

OREGON LAW UPDATE

Failure to Appear? No Judgment Unless Rules Are Followed

From the desk of Jeff Eberhard: In this case, the Court of Appeals held that failure to file responsive pleadings does not entitle the opposing party to a default judgment unless the opposing party complies with the requirements of ORCP 69.

Claims Pointer: Insurers should be aware that a party is not entitled to a default judgment just because the other party fails to appear. Certain procedural requirements must be followed, or else a court cannot and will not grant a judgment in favor of the appearing party. Simply filing a motion for an order of default is easy, and ensures that the court will issue a judgment against the delinquent party.

case in point...

Lehman v. Bielenberg, in the Court of Appeals of the State of Oregon, A149985 (July 10, 2013).

Stafford and her husband created a revocable trust, with Lehman as the trustee. Bielenberg, Stafford's son, wanted to appoint a conservator and guardian for Stafford. Bielenberg claimed that Stafford was financially incapable and had assets that required management. Lehman and Stafford filed a counterclaim asking for a judgment declaring the trust valid, compensation for care giving and trustee services, and attorney fees. Bielenberg did not reply to the claim. A court-appointed visitor determined that there was no reason to appoint a conservator and guardian, as requested by Lehman and Stafford. The parties eventually agreed not to appoint a conservator and guardian and the trial court dismissed the petition but allowed a hearing to determine attorney fees. Lehman appealed.

On appeal, Lehman argued that the trial court did not address his counterclaim and should have entered a judgment in his favor. Lehman argued that he was entitled to judgment on the counterclaim as a matter of law because Bielenberg did not file a reply to it. The Court of Appeals held that Lehman was not entitled to a default judgment on his counterclaim because he had not met the procedural requirements established by Oregon Rule of Civil Procedure 69. Specifically, Lehman failed to file a motion for order of default. The Court explained that ORCP 69's requirements related to default orders apply to all types of claims, including counterclaims. Because Lehman failed to comply with those requirements, the trial court did not err when it declined to enter a judgment against Bielenberg. Lehman should have filed a motion for an order of default, at which point the trial court would have been able to enter a judgment against Bielenberg.

The Court made two additional rulings. First, the Court found that Lehman did not properly preserve the error of failing to enter a judgment because he did not object to the trial court's general judgment of dismissal. Second, the Court found that Lehman could not challenge the trial court's decision to prohibit him from paying his attorney fees from the trust. The Court stated that issues with attorney fees could only be challenged following an additional post-judgment hearing, which had not yet occurred.



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