

SUPREME COURT OF WASHINGTON

Morin v. Burris

161 P.3d 956 (Wash. 2007) · No. Nos. 77291-6, 77784-5, 77867-1 · Decided June 28, 2007

SUMMARY

The Washington Supreme Court consolidated three cases concerning whether prelitigation communications or other informal conduct constituted an appearance entitling defendants to notice before entry of default judgment. The court rejected the informal-appearance doctrine as formulated by the lower courts, holding that prelitigation communications alone do not satisfy the appearance requirement under Washington's civil rules. It reinstated the default judgments in Morin and Matia and remanded Gutz for consideration of equitable and CR 60 grounds for relief.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Chambers, J.; Charles W. Johnson; Susan Owens; Mary E. Fairhurst; Richard B. Sanders; James M. Johnson; Bridge; Gerry L. Alexander; Barbara A. Madsen
JURISDICTION	Washington
DECIDED	June 28, 2007
DOCKET	Nos. 77291-6, 77784-5, 77867-1
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Washington Supreme Court granted review and consolidated three appeals involving vacation or reinstatement of default judgments. The Court of Appeals had set aside the default judgments in Morin and Matia and had vacated the default judgment in Gutz, remanding for trial on the merits.
STANDARD OF REVIEW	A trial court's decision on a motion for default judgment is reviewed for abuse of discretion; questions of law are reviewed de novo. Abuse of discretion occurs when the decision rests on untenable grounds or reasons.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Sherri Morin and Eugene Morin, Desiree C. Gutz and Sharon J. Gutz, Matia Investment Fund, Inc. v. Bonnie Burris and Jeffrey Barth, Stanley B. Johnson, City of Tacoma

TOPICS

default judgment default civil procedure remedies

PRACTICE AREAS

civil procedure default judgments remedies insurance

QUESTIONS PRESENTED

1. Whether prelitigation communications or other conduct showing an intent to defend can constitute an appearance entitling a defendant to notice of a motion for default under Washington Civil Rules 4 and 55.
2. Whether defendants in Morin and Matia substantially complied with the appearance requirement or otherwise established grounds under CR 60 or equitable principles to vacate their default judgments.
3. Whether the Gutz defendants were entitled to further consideration of vacation of their default judgment under White v. Holm and CR 60 based on possible diligence, excusable neglect, or inequitable concealment by opposing counsel.

HOLDINGS

1. A party's prelitigation communications or merely expressed intent to defend do not constitute an appearance in court and cannot, standing alone, entitle the party to notice of a default judgment hearing. After service of a summons and complaint, the party must take some action acknowledging that the dispute is in court, although substantial compliance may be informal.
2. The defendants in Morin and Matia did not substantially comply with the appearance rules because they took no action acknowledging that their disputes were pending in court. They were not entitled to notice of the default hearings and did not establish mistake, surprise, excusable neglect, or inequitable conduct warranting vacation of the judgments.
3. The Gutz defendants made a sufficient showing that their failure to appear may have been excused by diligence and opposing counsel's possible concealment of the pending litigation and default proceedings. The default judgment was therefore vacated and the case remanded for the trial court to determine whether the requirements of White and/or CR 60(b)(1) or (4) were satisfied.

KEY QUOTATIONS

"Parties must take some action acknowledging that the dispute is in court before they are entitled to a notice of default judgment hearing, though they may still be entitled to have default judgment set aside upon other well established grounds." (161 P.3d at 963)

"We reject the argument that prelitigation communications alone may satisfy the appearance requirements of CR 4 and CR 55, and we decline to adopt the doctrine of informal appearance as formulated by the courts below." (161 P.3d at 964)

FACTUAL BACKGROUND

In Morin, the defendants' insured vehicle rear-ended Morin's vehicle. After prelitigation insurance communications and unsuccessful settlement discussions, Morin filed suit, served the defendants, and obtained a default judgment when they did not respond. In Matia, a corporation sued Tacoma after the City invalidated a property-bidding process and denied Matia's claim for bid-preparation expenses; the City failed to answer because the summons and complaint were not forwarded to the city attorney. In Gutz, the defendants' insurer engaged in extensive prelitigation settlement communications, but the defendants did not formally appear after being served; the plaintiffs obtained a default order and judgment while allegedly failing to disclose that litigation and default proceedings were pending.

PROCEDURAL HISTORY

In Morin and Matia, the defendants failed to answer or otherwise formally appear after being served, and the plaintiffs obtained default judgments. The trial courts later vacated those judgments based on an asserted informal appearance, and the Court of Appeals affirmed or upheld the vacations. In Gutz, the trial court denied the defendants' motions to vacate the default, while the Court of Appeals vacated the order and judgment on informal-appearance and CR 60 grounds. The Washington Supreme Court reversed in Morin and Matia, reinstating the default judgments, and vacated the Gutz default judgment for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In Morin v. Burris and Matia Investment Fund, Inc. v. City of Tacoma, the Court of Appeals decisions are reversed and the default judgments are reinstated. In Gutz v. Johnson, the default judgment is vacated and the case is remanded for further consideration of whether the defendants satisfy White v. Holm and/or CR 60(b)(1) or (4).

CASES CITED

- Tiffin v. Hendricks, 44 Wash. 2d 837, 271 P.2d 683 (1954)
- State ex rel. Trickel v. Superior Court, 52 Wash. 13, 100 P. 155 (1909)
- Yeck v. Department of Labor & Industries, 27 Wash. 2d 92, 176 P.2d 359 (1947)
- Braam v. State, 150 Wash. 2d 689, 81 P.3d 851 (2003)
- Department of Ecology v. Campbell & Gwinn, L.L.C., 146 Wash. 2d 1, 43 P.3d 4 (2002)
- Griggs v. Averbeck Realty, Inc., 92 Wash. 2d 576, 599 P.2d 1289 (1979)
- Dlouhy v. Dlouhy, 55 Wash. 2d 718, 349 P.2d 1073 (1960)
- Roth v. Nash, 19 Wash. 2d 731, 144 P.2d 271 (1943)
- Hull v. Vining, 17 Wash. 352, 49 P. 537 (1897)
- Batterman v. Red Lion Hotels, Inc., 106 Wash. App. 54, 21 P.3d 1174 (2001)
- Warnock v. Seattle Times Co., 48 Wash. 2d 450, 294 P.2d 646 (1956)
- State ex rel. LeRoy v. Superior Court, 149 Wash. 443, 271 P. 87 (1928)

- Gage v. Boeing Co., 55 Wash. App. 157, 776 P.2d 991 (1989)
- Skilcraft Fiberglass v. Boeing Co., 72 Wash. App. 40, 863 P.2d 573 (1993)
- Matia Investment Fund, Inc. v. City of Tacoma, 129 Wash. App. 541, 119 P.3d 391 (2005)
- Gutz v. Johnson, 128 Wash. App. 901, 117 P.3d 390 (2005)
- Mayer v. Sto Industries, Inc., 156 Wash. 2d 677, 132 P.3d 115 (2006)
- State v. Rohrich, 149 Wash. 2d 647, 71 P.3d 638 (2003)
- State v. Lewis, 115 Wash. 2d 294, 797 P.2d 1141 (1990)
- Shreve v. Chamberlin, 66 Wash. App. 728, 832 P.2d 1355 (1992)

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