MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 08-227
Docket No. Cum-08-376

RICHARD THUOTTE et al.

v.

MAINE TURNPIKE AUTHORITY et al.

Argued November 19, 2008
Decided December 4, 2008

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Peter Perry and the Maine Turnpike Authority (MTA) appeal from a judgment entered in the Superior Court (Cumberland County, *Delahanty, J.*) denying their motions for summary judgment and denying the MTA's motion to dismiss complaints filed by Richard Thuotte and Terry Lee Huntley (collectively, Thuotte). Perry and the MTA contend that they were entitled to summary judgment because the court erred by: (1) considering facts, contained in an affidavit, that were outside the scope of Thuotte's material facts; (2) relying on conclusory statements of law offered by Thuotte; and (3) determining that, pursuant to 14 M.R.S. § 8107(1), (5) (2007), Thuotte had good cause for filing a late notice of claim. Thuotte contends that the court erred by denying his motion for a default judgment against MTA when, in fact, there was no such pending motion because the judgment had already been entered by the clerk pursuant to Thuotte's request.

Contrary to the contentions of Perry and the MTA, the court properly relied on the factual portions of Thuotte's statement of material facts, as well as those portions of the affidavit cited therein. *See* M.R. Civ. P. 56(e), (h)(4). Furthermore, on de novo review, *see Madore v. Kennebec Heights Country Club*, 2007 ME 92, ¶ 10, 926 A.2d 1180, 1184, the court did not err in interpreting section 8107(5),

which defines "good cause," to include the kind of communication that occurred between Thuotte's attorney and the insurance company.

In addition, because Thuotte did not suffer a "plain and unmistakable injustice" as a result of the MTA's four-day delay in filing its answer, the court did not abuse its discretion when it declined to enter a default judgment. *See Conrad v. Swan*, 2008 ME 2, ¶ 9, 940 A.2d 1070, 1074. Although the court erred by stating in its order that Thuotte's "motion[] for default . . . [was] denied," rather than setting aside the default that had already been entered by the clerk, the court's error was harmless because there was good cause for the court to set aside the judgment. *See* M.R. Civ. P. 55(c), 61.

The entry is:

Judgment affirmed.

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