

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2006-000075-001 DT

05/16/2006

COMM. EARTHA K. WASHINGTON

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 05/17/2006

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

MARSHALL A KNOX (001)

MARSHALL A KNOX
11832 W ROANOKE
AVONDALE AZ 85323

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

LOWER COURT REVERSED / REMAND

Lower Court Case No. PR200528074

This appeal, previously assigned to Judge Margaret H. Downie, was reassigned to Commissioner Eartha K. Washington 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, exhibits made of record, and the memoranda submitted.

On May 25, 2005, a vehicle bearing the license plate number 694-HVA was captured by a traffic camera northbound on Scottsdale & Frank Lloyd Wright Boulevard traveling seventeen miles over the posted speed limit. The camera captured a white male in a Ford minivan behind the wheel at the time of the violation. Based on that incident, the appellant, Marshall Knox, was sent a traffic ticket and complaint alleging that he had violated A.R.S. 28-701.A (speed greater than reasonable and prudent).

The issue in this case is whether the lower court abused its discretion in not setting aside the default judgment against the appellant. Rule 23 of the Rules of Procedure in Civil Traffic Cases gives the lower court the ability, upon written motion, to set aside default judgments entered upon a failure to appear where good cause is shown or where it's necessary to prevent a manifest injustice.

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In reviewing an order setting aside a default judgment we are mindful of two fundamental principles. The first is the law's preference for resolution of disputes on their merits, so that any doubt should be resolved in favor of the party seeking to set aside the default judgment.... The second is that the trial court is vested with broad discretion in this matter, and its determination will not be overturned by an appellate court absent a clear abuse of discretion....The exercise of that discretion must, however, be supported "by facts or sound legal policy."

Alamarez v. Superior Court, 146 Ariz. 189, 704 P.2d 830 (1985). An abuse of discretion occurs where the lower court exceeds "the bounds of reason by performing the challenged act." *Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997).

After failing to appear for an arraignment in the Scottsdale City Court on October 10, 2005, a default judgment was entered against the appellant on October 13, 2005. After receiving the notice of default judgment, the appellant on October 27, 2005, filed a motion with the court to set aside the judgment. That same day he appeared before the lower court and explained that the person captured by camera on May 25, 2005, was not him. The lower court judge questioned the appellant on the steps he took before the default was entered to resolve the case. After reviewing the appellant's evidence and the paperwork he claimed he received from the court, the lower court judge denied the motion to set aside the judgment.

Appellant, having filed a timely notice of appeal, now brings the matter before this court.

The appellant, based on the paperwork he received from the lower court prior to the missed court date, did try and resolve the case by sending in a copy of his identification. The lower court ruled that paperwork in the appellant's possession did not provide evidence that he tried to resolve his case in the proper manner. In his appeal, the appellant provides the evidence that he showed to the lower court at the time of the hearing on his motion to set aside. Had the court examined the photo of the traffic violation on May 25, 2005, it would have seen that person behind the wheel was not the appellant, and that the vehicle bearing the license plate registered in appellant's name, was a Ford minivan not a Ford Expedition.

The appellant provides evidence that he was unable to present to the lower court at the time of the hearing. He provides proof that he sold his vehicle, a white Ford Expedition on May 5, 2005, and he has evidence in support of that sale from Avondale Nissan. A letter from a representative from Avondale Nissan indicates that they took the plates off the Ford Expedition after the sale; however, they did not destroy the plates and as result they were stolen from the company.

The lower court, looking at the photo that was generated and sent with the ticket and traffic complaint to the appellant, should have granted the motion to set aside the judgment. The grant of the motion was necessary to prevent a manifest injustice, i.e. a judgment against the

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defendant where it is clear that he was not responsible for the civil traffic violation that occurred on May 25, 2005. The lower court's failure to do so was an abuse of its discretion because the reason for the denial was unsupported by facts or any sound legal policy.

IT IS ORDERED setting aside the judgment of default imposed by the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings consistent with this ruling.