

FILED

FEB 28 1995

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-470 / 94-556

LA ROSA, S.A., Formerly QUIJAS ENTERPRISES, INC.,

Appellee,

vs.

RICHARD L. CASTRO,

Appellant.

Appeal from the Iowa District Court for Scott County,
James E. Kelley, Judge.

Richard L. Castro appeals the district court's order
denying his motion to set aside a judgment. **AFFIRMED.**

Timothy S. White and Sherry L. Schulte of White &
Johnson, P.C., Cedar Rapids, for appellant.

Walter Newport of Newport, Bell & Oxley, Davenport, for
appellee.

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

DONIELSON, C.J.

The defendant, representing himself, failed to appear for trial as scheduled and was therefore in default. Iowa R. Civ. P. 230. Judgment was entered against the defendant, and the trial court denied his motion to set aside the judgment. Iowa R. Civ. P. 236. Finding no abuse of discretion in the district court's decision, we affirm.

I. TIMELINESS OF APPEAL

The plaintiff contends the defendant's notice of appeal was not timely filed and this court is without jurisdiction to entertain this appeal. The trial court filed its order denying the motion to set aside the judgment on March 4, 1994. The defendant served copies of his notice of appeal on April 2, 1994, and his notice of appeal was filed by the district court on April 4, 1994.

An appeal must be taken within, and not after, thirty days from the entry of an order. Iowa R. App. P. 5(a). An appeal is taken and perfected by filing a notice with the clerk of court where the order was entered. Iowa R. App. P. 6(a). The parties raise various arguments pertaining to the tolling of the time for filing an appeal when timely service is made. See Iowa R. Civil P. 82(d). We decline to address these arguments as we find the notice of appeal was otherwise timely filed.

Relying upon the time computation provisions found in Iowa Code section 4.1(34), it appears the thirtieth day

from the entry of the order denying the motion to set aside the judgment was Sunday, April 3, 1994. When the last day for perfecting an appeal falls on a Sunday, the time for filing is extended to the next day. See Iowa Code §4.1(34) (1995). The defendant's notice of appeal was timely filed on Monday, April 4, 1994, and we have jurisdiction over this matter.

II. MOTION TO SET ASIDE JUDGMENT

A trial court has broad discretion in determining whether to set aside a default judgment, and a trial court's order will stand unless an abuse of discretion is shown. Easton v. Crystal River Resources, Inc., 360 N.W.2d 138, 139 (Iowa App. 1984). When reviewing a motion to set aside a default judgment, a trial court's findings of disputed facts are entitled to the same weight as a jury verdict. See Hastings v. Espinosa, 340 N.W.2d 603, 608 (Iowa App. 1983).

The defendant's counsel had been allowed to withdraw on September 27, 1993. The defendant had opted to represent himself with respect to further proceedings. The record reveals the defendant was aware a settlement conference was scheduled for October 22, 1993, and trial was set for November 4, 1993. The defendant failed to appear for both the settlement conference and the trial.

The defendant contends good cause exists to set aside the judgment because he was under the "mistaken impression

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trial would not proceed because the parties had entered into settlement negotiations." In an affidavit submitted with his motion, the defendant contends the plaintiff and the plaintiff's counsel led him to believe their discussion about a possible settlement would take the place of the court-ordered settlement conference. He also asserts it was his understanding the trial would be continued because of the settlement negotiations.

In affidavits in resistance to the defendant's motion, the plaintiff and the plaintiff's counsel both strongly denied any representations were made regarding the continuance of the trial or the settlement conference. In denying the motion to set aside the trial court found --

The record here is quite clear that neither Plaintiff nor its attorney told the defendant that he did not have to attend the settlement conference or trial. They did not tell him that either had been continued. Since Defendant at that time was representing himself, he was on inquiry notice concerning whether the settlement conference or trial were continued.

The court further found any "misunderstanding" the defendant had was not held in good faith as it was not reasonable to believe the case was to be settled or the settlement conference and trial were to be continued.

"Good cause" for setting aside a default judgment is a sound effective, truthful reason which is something more than an excuse or plea. See Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). A movant must show his failure to defend was not due to his negligence, want of

ordinary care or inattention. Id. A movant must show he intended to defend, but, because of some misunderstanding, accident, mistake or excusable neglect, failed to do so. Id.

That the defendant had opted to represent himself does not excuse his failure to appear for trial. When a lay person chooses to proceed pro se, he does so at his own risk. Metropolitan Jacobson Dev. Venture v. Board of Review, 476 N.W.2d 726, 729 (Iowa App. 1991). The defendant was aware of the trial date and failed to establish good cause for not appearing. The trial court found there was no evidence to substantiate the defendant's claim that plaintiff or the plaintiff's attorney made any misrepresentations concerning the settlement conference or trial. We find no abuse of discretion in the trial court's denial of the request to set aside the judgment.

AFFIRMED.