FILED
MAY 23 1992
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-572 / 91-789

JACK STRONG, Individually as Father and Next Friend of MELORIE M. STRONG and ELAINE STRONG,

Appellants,

890

vs.

CITY OF SIOUX CITY, SIOUX CITY COMMUNITY SCHOOL DISTRICT, RICHARD SAUNDERS, CARDINAL COMMUNICATIONS, INCORPORATED, d/b/a KGLI, and BACKSTAGE CORPORATION, f/d/b/a METRO,

Appellees.

Appeal from the Iowa District Court for Woodbury County, Edwin L. Mitchell, Judge.

Strong appeals a district court order granting the school district's motion to set aside a default judgment. **AFFIRMED.**

Robert B. Deck, Sioux City, for appellants.

Michael R. Hellige, James P. Comstock, and M. James Daley of Shull, Cosgrove, Hellige, Du Bray and Lundberg, Sioux City, for appellees.

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

SCHLEGEL, J.

On November 17, 1989, Strong filed a petition against the Sioux City Community School District seeking monetary damages. On that same day, the school district's insurance coordinator mailed Strong's original notice to Gary Wall, the Des Moines claims manager for Employer's Mutual, the school district's liability insurance carrier. However, due to a clerical error, Employer's Mutual failed to refer the petition to defense counsel and thus failed to file a timely answer or appearance.

On March 23, 1990, default was entered against the school district, and Strong filed a motion for default judgment on March 28, 1990. On April 4, 1990, the school district filed a motion to set aside default, arguing due to a clerical error no answer was filed and that it had every intention of defending against the lawsuit. Strong filed a resistance to the motion to set aside default on April 6, 1990. On April 26, 1990, the district court granted the school district's motion to set aside. Strong appeals.

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. City of 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.

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 Co. v. Wahl and Assocs., 216 N.W.2d 391, 394 (Iowa 1974). 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).

Strong argues there is not substantial evidence to support the ruling. He feels the school district is required to make some effort to defend the lawsuit and there must be a factual basis for its failure to answer. We find there is substantial evidence in the record to support the trial court's decision to set aside the default judgment against the school district.

Two affidavits, accompanying the school district's motion to set aside default, demonstrate the school district acted promptly and diligently by sending the petition to its insurance company on the same date it was received. There is no evidence the school district ignored notice of the suit or neglected to give attention to the

matter. We determine any failure to timely appear and defend was not the fault of the school district. See Edgar v. Armored Carrier Corp., 256 Iowa 700, 706-07, 128 N.W.2d 922, 926 (1964). The school district has evidenced an intent to defend which was frustrated by the mistake of the insurer in failing to refer the matter to counsel in a timely matter. In addition, the school district has proved the presence of a meritorious defense.

We find the district court did not abuse its discretion in granting the school district's motion to set aside the default judgment.

AFFIRMED.