

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000932-001 DT

03/20/2006

COMM. LISA ANN VANDENBERG

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 03/22/2006

STATE OF ARIZONA

CARON L CLOSE

v.

LYDIA F D'AGOSTO (001)

SUSAN J KAYLER

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

RECORD APPEAL RULE / REMAND

Lower Court Case No. PR200520964

This appeal, previously assigned to Judge Margaret H. Downie, was reassigned to Commissioner Lisa Ann Vandenberg for determination.

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, section 16, and A.R.S. § 12-124 (A). The court has considered the record of the proceedings from the trial court and the memoranda submitted.

On August 2, 2005, the Scottsdale City Court issued a Default Judgment against Lydia F. D'Agosto in the amount of \$228.00. This judgment arises out of an Arizona Traffic Ticket and Complaint, no. 05026876, which was believed to have been served on Defendant Lydia F. D'Agosto's ("Appellant") place of residence on July 3, 2005, directing her to appear before the trial court on August 2, 2005. When the Appellant failed to appear on the date of hearing, the trial court assumed the allegations of the complaints were deemed admitted, and the court entered a judgment for the State and imposed a civil sanction.¹

On September 14, 2005, the Defendant filed a Motion to Set Aside Default pursuant to Arizona Rules of Civil Traffic Procedure ("Ariz.R.Civ.T.P."), Rule 23. On that same day, the trial court held a hearing on the Motion. After the hearing, the trial court affirmed the Default

¹ *see* Arizona Rules of Civil Traffic Procedure, Rule 22(a).

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Judgment². The Defendant, having filed a notice of appeal, now brings this matter before this court.

In the case at hand, the Defendant indicated to the trial court that she was not the person driving the vehicle described in the complaint. She also described that she had resolved another ticket in the same time frame as this matter. In the other traffic matter, she stated that she demonstrated that she was not the driver, and the matter was dismissed by the court. She further indicated that she believed that dismissal had resolved her traffic issues with the trial court. The trial court did not dispute this information, instead the court indicated that it is common to receive multiple tickets for the same driving event and proceeded to deny the Motion and affirm the Default Judgment.

This court turns to the Supreme Court of Arizona's guidance for the appropriate standard of review with regard to a trial court's denial of a motion to set aside default judgment. The Court in *Hirsh v. National Van Lines, Inc.* stated:

At the outset we note that it is a highly desirable legal objective that cases be decided on their merits and that any doubts should be resolved in favor of the party seeking to set aside the default judgment. *Richas v. Superior Court*, 133 Ariz. 512, 652 P.2d 1035 (1982); *Union Oil Co. v. Hudson Oil Co.*, 131 Ariz. 285, 640 P.2d 847 (1982). These matters, however, rest entirely within the trial court's discretion and will not be overturned on appeal unless a clear abuse of discretion has been shown. *Richas, supra*, *Union Oil, supra*.

Hirsh v. National Van Lines, Inc., 136 Ariz. 304, 666 P.2d 49 (1983).

In the case at hand, Ms. D'Agosto provided explanation for her failure to appear for the August 2, 2005 hearing. First, she indicated that she believed the previous dismissal led her to believe that she had resolved this matter. Second, she indicated that she had previously provided the same court satisfactory evidence that she did not drive the alleged vehicle as described in the complaint. Given this uncontroverted information, the Appellant should be provided an opportunity to have this case decided on the merits.

IT IS THEREFORE ORDERED vacating the Default Judgment of \$296.40, as modified on September 14, 2005 in this matter.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale City Court for a trial on Arizona Traffic Ticket and Complaint no. 05026876 and for all further appropriate proceedings.

² The Default Judgment was modified on September 14, 2005 to indicate an outstanding amount of \$296.40.