

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (3d) 100677-U

Order filed January 19, 2012

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

SAMUEL DAVIS, n/k/a JUNIUS HAWKINS and ALISA INGRAM,	) Appeal from the Circuit Court
	) of the 10th Judicial Circuit,
Plaintiffs-Appellees,	) Peoria County, Illinois,
	)
v.	) Appeal No. 3-10-0677
	) Circuit No. 02-LM-1180
LLOYD SCHUMACHER,	)
	) Honorable
Defendant-Appellant.	) Joe R. Vespa,
	) Judge, Presiding.

---

JUSTICE McDADE delivered the judgment of the court.  
Justices O'Brien and Holdridge concurred in the judgment.

---

**ORDER**

¶ 1 *Held:* The trial court did not err when it denied defendant's motion to vacate the default judgment.

¶ 2 The trial court entered a default judgment against defendant, Lloyd Schumacher, for failing to appear at a case management conference (CMC). Defendant also failed to appear at the hearing for prove up of damages, and the court entered a judgment against him. Defendant's motion to vacate judgment and motion to reconsider were both denied. On appeal, defendant argues that the trial court erred when it denied his motion to vacate judgment. We affirm.

## FACTS

¶ 3

¶ 4 On July 10, 2002, plaintiffs filed an initial complaint against defendant. After several motions to dismiss, plaintiff filed his fourth amended complaint on October 22, 2003,<sup>1</sup> alleging that he and defendant entered into an agreement ON December 10, 1999, memorialized in part by a written document, for the purchase of a residence in Peoria at a price of \$80,000. Pursuant to the agreement, plaintiff paid \$5,000 down, and began paying \$1,000 in monthly installments towards the purchase price. Plaintiff took possession of the property in January 2000, and began making improvements.

¶ 5 In January 2002, defendant was required to repair the roof, but in contravention of their agreement, demanded funds from plaintiff. Plaintiff refused defendant's demand, and defendant made a conditional offer to have plaintiff move to another residence owned by defendant. In reliance upon the representations made by defendant, plaintiff moved to the new property and began making improvements. Defendant failed to deliver the warranty deed to the new property, and also denied requests by plaintiff to retake possession of the original property or recover funds expended on that property. In March 2002, defendant caused the utility service to the new property to be shut off, and plaintiff moved from the residence due to it becoming uninhabitable. Thereafter, defendant took control and possession of the property, and failed to allow plaintiff to retake possession.

¶ 6 Defendant filed a motion to dismiss plaintiff's amended complaint, and the court dismissed three counts but allowed plaintiff's claims for breach of contract for the second

---

<sup>1</sup> Plaintiff Alisa Ingram signed the original complaint, but did not sign the fourth amended complaint, leaving Junius Hawkins as the sole plaintiff.

property, common law fraud, and unjust enrichment to stand. Plaintiff sought recovery of \$25,604.73 plus costs. Thereafter, several CMCs were held from December 3, 2004, to July 10, 2009. On October 23, 2009, defendant's attorney appeared at a CMC, where a subsequent CMC was set for May 7, 2010. On November 5, 2009, plaintiff's attorney issued notice for a bench trial to be held on April 15, 2010.

¶ 7 On March 29, 2010, defendant's counsel, C. Edwin Walker, filed a second motion to withdraw, citing an irreparable breakdown in the attorney-client relationship. This motion was served on defendant by leaving it with Betty Schumacher at defendant's residence. On April 13, 2010, the trial court heard the motion and allowed defendant's attorney to withdraw. The trial date for April 15, 2010, was vacated, and defendant was given 21 days (or until May 6, 2010) to either retain counsel or file a supplementary appearance. The May 7, 2010 CMC was not vacated.

¶ 8 On May 7, 2010, defendant failed to appear at the previously scheduled CMC. Nor had he either provided notice that he had retained new counsel or filed a supplementary appearance. The court found defendant in default, and the cause – which had been pending for nearly eight years – was set for a hearing on May 26, 2010 to prove up damages. Plaintiff's counsel mailed a copy of the default order to defendant's address of record on May 17, 2010. Defendant failed to appear at the hearing for prove up of damages on May 26, 2010, defendant failed to appear, and the court, upon hearing the evidence presented, entered a judgment for the plaintiff in the amount of \$25,604.73 plus costs of \$390.50. Plaintiff's counsel mailed a copy of this judgment to defendant on May 27, 2010.

¶ 9 On June 22, 2010, defendant filed a *pro se* motion to vacate judgment, which stated that

defendant "is legally blind and does not recall receiving notice of any hearing on default or damages." On August 3, 2010, the court held a hearing on the motion to vacate. Defendant originally failed to appear, and the court denied the motion. The court's order indicated that eventually defendant did appear, and upon hearing arguments, the court affirmed its denial of the motion.

¶ 10 On August 24, 2010, defendant's new counsel, Ron D. Cadwalader, entered an appearance and filed a motion for reconsideration. The motion stated that when defendant's original counsel withdrew, he informed defendant that the court would be sending a new notice of a hearing date. It further stated that defendant did not recall receiving notice of the hearing dates, and that he had a genuine defense to plaintiff's allegations; therefore, in the interests of justice, the matter should proceed to trial on the merits. The motion for reconsideration was heard on September 1, 2010, and the court denied the motion. In its order, the court stated that defendant's actions were a clear attempt to obtain another "bite of the same apple," and that there were no facts or law asserted in the motion that were not before the court on the motion to vacate. The court further indicated that defendant never indicated how his legal blindness was material to the issues, and never asserted that he did not receive notice. The court also reiterated that defendant was mailed a copy of the CMC order on May 17, 2010. Defendant appeals.

¶ 11

#### ANALYSIS

¶ 12 Defendant's sole argument on appeal is that the trial court erred when it denied his motion to vacate the default judgment of May 26, 2010, because it was a drastic action and unjust. Specifically, defendant alleges that he is legally blind and cannot read letters very well; therefore, he should not be prejudiced by allowing the default judgment to stand.

¶ 13 Under section 2-1301(e) of the Code of Civil Procedure, the trial court may, in its discretion, set aside any default, either before final judgment is entered or within 30 days thereafter. 735 ILCS 5/2-1301(e) (West 2010). The moving party has the burden of establishing sufficient grounds to vacate a default judgment. *Northern Trust Co. v. American National Bank & Trust Co.*, 265 Ill. App. 3d 406 (1994). Although we will not disturb the court's decision on a motion to vacate absent an abuse of the court's discretion, this court's primary consideration is whether substantial justice is being done between the litigants and whether, under the circumstances, it is unreasonable to force the parties to proceed to trial on the merits. *In re Adoption of D.*, 317 Ill. App. 3d 155 (2000). However, a court may also consider whether a meritorious defense exists, the exercise of due diligence, the severity of the penalty as a result of the judgment, and the hardship on the nonmovant if required to proceed to trial. *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937 (1999).

¶ 14 Under the circumstances of this case, defendant was not denied substantial justice when the trial court did not vacate the default judgment. We believe that defendant's motion to vacate attempted to establish his due diligence, but he failed to identify how his legal blindness affected his ability to receive notice, especially in light of his ability to review the default judgments and to file a *pro se* motion to vacate.

¶ 15 On appeal, defendant argues that the entry of a default judgment was too severe a sanction for missing one CMC and for a party acting *pro se*. However, defendant never disputed actually receiving notice, but only that he did not receive verbal notice. Additionally, defendant claims to have believed that after his original counsel withdrew, the bench trial was still scheduled for April 15, 2010, but that the CMC for May 7, 2010, had been vacated – both of

which beliefs are proven wrong by the written order of April 13, 2010, which was ordered by the court to be served on him. In addition, the record shows that he did not retain counsel or enter a supplemental appearance or take any other steps to prepare for trial until his motion for reconsideration was filed on August 24, 2010. Defendant also had an independent duty to follow his case after his attorney withdrew. See *Marren Builders*, 307 Ill. App. 3d 937 (a litigant has an independent obligation to follow the progress of a litigation).

¶ 16 Furthermore, the record does not contain a report of proceedings from the hearing on the motion to vacate; therefore, we are unable to determine what arguments defendant made in addition to his motion, or what factors and additional evidence the court considered when it denied the motion. The burden rests on the appellant to provide a sufficient record to support the claim of error, and in the absence of such a record, the reviewing court will presume that the trial court's order was in conformity with established legal principles and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984). Thus, given all of the circumstances present in this case, we conclude that substantial justice was done, and the trial court did not abuse its discretion in denying defendant's motion to vacate the default judgment.

¶ 17

#### CONCLUSION

¶ 18 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 19 Affirmed.