



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

I have been presented with a novel issue. A client requested that I represent him in a case in which a default judgment was entered against him. Apparently, he failed to comply with numerous court orders. At the adjudicative phase of the process, the court entered a ruling based strictly on the testimony of his former spouse. He was refused the right to participate in that process and, of course, was very unhappy with the results. Somehow, even though I realize that the client was wrong, it seems to me that his rights have been violated. Do you agree?

Practitioner

Dear Practitioner:

Based on the limited information you provided, I cannot agree with your belief that your client's rights were violated. The court does have the authority to grant a default judgment and to preclude a party from participating in the process.

You should carefully review *Koy v Koy*, 274 Mich App 653, 735 NW2d 665 (2007). Therein, a default judgment was entered against a party for failing to comply with numerous court orders. In one instance, being held in contempt of court for failure to return a vehicle to his wife as ordered, and when he finally did return the vehicle, he did so without providing her with the keys; failing to answer interrogatories, contrary to a court order; and failing to pay court ordered sanctions. The Appellate court held:

*When a trial court must resort repeatedly to orders and sanctions of increasing severity to compel a party's participation in court proceedings, and the party still refuses to comply, the trial court properly exercises its power in entering a default and, if appropriate, a default judgment against that party. As this court previously stated, in *Draggoo v Draggoo*,*

223 Mich App 415, 427, 566 NW2d 642 (1997), "In our view, the ultimate sanction of default judgment is a necessary sanction at the trial court's disposal to require compliance with its interim orders in a divorce case." Under the circumstances of this case, the trial court did not abuse its discretion in denying defendant's motion to set aside the default judgment.

Most noteworthy, however, is the Appellate Court's holding that:

The trial court did not err in precluding defendant's participation after entry of the default. This court has held that "[a]llowing a defaulted party to participate in the adjudication of the property division in a divorce case would effectively undermine the court's 'inherent authority to enforce its own directives' and '[to mold] its relief according to the character of the case.'"

**Answer respectfully submitted by
Harvey I. Hauer, Hauer & Snover.**

Please send questions for Professor Lex to Hhauer@hauersnover.com. Include "Professor Lex" in the e-mail's subject line.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

AUTHOR'S COMMENT: Last month, I discussed the recent case of *Shouneyia v Shouneyia*, ---NW2d ---, 2011 WL 148783 (Mich App, Jan 18, 2011) (No. 297007). Please note that the Defendant-Appellant has requested leave to appeal to the Michigan Supreme Court. Currently the opinion is stayed.

