

STATE OF MICHIGAN  
COURT OF APPEALS

---

HARDIG & PARSONS,

Plaintiff-Appellee,

v

BRUCE W. FRANKLIN,

Defendant-Appellant.

---

UNPUBLISHED

August 16, 1996

No. 180933

LC No. 94-482637 CZ

Before: Sawyer, P.J., and Bandstra and M.J. Talbot,\* JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's denial of his motion to set aside entry of default and its grant of plaintiff's motion to enter default judgment. We affirm, but remand to the trial court for a determination of damages.

Plaintiff filed suit seeking payment on account stated for legal services rendered to defendant. Plaintiff served the summons and complaint on defendant by certified mail, return receipt requested, delivery restricted. A secretary at defendant's law firm signed the return receipt at the space designated for the signature of an agent on September 7, 1994. Defendant admitted that negotiations continued between the parties after that date. When defendant failed to appear or answer the complaint, plaintiff caused default to be entered and moved for entry of default judgment. Defendant sought to set aside the default arguing that plaintiff failed to follow the rules for service of process and that, as a result, the trial court lacked personal jurisdiction over defendant.

This Court reviews a trial court's finding of jurisdiction de novo. *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995). MCR 2.105(H) allows for service of process on an authorized agent. Plaintiff met his initial burden of proof when he established a prima facie showing of jurisdiction by attaching the return receipt signed by a person purporting to be defendant's agent. *Jeffrey, supra*. At that point, the burden of going forward shifted to defendant because he had the superior knowledge as to whether his purported agent was his agent and whether he received actual notice. See *Brown v Beckwith Evans Co*, 192 Mich App 158, 168-171; 480 NW2d 311 (1991);

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

*White Cloud Educ Assoc v White Cloud Bd of Educ*, 101 Mich App 309, 319; 300 NW2d 551 (1980). Defendant claimed that the secretary who signed the return receipt was not his authorized agent. However, defendant failed to present any evidence that the secretary was not his agent and failed to present any evidence suggesting that he had not, in fact, received the summons and complaint. Because the return receipt and defendant's statements about negotiations suggest that defendant received actual notice and because defendant has not presented any affidavit in rebuttal, any failure to technically comply with the court rule did not deprive the trial court of jurisdiction. *Alycekay Co v Hasko Const Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989). The trial court did not err in finding that plaintiff had put forth evidence that defendant's agent had accepted service and that, therefore, technically the service requirement had been met.

The trial court did not abuse its discretion in denying defendant's motion to set aside entry of default. *Id.* at 505. Defendant did not avail himself of the opportunity given to him by the trial court to bring the motion again in order to assert the good cause and meritorious defense required to set aside a default. MCR 2.603(D)(1). Further, defendant did not demonstrate that any irregularity in the service of process was a substantial irregularity in the proceedings necessary to support a finding of good cause. *Alycekay Co, supra* at 505-506.

Finally, plaintiff argues that this is a vexatious appeal. We agree and conclude that plaintiff is entitled to a recovery of the expenses incurred because of this appeal.

We affirm, but remand to the trial court for a determination of actual damages pursuant to MCR 7.216(C). We do not retain jurisdiction.

/s/ David H. Sawyer  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot