



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**BRANDON L. McMAHAN v. GRASSHOPPER TRANSP. INC
CV-25-0287-PR**

PARTIES:

Petitioner/Defendant: Grasshopper Transportation Inc. (“Grasshopper”)

Respondent/Plaintiff: Brandon L. McMahan (“McMahan”)

FACTS:

On February 13, 2023, McMahan was working on a construction site in Phoenix and was standing behind a row of orange barricades dividing the road and the worksite. A truck with a Grasshopper logo allegedly side-swiped some of the barriers, catapulting them into McMahan and seriously injuring him. The truck did not stop and left the scene.

About a year later, McMahan filed a lawsuit against Grasshopper in superior court, alleging that Grasshopper, as an employer, was liable for its employee’s negligence in side-swiping the barriers. Ljubisa Srejovic, a Grasshopper employee, is Grasshopper’s statutory agent authorized to receive service of complaints against the company. In early March 2024, McMahan’s process server attempted to serve the complaint on Srejovi at her office. His later Affidavit of Service says that “Ms. Srejovic was out of town so papers were accepted by her assistant/registered agent,” Sladana Bojic.

Grasshopper failed to file an answer to the complaint in a timely manner, leading McMahan to apply for entry of default. If a defendant does not file an answer within 10 days after the application is filed, the default becomes effective and the defendant may no longer contest liability. When Grasshopper still did not file an answer within that time, McMahan filed a motion for a default judgment to declare McMahan as the prevailing party in the lawsuit.

In June 2024, about three weeks after the default became effective, Grasshopper filed an answer to McMahan’s complaint. In early July, it filed a motion under Civil Procedure Rule 55 to set aside the default, which would allow it to contest liability and proceed with the case. The court denied the motion because it could not find that Grasshopper’s failure to timely respond to the complaint was the result of excusable neglect.

The court also denied a later filed motion under Civil Procedure Rule 60(a) and (b) to set aside the default. McMahan then filed a motion asking the court to reconsider its ruling. In the motion, Grasshopper argued for the first time that the complaint was served improperly because Grasshopper had not authorized Bojic to accept service on its behalf. It argued that the superior court never had jurisdiction to enter the default because Grasshopper was not properly served, and that any resulting default or default judgment was void, i.e., as if it never existed. Thus, it contended that the court should set aside the entry of default.

The superior court held oral argument and ordered Grasshopper to “recast” its motion for reconsideration as one for Rule 60 relief. When Grasshopper did that, it granted the motion and set aside the default, ruling that Grasshopper was not properly served. McMahan then filed a

special action in the Court of Appeals, a procedural mechanism that gives an appellate court discretion to review an issue that otherwise cannot be appealed as a matter of right.

The Court of Appeals' Decision. The Court of Appeals accepted jurisdiction over McMahan's special action and vacated the superior court's ruling setting aside the default. It reasoned that Grasshopper had waived its insufficient-service-of-process defense by failing to raise it in a Rule 12 motion to dismiss or in its answer. It also ruled that it waived the defense by appearing in the case and defending against the suit.

In this petition for review, Grasshopper contends that the court's opinion is factually inaccurate and wrong as a matter of law because a party cannot waive an insufficient-service-of-process defense as any default or default judgment is void if the plaintiff fails to serve the defendant properly.

ISSUE:

Grasshopper has asked the Supreme Court to address the following issue:

“Can a party waive the right to have a court vacate a void order, which was entered against the party without proper service, before voluntarily appearing, and without the Court otherwise acquiring jurisdiction prior to the order?”

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