

NOTICE

Decision filed 03/13/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140019-U

NO. 5-14-0019

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

C. KENT RENSHAW, d/b/a
Renshaw & Associates,

Plaintiff-Appellee,

v.

ANIL GUPTA,

Defendant-Appellant.

) Appeal from the
) Circuit Court of
) Jefferson County.
)
)
) No. 12-LM-131
)
) Honorable
) Timothy R. Neubauer,
) Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order of default judgment is vacated and remanded, where it was entered within the 21-day period pursuant to Supreme Court Rule 13 for defendant to obtain new counsel or proceed *pro se* after prior attorney was granted leave to withdraw.

¶ 2 Defendant Anil Gupta appeals the circuit court's denial of his motion to vacate default judgment in a civil suit against C. Kent Renshaw, d/b/a Renshaw & Associates, regarding prior legal fees. The circuit court entered default judgment during the 21-day period granted to Gupta pursuant to Illinois Supreme Court Rule 13 (eff. July 1, 2013) to obtain substitute counsel or proceed *pro se* after his attorney had been granted leave to

withdraw. For the reasons that follow, we vacate the decision of the circuit court and remand for further proceedings.

¶ 3

BACKGROUND

¶ 4 On August 1, 2012, Renshaw filed in the circuit court a complaint in which he alleged that Gupta had failed to pay legal fees plus accrued interest resulting from Gupta's 2004 divorce. After several unsuccessful attempts, Renshaw served Gupta on June 11, 2013, with an out-of-date summons. Gupta filed a limited entry of appearance contesting jurisdiction on July 12, 2013.

¶ 5 Gupta appeared with his then-attorney Troy J. Parrish before the circuit court on August 26, 2013. Parrish filed an entry of appearance on that date. According to the docket entry for August 26, 2013, Gupta accepted service of summons and the complaint in open court and waived formal service. Defendant was given 30 days to file a responsive pleading. The court set a status hearing on the case for October 13, 2013.

¶ 6 In an affidavit, Parrish asserted that at the August 26, 2013, hearing, he had reserved the right to file a motion to dismiss due to the lack of diligence in service. Parrish also asserted that, after the August 26, 2013, hearing, Renshaw informed Parrish that Parrish likely had a conflict of interest in representing Gupta. Upon investigating this claim, Parrish agreed, but he did not file a motion to withdraw, nor did he file a responsive pleading within the 30 days from August 26, 2013, granted by the court.

¶ 7 On October 16, 2013, Parrish and Renshaw appeared before the circuit court on the case. At that hearing, Parrish asserted that he had a conflict and would move to withdraw from the case. A status hearing was set by the court for November 6, 2013.

Parrish filed a motion for leave to withdraw on October 17, 2013, and the court entered an order granting the motion to withdraw and allowing Gupta 21 days to obtain substitute counsel or alternatively ordering Gupta to file a supplementary appearance.

¶ 8 On November 6, 2013, 20 days after the October 17, 2013, order granting Parrish leave to withdraw, Renshaw appeared before the court for a hearing on the case. Neither Gupta nor a representative of Gupta was present. On that date, the circuit court entered a default judgment in favor of Renshaw. The record is not clear as to whether the default judgment was entered *sua sponte* or on the plaintiff's oral motion.

¶ 9 On December 6, 2013, attorney L. James Hanson, new counsel for Gupta, filed a motion to vacate the default judgment and allow Gupta an additional 21 days to file a responsive pleading and other motions. On December 27, 2013, Renshaw filed a response to the motion to vacate, contesting Gupta's reasons for requesting the court to vacate the default judgment. On January 2, 2014, a hearing was held on Gupta's motion to vacate default judgment. The circuit court reasoned that Gupta was in default because he had been given 30 days from the August 26, 2013, hearing to file a responsive pleading, but neither he nor Parrish filed any pleading within that time. Further, Gupta was present at the hearing and made aware of the 30-day deadline in open court. Thus, the court denied the motion to vacate the default judgment and allowed it to stand. Gupta timely filed notice of appeal on January 9, 2014.

¶ 10 ANALYSIS

¶ 11 Gupta argues, among other contentions, that the court erred in entering default judgment because, under Supreme Court Rule 13(c)(2), the court was required to give

Gupta 21 days from the withdrawal of counsel before any substantive action could occur. We agree.

¶ 12 The parties disagree as to the proper standard of review. Gupta argues that, because this court is called upon to interpret rules of law, this court must apply a *de novo* standard of review. Renshaw correctly counters that motions to vacate judgments are reviewed under an abuse of discretion standard. See *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548 (2008). However, Gupta's primary argument is that Supreme Court Rule 13(c)(2) should have prevented the entry of default judgment despite the trial court's discretion in such matters. When an argument involves the construction of a supreme court rule, we review it *de novo*. See *White v. Garlock Sealing Technologies, LLC*, 398 Ill. App. 3d 610, 620 (2010) (citing *In re Estate of Rennick*, 181 Ill. 2d 395, 401 (1998)). We will apply *de novo* review to the extent that Supreme Court Rule 13(c)(2) is dispositive.

¶ 13 Under Supreme Court Rule 13(c)(2), an attorney who withdraws from representation "shall advise [the represented party] that to insure notice of any action in said cause, he should retain other counsel therein or file with the clerk of the court, within 21 days after entry of the order of withdrawal, his supplementary appearance stating therein an address at which service of notices or other documents may be had upon him." Ill. S. Ct. R. 13(c)(2) (eff. July 1, 2013). Once a trial court has granted the motion to withdraw, "Rule 13 requires a continuance of at least 21 days after the order granting withdrawal so that the party can retain other counsel *or* enter her own supplementary appearance." (Emphasis in original.) *In re Marriage of Miller*, 273 Ill. App. 3d 64, 69

(1995). Because the 21-day period specified refers to a period after withdrawal has been entered, whether the party received notice and was present at the hearing to withdraw is irrelevant to compliance with Rule 13. *Id.*

¶ 14 In *Ali v. Jones*, 239 Ill. App. 3d 844 (1993), the trial court gave the plaintiff's attorney leave to withdraw but ordered that trial by jury would begin in less than 21 days after the withdrawal. *Id.* at 846. The plaintiff was not prepared on the day set for trial and asked for a continuance. *Id.* at 846-47. The court noted that being unprepared was one of numerous delays by the plaintiff and thus entered an order dismissing the cause with prejudice. *Id.* at 847. The appellate court, however, held that by denying the plaintiff a continuance for at least the 21-day period, the trial court had erred. *Id.* at 848-49. Even if the trial court had good cause to dismiss with prejudice, the appellate court held, the trial court could not do so during the 21-day period. *Id.* at 849.

¶ 15 In the present case, at the time of the October 16 hearing, at which Renshaw and Parrish appeared, the defendant was clearly in default by not having timely filed a responsive pleading pursuant to the court's order of August 26, 2013. The court could have entered default judgment at the October 16 hearing but instead granted defendant's counsel leave to file a motion to withdraw and entered an order allowing the withdrawal on October 17. Entry of the order allowing attorney Parrish to withdraw invoked the 21-day time period under Supreme Court Rule 13 to allow defendant to obtain new counsel or proceed *pro se*. Whether or not the trial court had good cause to find Gupta in default, it could not do so during the 21-day period. Even if the circumstances of the supposed default occurred before the 21-day period arose, Rule 13 does not allow a trial court to

enter orders affecting a party's substantive rights during the 21-day period. Because the trial court ordered default judgment for Renshaw on day 20, we now must vacate the judgment of the trial court and remand for further proceedings.

¶ 16

CONCLUSION

¶ 17 For the reasons stated, we vacate the judgment of the circuit court of Jefferson County and remand for further proceedings.

¶ 18 Vacated and remanded.