told the trial court that they had not known that they needed to file any documents because they believed they prevailed when the court denied plaintiff's preliminary injunction motion. The trial court entered a default judgment awarding plaintiff a permanent easement and requiring defendants to maintain it.

After retaining counsel, defendants moved to set aside the default judgment. They argued the default had been improperly entered because Mark had "otherwise defended" against the complaint by appearing at the preliminary injunction hearing. The trial court partially granted defendants' motion, concluding that unresolved issues concerning damages remained. But it denied the motion to the extent it sought to set aside the default with respect to liability. As a result, it set aside the default judgment, but left the underlying default in place.

After the parties litigated the issues surrounding damages, the trial court issued its final order. It declined to reconsider its prior ruling with respect to setting aside the default, concluding that the authority defendants relied on to argue that they "otherwise defended" the lawsuit was distinguishable. Defendants now appeal.

II. STANDARDS OF REVIEW

This Court reviews a trial court's decision on a motion to set aside a default judgment for an abuse of discretion. *Bullington v Corbell*, 293 Mich App 549, 554-555; 809 NW2d 657 (2011). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016). "A trial court necessarily abuses its discretion when it makes an error of law." *Id*. This Court reviews the interpretation of court rules de novo. *Ligons v Crittenton Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011).

III. ANALYSIS

Defendants argue that the trial court erred by refusing to set aside their default. We disagree.

We need not decide whether the clerk properly entered the default because defendants have not established that they were entitled to relief under MCR 2.612(C)(1)(f).[3] That rule permits relief from judgment for "[a]ny other reason justifying relief from the operation of the judgment." In determining whether relief is warranted under this subsection, Michigan courts use a three-part test:

> (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. [*King v McPherson Hosp*, 290 Mich App 299, 304; 810 NW2d 594 (2010), quoting *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999).]

The central issue in this case is whether extraordinary circumstances warrant relief. Defendants do not address the "extraordinary circumstances" requirement in their appellate brief, and only summarily argue in their reply brief that:

> [W]hen extraordinary circumstances exist, as they do here, including Mark's appearance and defense, the trial court's language that gave the "layman's

[3] Defendants argue that, because the default was improperly entered, the trial court necessarily abused its discretion by refusing to grant relief from judgment because it made an error of law. *Pirgu*, 499 Mich at 274. But this argument does not account for the distinction between a clerk's entry of default and a trial court's entry of a default order. Even if defendants were improperly defaulted, this error would have been committed by the *clerk*, not the trial court. It is the trial court's reasoning underlying its denial of defendants' motion for *relief* from that default that is at issue. Even in cases where this Court has concluded that a default was improperly entered, we have still required that the party seeking to set it aside satisfy the requirements of the court rule under which they moved for relief. See, e.g., *Edmore*, 322 Mich App at 255. In other words, regardless of the propriety of the underlying default, defendants were still required to satisfy the test for MCR 2.612(C)(1)(f).

impression" that the case was over, and the judgment's prospective affirmative obligations and consequences under the Mine Safety and Health Act,[4] failing to grant relief from the default judgment is reversible error.

We do not find support in the record for defendants' claims that any of the above factors constitute "extraordinary circumstances." Although there is limited binding authority explaining what constitutes "extraordinary circumstances" beyond "the improper conduct of the party in whose favor [the default] was rendered[,]" *King*, 290 Mich App at 304, quoting *Heugel*, 237 Mich App at 479, the circumstances defendants identify do not establish that relief is warranted here.

First, Mark's appearance at a hearing and his opposition to plaintiff's preliminary injunction motion do not, standing alone, establish extraordinary circumstances. Although Mark attempted to challenge plaintiff's allegations, the trial court explained that the hearing concerned the preliminary injunction motion, not the underlying complaint. Mark's participation does not constitute an exceptional circumstance entitling him to relief from judgment.

Second, the record does not support defendants' assertion that the trial court led them to believe the entire case had concluded. Although the trial court denied the motion for a preliminary injunction and ended the hearing by saying "that will conclude the matter[,]" the surrounding discussion made it clear that the underlying case remained pending. Plaintiff's counsel expressly raised the fact that defendants' answer had not yet been filed and confirmed that the deadline to do so had not yet passed. The trial court also instructed plaintiff's counsel: "I'll leave it up to your office to schedule on, in essence, the next issue. I suppose we'll probably do a pretrial as it relates to the underlying complaint." It is obvious from the trial court's exchange with plaintiff's counsel that *something* remained of the case. Moreover, the answer deadline was discussed in Mark's presence. Viewed in context, the trial court's statements do not support defendants' assertion that they reasonably believed that the case had concluded.

Finally, defendants have not adequately explained why the asserted consequences under the Mine Safety and Health Act constitute extraordinary circumstances that warrant relief from judgment. Defendants contend that recognition of the easement subjects them to additional regulatory obligations and potential fines. But they have not demonstrated on this record that those consequences justify setting aside the judgment under MCR 2.612(C)(1)(f). Because defendants failed to demonstrate any extraordinary circumstances permitting relief under MCR 2.612(C)(1)(f) they have not established that the trial court abused its discretion by denying their motion for relief from judgment.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado

[4] 30 USC § 801 *et seq*.