MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

MIDWEST CLEARANCE CENTERS, LLC,	)	No. ED111193
	)	
Appellant,	)	Appeal from the Trial Court
	)	of St. Louis County
vs.	)	
	)	Honorable Joseph S. Dueker
ST. LOUIS RETAIL OUTLET, LLC, AND	)	
NAMDAR REALTY GROUP, LLC,	)	
	)	
Respondents.	)	FILED: November 28, 2023

Midwest Clearance Centers, LLC ("Appellant") appeals from the trial court's ruling setting aside a purported default judgment entered in September 2022 ("September Judgment"). Appellant raises two points on appeal, arguing the trial court erred in granting a motion by St. Louis Retail Outlet, LLC and Namdar Realty Group, LLC ("Respondents") to set aside the September Judgment under the procedural mechanisms of either Rule 74.05(d) or Rule 75.01. First, Appellant maintains the trial court lacked authority to set aside the judgment under Rule 74.05(d) because there was no default judgment to set aside in that Respondents filed an answer to the petition and litigated the case before failing to appear at trial. Second, Appellant contends the trial court lacked authority to vacate the September Judgment pursuant to Rule 75.01 because Respondents did not adduce good cause to vacate the judgment as required under the rule.

DISMISSED.

DIVISION TWO HOLDS: Because there is no final judgment in the case, we lack jurisdiction to review the appeal. Given that Respondents answered and litigated the Second Amended Petition prior to failing to appear at trial, the September Judgment was not a default judgment but a judgment on the merits. Therefore, absent a default judgment in the record, we cannot premise our jurisdiction on the immediate right to an appeal taken from a trial court's ruling on a Rule 74.05(d) motion to set aside a default judgment. Further, to the extent that the trial court otherwise explicitly vacated the September Judgment under Rule 75.01 within thirty days prior to the judgment becoming final, that action is unreviewable without a final judgment in the case. Accordingly, we must dismiss the appeal.

Opinion by: Kurt S. Odenwald, P.J.
Michael E. Gardner, J., and Renée D. Hardin-Tammons, J., concur.

Attorneys for Appellant: Timothy P. Philipp and Katherine E. Hummel

Attorneys for Respondents: Amy L. Fehr and Andrew W. Blackwell

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.