

IN THE COURT OF APPEALS OF IOWA

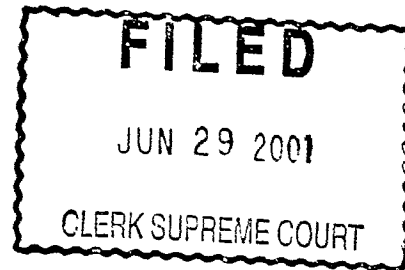
No. 1-235 / 99-0075

Filed June 29, 2001

MARK A. BELL,
Plaintiff-Appellee,

vs.

MARGARET R. BEST,
Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Margaret Best appeals from a district court order summarily denying her
motion to vacate default judgments. **REVERSED AND REMANDED.**

Michael J. McCarthy of McCarthy, Lammers & Hines, Davenport, for
appellant.

Michael J. Motto of Bush, Motto, Creen & Hoffman, P.L.C., Davenport, for
appellee.

Heard by Sackett, C.J., and Huitink and Zimmer, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Mark Bell sued his former lawyer, Margaret Best, to recover a \$20,000 retainer he claimed she collected but failed to earn. On October 2, 1997, the Scott County Clerk of Court, at Bell's request, entered a partial default judgment against Best based on her failure to appear or file an answer to Bell's petition. The district court entered a default judgment against Best on the balance of Bell's claims on March 3, 1998.

These proceedings commenced with Best's motion to set aside the default judgments against her. Best claimed the judgments were void because the court lacked jurisdiction over her at the time the judgments were entered. Best's jurisdictional challenge was premised on her claim that she was not personally served with an original notice of Bell's suit against her. In an affidavit attached to this motion, Best stated:

1. I was not served and was not aware of the complaint in Case No. 91185 until January 1998 when I received a copy from the Attorney Registration and Discipline Commission attached to a complaint Mark Bell filed against me.

2. I have a meritorious defense to the claims. I earned the fees paid to me by Mark Bell.

In a resistance to Best's motion, Bell's lawyer disputed Best's jurisdictional claims. Bell's resistance noted that Best was sued as an individual doing business as the Law Offices of Margie Best located in Chicago, Cook County, Illinois. Bell also claimed the original notice was properly served on Best's agent or clerk because his claim against Best related to the business of Best's Cook County, Illinois, law office, and Best was not a Cook County resident.

The district court, without further evidentiary hearing, denied Best's motion to set aside the default judgments. The court's ruling states:

The Court notes that the file indicates she [Best] was served by a designee of the Sheriff of Cook County, Illinois, through an individual known as R. Sikoski on July 25, 1997. The Defendant complains that she did not receive the original notice and petition even though an individual served at her office received the same. The Court notes that in the pleadings, the Plaintiff was sued as an attorney doing business as "The Law Offices of Margie Best." There is no allegation that the Defendant was a resident of Cook County, Illinois at the time of the service or that R. Sikoski was not an employee in her law office. The Court finds that under Iowa Rule of Civil Procedure 56.1(g) the Defendant was sued as an individual maintaining a business known as Law Offices of Margie Best and that a clerk in her employ was served at her office in that there was no proof that she did not reside in Cook County, Illinois.

In a motion to reconsider this ruling Best claimed the court should not have ruled on the merits of her jurisdictional challenge without an evidentiary hearing. Best additionally claimed that Bell bore the burden to show she was properly served with an original notice and, because he failed to meet that burden, the district court should have reconsidered its ruling and set aside the default judgment. The court declined to reconsider or vacate its ruling.

On appeal Best renews the arguments made in the district court. Bell contends the district court should be affirmed or, alternatively, the motion should be remanded for an evidentiary hearing to resolve the factual dispute concerning Best's residence at the time the original notice was served.

II. Standard of Review.

Our scope of review of proceedings to vacate or set aside a default judgment on jurisdictional grounds is for errors of law. Iowa R. App. P. 4.

III. The Merits.

A motion to vacate or set aside a default on jurisdictional grounds is a special proceeding and is not subject to the rules of civil procedure applicable to default judgment or proceedings to vacate a judgment on other grounds. *Jacobson v. Leap*, 249 Iowa 1036, 1039, 88 N.W.2d 919, 921 (1958); *Williamson v. Williamson*, 179 Iowa 489, 494, 161 N.W. 482, 485 (1917). Regardless of its denomination, the requested relief may be considered as a motion and disposed of accordingly. *Jacobson*, 249 Iowa at 1039, 88 N.W.2d at 921.

A motion to set aside a default judgment on jurisdictional grounds has been distinguished from a motion to set aside a default judgment for cause. *State ex rel. Houk v. Grewing*, 586 N.W.2d 224, 226 (Iowa Ct. App. 1998). In the latter, the burden is on the moving party to show good cause. *Haynes v. Ruhoff*, 261 Iowa 1279, 1281, 157 N.W.2d 914, 915 (1968). In the former, the plaintiff bears the burden to establish the requisite jurisdiction. *Life v. Best Refrigerated Express, Inc.*, 443 N.W.2d 334, 335 (Iowa Ct. App. 1989). Once the plaintiff has established a prima facie showing of jurisdiction, the burden shifts to the defendant to produce evidence to rebut this showing. *Id.*

The district court's ruling on Best's motion to reconsider states:

The burden is upon the moving party [Best] to set aside a default for good cause. *Haynes v. Ruhoff*, 157 N.W.2d 914 (Iowa 1968). This does not change based on the allegation that the default must be set aside due to lack of jurisdiction. Lack of jurisdiction may release the time constraints on the filing of the motion but does not release the burden of proof. *In re Marriage of Ivins*, 308 N.W.2d 75 (Iowa 1981). This burden of proof may be carried by supporting affidavit. *First National Bank in Lanox v. Claiser*, 308 N.W.2d 1 (1981).

We are unable to reconcile the district court's assignment of the burden of proof with the foregoing authorities. Because Best's motion to set aside the default judgment is premised on a claimed jurisdictional defect, the shifting burden analysis described in *Life v. Best Refrigerated Express, Inc.* is controlling. See *Life*, 443 N.W.2d at 335. The district court erred by concluding otherwise.

When viewed in this context, the underlying factual dispute concerning Best's residence did not lend itself to summary disposition on this record. We accordingly vacate the district court's ruling and remand for an evidentiary hearing on the merits of Best's motion to set aside the default judgments entered against her. We do not retain jurisdiction.

REVERSED AND REMANDED.