FILED
OCT 29 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-33 / 90-962

STROH CORPORATION,

Appellee,

vs.

FITNESS WORLD WEST, INC.,

Appellant.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Defendant appeals district court's default judgment in favor of plaintiff. **AFFIRMED.**

George T. Qualley, West Des Moines, for appellant.

Brenton D. Soderstrum of Shearer, Templer & Pingel, P.C., West Des Moines, for appellee.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

SCHLEGEL, P.J.

Stroh Corporation filed a petition against Fitness World West, Inc. The petition and original notice were served on the registered agent for Fitness World West, attorney Larry Seckington. Seckington sent the petition and original notice by certified mail to the managing officer of Fitness World West, David Rosenberger. On January 10, 1990, Stroh filed an application for entry of default. A default judgment was entered against Fitness World West on the same day.

Fitness World West later moved to set aside the default judgment. In a hearing on this motion, Rosenberger testified that he had received notice of the certified mail but had failed to claim it because he was too busy to go to the post office; he noted he had been appearing in federal court due to the bankruptcy of his other company.

The district court overruled the defendant's motion to set aside the default judgment. The court concluded the default was due to the defendant's negligence, carelessness, or inattention, rather than to mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty. Fitness World West appeals.

The district court has broad discretion in ruling on a motion to set aside a default judgment and should only be reversed on appeal if this discretion is abused. See Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977); Hastings v. Espinosa, 340 N.W.2d 603, 608 (Iowa App. 1983);

Specketer v. City of Burlington Fire Retirement Bd., 320 N.W.2d 653, 655 (Iowa App. 1982). Generally abuse will be found only where there is a lack of substantial evidence to support the trial court's ruling. Paige, 252 N.W.2d at 437.

Fitness World West contends the district court abused its discretion by concluding that its failure to appear had resulted from its own negligence rather than from mistake, inadvertence, or excusable neglect. Under Iowa Rule of Civil Procedure 236 a default may be set aside

> [o]n motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

We believe the trial court did not abuse its discretion in overruling the defendant's motion to set aside the default judgment.

The supreme court has defined the required good cause as

> a sound effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect. The movant must show [the] failure was not due to . . . negligence, want of ordinary care or attention, or to . . . carelessness or inattention.

Paige, 252 N.W.2d at 437. The defendant failed to show good cause for not picking up his certified mail and for not responding. He testified that he "was very busy" and "was in court practically every day through that whole period of time." We believe the more likely reason Mr.

Rosenberger did not pick up his certified mail was the one he gave Mr. Seckington over the phone: "Larry, you know I don't pick up certified mail. It simply means trouble." Even if Mr. Rosenberger failed to pick up the letter because he was too busy, this excuse is not acceptable. The trial court did not abuse its discretion in failing to set aside the default judgment; defendant has failed to show good cause due to his own negligence.

Fitness World West also suggests its failure to appear should be blamed not on its own omission but on attorney Seckington. It complains that Seckington made only one attempt to notify Rosenberger of the pending Stroh lawsuit. This argument was not raised in the hearing on the defendant's motion to set aside the default judgment. This issue is waived because it was raised for the first time on appeal.

We affirm the trial court's order denying defendant's motion to set aside the default judgment. The costs and attorney fees for this appeal should be assessed against the defendant.

AFFIRMED.