

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL CIRCUIT
ASSOCIATE JUDGE DIVISION
STATE OF MISSOURI

Set aside
Default
Judgment
H. M. West
Good cause

MICHAEL G. DAVIDSON)

Cause No. 0722-AC-17656

Plaintiff,)

vs.)

MONA WILLIAMS)

Division 28

Defendant.)

FILED

AUG 22 2008

MARIANO V. FAVAZZA
CLERK
BY DEPUTY CLERK

JUDGMENT AND ORDER OF THE COURT

Defendant, Mona Williams, has filed a Motion to Set Aside Default Judgment. The motion was heard on August 21, 2008, in Division 28. Defendant was present and represented by counsel. Plaintiff was present by counsel only. The court now rules as follows:

A Default judgment was entered on April 1, 2008 in the amount of \$9,909.71, plus costs. Defendant admits that she was not present in court on the date that the default judgment was entered. However, she does state that she was present in court on February 19, 2008, and spoke with plaintiff's counsel. Prior to that, on February 5, 2008, both parties were present in court and the case was continued to February 19, 2008.

A Motion to Set Aside a Default Judgment is governed by the sound discretion of the trial court. *Klause vs. Shelby, 42 S.W. 3d, 829, 831 (Mo. App. E.D., 2001)*. The trial court has broader discretion to grant a Motion to Set Aside a Default Judgment than it does to deny such a motion. See *Klause vs. Shelby, 831*. However, a trial court abuses its discretion if it sets aside a default judgment when there is no evidence that would support a finding of good cause. *Id* at 831.

Rule 74.05 of the Missouri Rules of Civil Procedure provides that the court may enter a default judgment against a party that has failed to plead or otherwise defend. The default judgment may be set aside under Rules 74.05 (d). However, this rule requires that the party in default file a motion which asserts sufficient facts to constitute both a meritorious defense and good cause for default. The motion must be made within a reasonable time not to exceed one year after entry of the judgment. **See Rule 74.05 (d) of the Missouri Rules of Civil Procedure.**

To satisfy the meritorious defense requirement, a party need only make a showing of an arguable theory of defense. *Yerkes vs. Asberry, 938 S.W. 2d, 307, 309 (Mo. App., E.D., 1997).* Here, the defendant has raised the issue of whether there is a valid and enforceable lease. The court finds that this is an arguable theory of defense, especially given the fact that the damages awarded in the default judgment were awarded based on a twelve month lease that was allegedly violated by the defendant.

“Good cause” is defined in Rule 74.05 (d) as including a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process.

- a.) Defendant in default must show good cause by proving that he or she did not recklessly or intentionally impede this process. *Great Southern Savings & Loan Association vs. Wilburn, 887 S.W. 2d, 581, 584 (Mo. App., 1994).*
- b.) In order for the defendant to show good cause here, the court must believe defendant’s testimony that she was never given a copy of the trial date for April 1, 2008, which was contained in the February 19, 2008 order. The February 19, 2008 order notes that it was hand delivered to the defendant. The court notes that the February 19, 2008 order is written on a court approved form; the form is in triplicate, one for the court file, and one for each litigant. The court notes that it is common practice in Division 28 to use this form for court trial settings. The court also notes that it is common practice for the cases that are removed from Division 27 to Division 28 for trial to use this form. It is also common practice for the party setting the case to write “hand delivered” on the order if the other party is present.

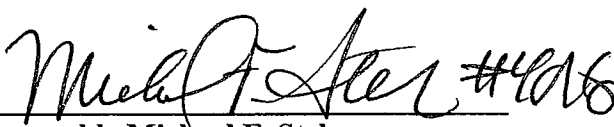
Plaintiff's attorney's testimony regarding removal of this case from Division 27 to Division 28, as well as the picking of the trial date, the use of the form on the February 19, 2008 order, are all consistent with the common practices in Division 28. The defendant has failed to prove good cause.

Lastly, even if the court's analysis is incorrect regarding the lack of good cause, the timeliness of the Motion to Set Aside Default Judgment is not reasonable. Default judgment was entered on April 1, 2008; this motion was not brought to the court's attention for 126 days.

The timeliness requirement is separate from the requirement of good cause. Klause vs. Shelby, 42 S.W. 3d, at 832. The court can consider the defaulting party's promptness in discovering the entry of judgment and moving to set it aside. Apparently, the motion was filed only after an attempt to garnish was made. The court finds this lack of promptness to be unreasonable. Defendant had made at least one previous appearance in court and was aware that the case was pending. In fact, there were three appearances during the months of January and February of 2008. Therefore, the defendant waited for over five months from her last court appearance on February 19, 2008 until August 1, 2008 when this motion was filed. It is unreasonable after having three court appearances within a two month period to wait five months to inquire as to whether anything else had occurred on the case.

Wherefore, the court denies defendant's Motion to Set Aside Default Judgment entered April 1, 2008.

SO ORDERED: This 20th day of August 2008.


Honorable Michael F. Stelzer
Associate Circuit Judge
Division 28

cc: Jennifer A. Coke
Attorney for Plaintiff
P.O. Box 771009
St. Louis, Missouri 63177
Fax: 866-838-0920

Randall C. Cahill
Attorney for Defendant
906 Olive Street, Suite 1250
St. Louis, Missouri 63101
Fax: 314-231-3073