

STATE OF MICHIGAN
COURT OF APPEALS

MIDWEST BUSINESS EXCHANGE,

Plaintiff-Appellant,

v

DAWN MOORE, d/b/a PROFILE
AUTOMOTIVE COLLISION CENTER, INC.,

Defendant-Appellee.

UNPUBLISHED

April 27, 2010

No. 286556

Kalamazoo Circuit Court

LC No. 07-000526-AV

Before: MARKEY, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Plaintiff Midwest Business Exchange (MBE), appeals by right the June 24, 2008 order of the circuit court affirming the district court's order, which granted defendant's motion to set aside the default judgment. We affirm.

Plaintiff argues that Moore did not show good cause for her failure to timely answer the summons and complaint. The district court also did not have sufficient factual information to determine that Moore had a meritorious defense because Moore's unsworn statements were conclusory and consisted of a mere denial of liability. In addition, it is mandatory that the meritorious defense be submitted in a written affidavit, which did not occur. Consequently, the circuit court abused its discretion in not concluding that the district court incorrectly found that the requirements of an affidavit of meritorious defense were met.

"The question whether a default or a default judgment should be set aside is within the sound discretion of the trial court and will not be reversed on appeal absent a clear abuse of that discretion." *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). "Although the law favors a determination of a claim on the basis of its merits, the policy of this state is generally against setting aside defaults and default judgments that have been properly entered." *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). "A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1). A moving party shows sufficient "good cause" to set aside a default by establishing either (1) a substantial irregularity or defect in the proceeding upon which the default is based, or (2) a reasonable excuse for failure to comply with the requirements that created the default. *ISB Sales Co, supra* at 531, 533. In general, "[i]f a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts

must be attached to the pleading as an exhibit” MCR 2.113(F)(1). A party in default establishes good cause, i.e., procedural irregularities, to set aside a default judgment when the claim arises from a written contract a copy of which is not attached to the complaint. *ISB Sales Co, supra* at 535-536. In addition, a mere general denial of liability without sufficient facts to support the reasons for the denial is insufficient to show the meritorious defense that is required by court rule as a prerequisite to setting aside a default judgment. *Novi Constr, Inc v Triangle Excavating Co*, 102 Mich App 586, 590; 302 NW2d 244 (1980).

In this case, the district court appears to have concluded that Moore had shown good cause for not filing an answer because she thought that she was going to be sent a court date. This finding was erroneous. “It is well settled that the negligence of either the attorney or the litigant is not normally grounds for setting aside a default regularly entered.” *Shawl v Spence Bros, Inc*, 280 Mich App 213; 760 NW2d 674 (2008) (citation omitted). And, the summons and complaint specifically provided that Moore had 21 days to answer the complaint and stated that if she did not answer, a judgment might be entered against her for the relief demanded in the complaint. Still, reversal is not necessary. The circuit court found that there was good cause to set aside the default because plaintiff did not comply with the requirements of MCR 2.113(F)(1) where it failed to attach the contract on which the claim was based to the complaint, pursuant to MCR 2.113(F). *ISB Sales Co, supra*. Thus, there was good cause to set aside the default. *Id.* We will not reverse a lower court that reaches the right result for wrong reasons. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). Here, the district court reached the right result for wrong reasons, and the circuit court did not abuse its discretion by finding that that the district court’s order setting aside the default should be affirmed because good cause existed. *Id.*; *ISB Sales Co, supra*.

With regard to an affidavit of meritorious defense, the reasoning of the district court is unclear. It appears the court may have concluded that Moore had a meritorious defense because she indicated in court that she had not signed anything for MBE in over ten years, and she did not recall signing anything to personally guarantee business debt. Moore also indicated in her motion to set aside default that she had requested but not received a statement of account from MBE and that she had claims against MBE to offset the amount claimed. We recognize that MCR 2.603(D)(1) provides that an affidavit of meritorious facts must be filed. But the matter is within the trial court’s discretion. *Perry v Perry*, 176 Mich App 762, 769-770; 440 NW2d 93 (1989). Although Moore did not file an affidavit of meritorious defense with her motion to set aside the default, she stated her defenses in her written motion to set aside the default and also orally to the district court in response to the court’s questions. Moore’s stated defenses, if true, might preclude her liability for the business debt or lessen the amount owed MBE. We find that the failure to file an affidavit of meritorious defense was not fatal in this case because the complaint was defective and because Moore stated facts constituting a meritorious defense in her motion to set aside the default and in the courtroom in response to the district court’s questions. See *Sylvania Savings Bank v Turner*, 27 Mich App 640, 649-650; 183 NW2d 894 (1970), where this Court reviewed the merits of the defaulting party’s claim without an affidavit of meritorious defense having been filed. Based on the foregoing, we conclude that the circuit court did not clearly abuse its discretion in finding that that the district court’s order setting aside the default should be affirmed because a meritorious defense was provided. *Park, supra* at 66.

We note that the circuit court used the wrong standard of review to determine if the district court abused its discretion. A court abuses its discretion only when its decision “is outside the range of reasonable and principled outcomes.” *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). Although the circuit court used the wrong standard, it indicated that failing to attach the contract to the complaint established good cause and that the statements Moore made in the district court were sufficient to establish a meritorious defense. The district court’s conclusion did not fall outside of the principled range of outcomes. *Id.* So, we conclude that the circuit court’s use of the wrong standard does not affect our decision on appeal.

Finally, we find no merit in plaintiff’s argument that the default against Profile Automotive Collision Center, Inc. (PACC), should have been treated differently from the default against Moore. Plaintiff argues because PACC did not respond to the summons and complaint or appear before the trial court, a default against it should stand. MBE brought its complaint against Moore, individually, and Moore d/b/a PACC. Thus, PACC, in and of itself, was not named a defendant in the case, and the district court did not abuse its discretion by not separating the default against PACC from the default against Moore.

We affirm. Defendant, as the prevailing party, may tax costs.

/s/ Richard A. Bandstra

/s/ Christopher M. Murray

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MARKEY, P.J. (*concurring*).

I concur in result only.

/s/ Jane E. Markey