

IN THE COURT OF APPEALS OF IOWA

No. 1-392 / 91-181

FILED

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CLERK SUPREME COURT

STATE OF IOWA,

Appellant,

vs.

521

HOWARD CUPPLES, JR.,

Appellee.

Appeal from the Iowa District Court for Jasper County,
Rodney Ryan, Judge.

State appeals district court order setting aside a
default judgment and ordering return of money seized from
defendant at the time of his arrest. **REVERSED AND
REMANDED.**

Bonnie J. Campbell, Attorney General, Richard J.
Bennett, Assistant Attorney General, James Wilson, County
Attorney, and Richard J. Scieszinski, Assistant County
Attorney, for appellant.

John E. Billingsley of Walker, Knopf & Billingsley,
Newton, for appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Howard Cupples was arrested on drug-related criminal charges. At the time of his arrest, \$4991 in cash was seized from him. Cupples denied the cash had any connection to illegal activity.

As a result of the arrest, Cupples was charged with possession of methamphetamine with intent to deliver. He was later acquitted on that charge.

Meanwhile, the State filed a notice under Iowa Code chapter 809 seeking forfeiture of the money seized from Cupples. Prior to Cupples' criminal acquittal, the district court ordered the cash forfeited after finding Cupples' claim for its return was untimely.

After his acquittal, Cupples again sought return of the cash. Because the earlier forfeiture order relied on the untimeliness of Cupples' claim and thus had features of a default judgment, Cupples captioned his request "Motion to Set Aside Default and For Return of Seized Property." The district court determined the matter was properly before it as a motion to set aside a default judgment. In light of Cupples' acquittal on the criminal charges, the district court found forfeiture of the cash "would constitute an unconscionable windfall to the State." Therefore, the district court granted Cupples' motion and ordered the money be returned.

The State appeals, contending Cupples failed to show good cause to set aside a default judgment under Iowa Rule

of Civil Procedure 236. In the alternative, the State argues even if Cupples is entitled to have the earlier default judgment set aside, a hearing should have been held to determine whether the cash was forfeitable before directing the cash be returned to Cupples.

I. Default Judgment. Trial courts have broad discretion in ruling on motions to set aside a default judgment. We will set aside such rulings only upon a showing of abuse of discretion. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987) (citing Paige v. Chariton, 252 N.W.2d 433, 437 (Iowa 1977)). Because the trial court's findings of fact have the force of a jury verdict, the movant generally must show a lack of substantial evidence supporting the ruling to show such abuse of discretion. Id.; Dealers Warehouse Co. v. Wahl & Assocs., 216 N.W.2d 391, 394 (Iowa 1974). We are more reluctant to interfere with the grant of such a motion, as in the present case, than with its denial. Edgar v. Armored Carrier Corp., 256 Iowa 700, 704, 128 N.W.2d 922, 924 (Iowa 1964). Every fair presumption will be indulged in favor of the trial court's ruling. Id.

Under Iowa Rule of Civil Procedure 236, a court may set aside a default judgment only for "good cause shown" based on "mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty." Thus, good cause requires "a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the

resulting effect." Dealers Warehouse, 216 N.W.2d at 394. Additionally, the movant must present "at least a prima facie showing of a meritorious defense as a condition to setting aside a default." Hallett Constr. Co. v. Iowa State Highway Comm'n, 258 Iowa 520, 530, 139 N.W.2d 421, 428 (1966). In the present case, it is clear defendant made a showing of a meritorious defense in the criminal proceeding in which he was acquitted. Therefore, we must determine whether good cause was shown to set aside the default judgment.

According to Cupples' first attorney, Lee M. Walker, Cupples had signed the claim for return of the property. Mr. Walker informed the State and the court at a previous hearing of Cupples' intent to claim the funds. However, as a result of Mr. Walker's mistake and inadvertence, the claim did not get filed within the thirty-day period.

"Where a party in good faith is shown to have intended to defend but fails to do so because of accident or excusable neglect the trial court is justified in setting aside the default . . . Courts look with favor upon trials [on their merits] and the rights of a litigant should not be denied proper hearing by strict application of legal formalities." Newell v. Tweed, 241 Iowa 90, 95, 40 N.W.2d 20, 23 (1949) (citation omitted). In Reilley v. Kinkead, 181 Iowa 615, 165 N.W. 80 (1917), our supreme court reversed the trial court's refusal to set aside a default judgment when because of confusion in the

defendant's attorney's office no appearance had been timely made. A similar result was reached in Newell v. Tweed, 241 Iowa 90, 40 N.W.2d 20 (1949), when no timely appearance was made because the original notice had been misplaced on the attorney's desk.

It is our conclusion the trial court did not abuse its discretion in setting aside the default judgment in the present case. The interests of justice would not be furthered by holding there was no mistake or inadvertence.

II. Forfeiture Hearing. In the alternative, the State contends the trial court acted illegally when it ordered the money be returned to Cupples without a forfeiture hearing. Although the State did not file a petition for certiorari, it asks us to treat this matter as an action for writ of certiorari under Iowa Rule of Appellate Procedure 304.

When an appeal has been taken improperly we may treat the application for appeal as a petition for writ of certiorari. Iowa R. App. P. 304. Certiorari lies when an inferior court is alleged to have exceeded its jurisdiction or to have acted illegally. State v. District Court, 463 N.W.2d 885, 886 (Iowa 1990). The State contends the district court acted illegally in ordering return of the money without a forfeiture hearing. Certiorari is thus the appropriate means for seeking review of the district court's action.

Certiorari is an action at law and is not triable here de novo. City of Des Moines v. Iowa District Court for Polk County, 428 N.W.2d 292, 296 (Iowa 1988). We will uphold the fact findings of the trial court if they are supported by substantial evidence. Downs v. Board of Trustees of Police Retirement System of City of Sioux City, 312 N.W.2d 563, 566 (Iowa 1981).

The district court determined the State's retention of the money would be "an unconscionable windfall" and ordered it returned to Cupples. It appears the district court determined under section 809.10 of the forfeiture statute it would be inequitable for the State to retain the money in view of Cupples' acquittal of the criminal charge. Section 809.10(3) provides, however, "u]pon a finding by the court that the property is forfeitable, the court may as a matter of equity enter an order transferring title to the property to the state." (Emphasis added.) Additionally, section 809.10(2) provides "[i]f an application for the return of forfeitable property is timely made . . . the claim shall be set for hearing and the hearing . . . shall be tried to the court." (Emphasis added.)

It appears the district court attempted to save judicial time and expense in ordering the money returned without holding a forfeiture hearing. It cannot be questioned, however, under the mandatory language of the statute the State had a right to a hearing on the

forfeitability of the money when the default judgment was set aside. Furthermore, a forfeiture action is a civil proceeding, separate and distinct from any related criminal action. Iowa Code § 809.11(1)(1991). Forfeiture is not dependent upon a prosecution for, or conviction of, a criminal offense. Id.

We hold the district court acted illegally because it had no authority to order the money returned to Cupples without affording the State a forfeiture hearing. This case is, therefore, reversed and remanded for a forfeiture hearing. We recognize a forfeiture hearing could be an exercise in futility and an inefficient use of judicial time. Nevertheless, we are constrained by the dictates of the forfeiture statute.

III. Conclusion. We hold the trial court did not abuse its discretion in setting aside the default judgment. However, the district court had no authority to order the money returned to defendant in the absence of a forfeiture hearing. Therefore, we reverse and remand this case and order a forfeiture hearing be held.

REVERSED AND REMANDED.