FILED
AUG 26 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JAMES JOLLY CLARK and SHARON M. CLARK,

Plaintiffs-Appellees,

vs.

JAMES E. BURNETT,

Defendant-Appellant.

August 26, 1982 248

2-199
2-67482

JAMES JOLLY CLARK and SHARON M. CLARK,

Plaintiffs-Appellants,

vs.

GERALD L. HODDE,

Defendant-Appellant.

Appeal from Polk District Court, Louis A. Lavorato and Richard Strickler, Judges.

The defendants appeal from the trial court's rulings refusing to grant their motions to set aside the default judgments against them. AFFIRMED.

Timothy J. Finn of Murray, Curtis & Finn, Ames, for defendants-appellants.

Doyle D. Sanders of Peddicord, Simpson & Sutphin, Des Moines, for plaintiffs-appellees.

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

The defendants appeal from the trial court's rulings refusing to grant their motions to set aside the default judgments againt them. We affirm.

The plaintiffs filed suit on April 27, 1981, in the Polk County District Court. The plaintiffs filed separate petitions against each defendant, but the cases have been consolidated on appeal. The petitions alleged that the defendants had personally guaranteed the payment of two leases between the plaintiffs and Collegium, Inc., a Michigan corporation doing business in Iowa. The corporation defaulted, the president of the corporation defaulted on a personal guarantee he had also given, and the plaintiffs then filed these actions based on the personal guarantees of the defendants.

The defendants are nonresidents of Iowa. They were personally served pursuant to Iowa R. Civ. P. 56.2. The defendant Hodde was served on May 1, 1981, and the defendant Burnett was served on May 5, 1981. The defendants notified a Michigan attorney, Clay Olmstead, of the suit on May 18, 1981. Mr. Olmstead attempted to telephone the plaintiffs' attorney to request an extension of time to advise the defendants and to retain an Iowa attorney since Mr. Olmstead is not licensed to practice law in Iowa. He was unsuccessful in reaching the plaintiffs' attorney. On June 5, 1981, default judgments were entered against the defendants. After June 5, attorney Olstead contacted Tim Finn, an Iowa attorney who had represented Collegium, Inc., in the past. On July 2, 1981, Mr. Finn filed special appearances and motions to set aside the default judgment.

The plaintiffs filed a resistance, and the trial judge overruled the motions to set aside the defaults. The defendants appeal these rulings.

The defendants argue that the trial judge erred in overruling the specially appearing defendants' motions to set aside default judgment. We disagree.

Iowa R. Civ. P. 236 provides that a default judgment may be set aside "for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty." The moving party "must introduce evidence to establish good cause on at least one ground of the rule." First National Bank In Lenox v. Claiser, 308 N.W.2d 1, 3 (Iowa 1981). When the trial court has held that the evidence is insufficient to meet the moving party's burden of proof, we may interfere with that holding only if the evidence is so overwhelming that the party has met his burden of proof as a matter of law. Id. at 3.

A ruling on a motion to set aside a default judgment will be reversed only if there has been an abuse of discretion. Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). We find no such abuse of discretion in this case. The defendants assert as their reason for not entering an appearance that their Michigan attorney attempted to telephone the plaintiffs' attorney without successfully reaching him. Mr. Olmstead stated by affidavit that he was trying to call the plaintiffs' attorney "to request an extension of time relative to the filing of pleadings so as to allow [him] to advise the clients and retain the services of an attorney in Iowa for representation." The defendant's attorney made no attempt to contact an Iowa attorney to represent the defendants until after the default judgment had been entered. This is not overwhelming evidence which proves good cause for failure to answer for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty as a matter of law. Therefore, the trial judge's ruling is affirmed.

AFFIRMED.