IN THE COURT OF APPEALS OF IOWA

FILED
MAY 30 1995
CLERK SUPREME COURT

No. 5-237 / 94-1311

RICHARD T. JORDAN, as Executor of the Estate of Dorothy Ragan, Deceased, **LOIS R. LYNCH**, and **DONNA M. TIFFANY**,

Appellees.

vs.

J. F. TIFFANY a/k/a **JOHN F. TIFFANY**,

Appellant.

Appeal from the Iowa District Court for Greene County, Dale R. Ruigh, Judge.

John Tiffany appeals the district court ruling denying his request to set aside default judgment. **AFFIRMED.**

Michael Fay, Cedar Rapids, for appellant.

John Jordan and Richard T. Jordan of Jordan, Mahoney & Jordan, P.C., Boone, for appellees.

Heard by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

John F. Tiffany appeals the district court's denial of his motion to set aside a default judgment. We affirm.

On November 22, 1993, a petition was filed seeking the recovery of unpaid rent from Tiffany. The court file contains a return of service filed by Deputy Hoffman on January 3, 1994. The return of service indicates the deputy had personally served Tiffany on December 23, 1993. No answer, motion, or appearance was filed by Tiffany, and on January 31, 1994, the plaintiffs filed a motion for entry of a default judgment against Tiffany.

A default judgment was entered on February 7, 1994. On March 21, 1994, Tiffany filed a motion to set aside the default judgment. His motion claimed he was not personally served with notice of the action. He also claimed he had a defense to the suit based on a prior court decision in which he introduced evidence indicating he was not a tenant for the land in question. A resistance was filed to the motion and a hearing was held April 18, 1994. Prior to the hearing, the plaintiffs, on April 12, 1994, filed the affidavit of Deputy Hoffman in support of their resistance to the motion to set aside the default judgment. The proof of service on the deputy's affidavit indicates a copy of it was mailed to Tiffany at the Newcastle, Wyoming, address he listed on his motion to set aside the default judgment.

At the hearing Tiffany objected to the court's consideration of Deputy Hoffman's affidavit. He asserted the affidavit contained hearsay and denied him the

opportunity of cross-examining the affiant. Tiffany also claimed he did not receive the affidavit until the day of the hearing. However, under cross examination Tiffany testified the affidavit had in fact been sent to the Wyoming address he listed on his court filings and was forwarded by one of his "various offices" to him in Iowa.

The district court entered an order denying Tiffany's motion. The court noted it was undisputed some type of contact had occurred between Deputy Hoffman and Tiffany on December 23, 1993, and it had to determine whose version of the events was accurate. After carefully reviewing the conflicting testimony, the court found the deputy's description of the events to be more credible, and it concluded Tiffany had in fact been served with notice of the suit. The court found Tiffany had deliberately attempted to evade lawful service, and, under those circumstances, no basis existed for setting aside the default judgment.

Iowa Rule of Civil Procedure 236 provides in relevant part --

> On 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 or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

A proceeding under this rule is at law. *Central Nat'l Ins. Co. of Omaha v. Ins. Co. of North America*, 513 N.W.2d 750, 753 (Iowa 1994).

We vest district courts with broad discretion in ruling on a motion to set aside a default. *Id.* We reverse such a ruling only if this discretion is abused. *Id.* Generally, we find such an abuse only when there is a lack of substantial evidence

to support the district court's ruling. *Id.* We are bound by the district court's findings of fact if supported by substantial evidence, and we view the evidence in the light most favorable to the district court's ruling. *Id.*

The burden is on the movant to plead and prove good cause under the rule. *Id.* at 754. The movant establishes good cause only if one of the grounds in the rule is proved. *Id.* "Good cause" is a sound, effective, and truthful reason. It is something more than some justification for the resulting effect. *Id.* Good cause also requires at least a claimed defense asserted in good faith. *Id.*

We find no abuse of discretion in the district court's refusal to set aside the default judgment. Evidence in resistance to a motion to set aside a default judgment may be submitted via an affidavit. Iowa R. Civ. P. 116; *Williamson v. Casey*, 220 N.W.2d 638, 640 (Iowa 1974). The trial court's findings that Deputy Hoffman had served Tiffany and Tiffany had deliberately tried to evade service were supported by substantial evidence. Furthermore, Tiffany did not present evidence of a meritorious defense. The prior adjudication upon which he was relying had resulted in a judicial finding that Tiffany was in fact the tenant for the land in question. Tiffany had no evidence of a good faith defense to the action. There was no abuse of discretion in the district court's refusal to set aside the default judgment and its ruling is affirmed.

AFFIRMED.