

**FILED**

DEC 26 1984

CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

**AMERICAN SAVINGS BANK,**

)

334

Plaintiff-Appellee,

)

Filed December 26, 1984

vs.

)

4-416  
83-1550

**ELMER L. HOLLAND,**

)

Defendant-Appellant.

)

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Appeal from the Iowa District Court for Plymouth County, James P. Kelley,  
Judge.

The trial court granted the plaintiff a summary judgment against one defendant. The defendant seeks to have the summary judgment vacated on the ground he had not received notice of the plaintiff's motion for summary judgment.  
**AFFIRMED.**

Thomas A. Vakulskas and Duane E. Hoffmeyer of the Vakulskas Law Firm,  
Sioux City, for defendant-appellant.

Patrick J. Birmingham of Bloomfield, Nebraska, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Sackett, JJ.

**OXBERGER, C.J.**

The plaintiff-bank filed a suit alleging wrongful detention of property in which the bank held a security interest. During the course of that litigation, the trial court entered a summary judgment in favor of the plaintiff-bank and against one of the defendants, Elmer Holland. Holland later moved to vacate the summary judgment on the ground he had never received notice of the plaintiff's motion for summary judgment. The trial court refused to vacate the summary judgment, and Holland has appealed. He contends that he had established several of the grounds stated in Iowa Rule of Civil Procedure 252 for vacating a judgment. We affirm.

Holland argues that service of the summary judgment motion on two lawyers, neither of whom had entered an appearance for Holland, did not constitute proper service on Holland under Iowa Rule of Civil Procedure 82(b). One of the lawyers represented other defendants; the other lawyer had apparently been consulted by Holland but had never entered an appearance or filed a document on Holland's behalf. Holland argues that the absence of proper service of the summary judgment motion entitled him to vacation of the summary judgment under at least three of the grounds for vacation stated in rule 252: (1) mistake, neglect, or omission by the clerk of district court; (2) unavoidable casualty or misfortune preventing him from defending; and (3) irregularity or fraud practiced in obtaining the summary judgment. Plaintiff-bank further claims Holland has not alleged he has a meritorious defense, as required by rule 253.

The bank contends this court does not have jurisdiction to review the motion to set aside the judgment, saying that an improper posttrial motion does not extend the time to file an appeal. Apparently the bank is referring to the fact that Holland initially filed his motion as a "motion to set aside default judgment," and although his attorney referred to the summary judgment throughout the motion, also cited the wrong rule, Iowa Rule of Civil Procedure 236, which deals

with default judgments. The trial court, however, found the motion had been misnamed and allowed Holland to amend it. When the motion was overruled, he filed timely appeal of the court's action. A motion under rule 252 is properly filed within a year of judgment. Iowa R. Civ. P. 253. He timely filed appeal from the court's action denying his motion, conferring jurisdiction upon this court.

The scope of our review of the court's action is limited to correcting errors of law. Jacobson v. Leap, 249 Iowa 1036, 1041, 88 N.W.2d 919, 922 (1958). The trial court is given wide discretion in making its ruling, and the burden is on the movant to show cause to set aside the default or judgment. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981). Even where the trial court makes no findings of fact or bases its ruling on a different ground, we will uphold such rulings if any proper ground appears in the record. Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974).

Here the court made no findings of fact, but instead overruled the motion without comment. We find the court properly reached this conclusion, since the record shows Holland never answered or appeared a year and one-half following the serving of the original notice. The supreme court has indicated that where a defendant does not enter an appearance he is in default and is not entitled to service of motions that follow. In re Marriage of Thompson, 275 N.W.2d 406, 410 (Iowa 1979). In the situation presented in Thompson, as here, the defendant did not answer, appear, or defend the action brought against him. Id. at 407. The defendant did not receive a copy of the order setting the case for trial. Id. After the judgment was entered, he claimed the judgment should be set aside under rule 252, asserting mistake, neglect, or omission by the clerk of court, and irregularity practiced in obtaining the judgment. Id. The court stated the rules of civil procedure requiring service of orders, judgments, and motions upon parties are not operative unless a general appearance is entered by the defendant. Id. at 409.

Since Holland has not fulfilled the prerequisite of a general appearance after proper service of the original notice, the rules of civil procedure regarding service of later motions did not apply, and his claim that the judgment should be vacated is without merit. For this reason we do not reach the question of whether a meritorious defense was alleged by Holland. We affirm the trial court.

AFFIRMED.