IN THE COURT OF APPEALS OF IOWA

No. 8-348 / 97-1337

JODY GLENN n/k/a JODY JOHNSON,

Plaintiff-Appellant,

vs.

SIPCO d/b/a MONFORT, INC. and BMS CONTRACT SERVICES, INC.,

Defendants-Appellees.

FILED
OCT 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson and Timothy J. Finn, Judges.

Plaintiff appeals the district court's ruling granting defendant BMS Contract Services, Inc.'s motions to set aside a default judgment. **AFFIRMED.**

Theodore R. Hoglan of Fairall, Fairall, Kaplan, Hoglan, Condon & Klaessy, Marshalltown, for appellant.

Thomas H. Walton of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellee BMS Services, Inc.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Plaintiff Jody Glenn, n/k/a Jody Johnson, appeals the district court's ruling granting defendant BMS Services, Inc.'s motions to set aside default judgment. She argues the district court erred in setting aside the default judgment. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

In May 1993, while in the employ of BMS, Glenn sustained a work-related injury when she fell into a hole as she was leaving the Marshalltown Monfort plant. Glenn received workers' compensation benefits from BMS. In May 1995, Glenn filed a petition against BMS and SIPCO (Monfort's parent company) alleging Monfort's negligence and BMS's responsibility[1] for injuries to its employees while on Monfort's premises. The BMS workers' compensation administrator was served with a notice of the petition on May 12, 1995, and faxed and mailed a copy of it to its general liability carrier, American International Group (AIG).

Before Glenn filed the suit, she and her attorney received correspondence from American International Recovery, Inc., "the recovery agents for AIG Risk Management who has paid a worker's compensation claim," giving notice of a lien against any recovery made by Glenn from third parties. Communication by telephone

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[1] BMS and Monfort had a contract containing this indemnification language: Contractor [BMS] shall indemnify and hold harmless Owner [Monfort], its parent, divisions and subsidiary companies, successories [sic] and assigns from any claims, damages, and causes of action of any kind, including costs of defense, from any person or entity, including employees of Contractor and Owner, as well as fees, fines, citations and penalties arising out of, or in any way connected with, the work to be performed by Contractor under this contract, which is due in whole or in part to acts or omissions of Contractor.

and mail between Glenn's attorney and American International Recovery continued throughout the pendency of this action.

On December 12, 1996, a default judgment was entered against BMS and on January 2, 1997, the court awarded Glenn $35,000 in damages. On February 2, 1997, BMS filed a motion for new trial and/or a motion to set aside the default judgment. It alleged AIG had failed to defend it against Glenn's law suit. On March 21, 1997, the district court granted the motion to set aside the judgment. In July 1997, BMS filed a motion to dismiss arguing Glenn's exclusive remedy was workers' compensation. The court granted the motion.

We review the grant or denial of motions to set aside a default judgment for abuse of discretion. *Millington v. Kuba*, 532 N.W.2d 787, 791 (Iowa 1995). We reverse such ruling only if the court abuses its discretion. *Central Nat'l Ins. Co. of Omaha v. Insurance Co. of North America*, 513 N.W.2d 750, 753 (Iowa 1994). We are more reluctant to interfere with the grant of a motion to set aside than with its denial. *Insurance Co. of North America v. Sperry & Hutchison Co.*, 168 N.W.2d 753, 756 (Iowa 1969).

On appeal, Glenn argues the district court erred in setting aside the default judgment obtained against BMS. She maintains AIG was kept apprised of the status of the lawsuit against BMS and failed to take any action. She also asserts the negligence of the insurance company should be imputed to BMS. We disagree. The district court relied on *Flexsteel Indus., Inc. v. Morbern Indus., Ltd.*, 239 N.W.2d 593

(Iowa 1976) in its analysis of BMS's motion. We find *Flexsteel* also guides our decision on appeal.

In *Flexsteel*, as in this case, the defendant promptly notified its insurer of the lawsuit. *Id.* at 594. The insurer was obligated by contract to defend its insured. *Id.* The insured intended to defend the suit and had a prima facie showing of a defense. *Id.* at 594-97. The Iowa Supreme Court in *Flexsteel* declined to extend the actions of the insurer in not defending the case to the defendant insured. We determine the district court in this case properly exercised its discretion in granting defendant BMS's motion to set aside the default judgment.

AFFIRMED.