

SUPREME COURT OF OREGON

Duvall v. McLeod, 331 Or. 675

21 P.3d 88 (2001) · No. SC S46779 · Decided March 22, 2001

SUMMARY

The Oregon Supreme Court held that ORCP 71 B(1) requires a party seeking relief from a default judgment to tender a responsive pleading or ORCP 21 A motion simultaneously with the motion for relief. The court concluded that ORCP 15 D did not authorize the trial court to accept the responsive pleading later, reversed the Court of Appeals, vacated the circuit court judgment, and remanded with instructions to reinstate the default judgment.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Kulongoski, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Kulongoski, Justice; Leeson, Justice; Riggs, Justice
JURISDICTION	Oregon
DECIDED	March 22, 2001
DOCKET	SC S46779
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiff petitioned for review of a Court of Appeals decision affirming the trial court's order setting aside a default judgment.
STANDARD OF REVIEW	The court reviewed the interpretation and application of the Oregon Rules of Civil Procedure as a matter of law.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Deborah Duvall v. Michelle Lynn McLeod

TOPICS

- default judgment
- civil procedure
- statutory interpretation
- appellate procedure
- negligence

PRACTICE AREAS

- civil procedure
- torts

QUESTIONS PRESENTED

1. Whether ORCP 71 B(1)'s requirement that a motion for relief from a default judgment be accompanied by a pleading or motion to dismiss requires simultaneous tender of that pleading or motion when the motion for relief is filed.
2. Whether ORCP 15 D authorized the trial court to accept a responsive pleading after the motion for relief from the default judgment had been filed.

HOLDINGS

1. ORCP 71 B(1) requires a party seeking relief from a default judgment to tender the motion for relief and the required responsive pleading or ORCP 21 A motion to dismiss simultaneously when the motion for relief is filed.
2. ORCP 15 D did not authorize the trial court to accept McLeod's late answer before setting aside the default judgment or to waive ORCP 71 B(1)'s simultaneous-tender requirement.

KEY QUOTATIONS

“The text and context of the rule reveal that the legislature intended that a motion for relief from default judgment be accompanied by the required pleading when the moving party files the motion.” (331 Or. at 679)

“We conclude that ORCP 71 B required defendant to tender her answer when she filed her motion for relief from default judgment and that ORCP 15 D did not authorize the trial court to waive that requirement.” (331 Or. at 680)

FACTUAL BACKGROUND

The negligence action arose from a traffic accident, and Duvall obtained a default judgment against McLeod in July 1995 for nearly \$70,000. McLeod sought relief under ORCP 71 B(1)(a), asserting mistake or excusable neglect based on a misunderstanding concerning the time to answer. She filed a motion for relief and an insurance adjuster's affidavit but did not simultaneously tender an answer or ORCP 21 A motion to dismiss. The trial court later allowed her to file an answer and then set aside the default judgment.

PROCEDURAL HISTORY

Duvall obtained a default judgment against McLeod in a negligence action arising from a traffic accident. McLeod moved for relief from the default judgment under ORCP 71 B(1) without simultaneously filing a responsive pleading. The trial court later accepted McLeod's answer and set aside the default judgment; the Court of Appeals affirmed in a split decision. The Oregon Supreme Court reversed the Court of Appeals, vacated the circuit court judgment, and remanded with instructions to reinstate the default judgment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The decision of the Court of Appeals was reversed, the circuit court judgment was vacated, and the case was remanded to the circuit court with instructions to reinstate the default judgment.

CASES CITED

- Duvall v. McLeod, 160 Or. App. 685, 984 P.2d 287 (1999)
- Waddill v. Anchor Hocking, Inc., 330 Or. 376, 381, 8 P.3d 200 (2000)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-11, 859 P.2d 1143 (1993)
- McFarlane v. McFarlane, 45 Or. 360, 365, 77 P. 837 (1904)

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