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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

CHARLES HALVERSON and LUANNE HALVERSON,

Plaintiffs-Appellees,

vs.

ALLIED PRODUCTS CORPORATION,

Defendant-Appellant.

Filed January 30, 1981

0-370
2-64792

Appeal from Winneshiek District Court - Peter Van Metre, Judge.

Defendant-corporation prosecutes an interlocutory appeal from trial court's order overruling its motion to set aside a default judgment entered against it in plaintiffs' products liability action claiming that good cause due to excusable neglect was shown, thereby excusing defendant's failure to respond to the original notice within the time required by the rules of civil procedure. AFFIRMED AND REMANDED FOR FURTHER PROCEEDINGS.

James F. Pickens of Pickens, Barnes & Abernathy, Cedar Rapids, Iowa, and Donald H. Gloe of Miller, Pearson, Gloe & Burns, Decorah, Iowa, for defendant-appellant.

Calvin R. Anderson and Paul Strand of Strand, Anderson & Larson, Decorah, Iowa, for plaintiffs-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Allied Products Corporation, prosecutes this interlocutory appeal from trial court's order overruling its motion to set aside a default judgment entered against it in plaintiffs' products liability action. Defendant claims that good cause due to excusable neglect was shown, thereby excusing its failure to respond to the original notice within twenty days as required by Iowa R. Civ. P. 53. We affirm trial court's order and remand this case to trial court for further proceedings.

On November 2, 1979, the Halversons filed a petition against Allied Products, a Delaware corporation authorized to do business in Iowa, seeking recovery for injuries sustained when Mr. Halverson was thrown from a farm manure loader manufactured by defendant. Plaintiffs alleged that their injuries were caused by defendant's negligence in the design and manufacture of the loader. Notice was served on defendant's registered Iowa agent on November 5. On November 27, plaintiffs demanded and received a default against defendant pursuant to Iowa R. Civ. P. 231, based on defendant's failure to serve a written special appearance, motion or answer within twenty days. It was not until December 5, 1979, that defendant entered its appearance. On December 12, defendant filed a motion to set aside the default alleging that the original notice and petition were mislaid in defendant's Chicago office and were not found until December 4. Defendant claimed these facts constituted good cause in the form of excusable neglect which would allow trial court to set aside the default pursuant to Iowa R. Civ. P. 236. Following a hearing, trial court overruled defendant's motion finding "that the failure to appear and defend was due to negligence or want of ordinary care or attention or to carelessness and inattention" (emphasis in original). On April 10, 1980, the Iowa Supreme Court sustained defendant's request for an order permitting this interlocutory appeal.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. Propriety of Trial Court's Ruling on Motion to Set Aside Default Judgment. Defendant claims that trial court abused its discretion in refusing to set aside the default judgment because good cause was established by the following factors: 1) meritorious defense; 2) default not willful; 3) no substantial prejudice to plaintiffs; 4) defendant's intent to defend and due diligence in answering and moving to set aside the default. We disagree.

Trial court is vested with broad discretion in ruling on a motion to set aside a default judgment. Gateway Transportation Co. v. Phillips & Phillips Co., 261 N.W.2d 175, 177 (Iowa 1978). We will reverse on appeal only if trial court's discretion is abused. Id. "Generally, abuse will be found only where there is a lack of substantial evidence to support the trial court's ruling." Id.; Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). "We view the evidence in the light most favorable to trial court's ruling and will uphold the ruling, even where the trial court made no findings of fact or based its ruling on a different ground," Paige, 252 N.W.2d at 437, if any proper ground appears in the record. Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974).

Iowa R. Civ. P. 236 provides in part as follows: "On motion for good cause shown 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." "Good cause" was defined in Paige, 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 his failure to defend was not due to his negligence, want of ordinary care, intention, or to his carelessness or inattention." 252 N.W.2d at 437. Defendant, as movant, has the burden to plead and prove the necessary good cause to justify setting aside the default. Hansman v. Gute, 215 N.W.2d 339, 342 (Iowa 1974).

In this case, we find no abuse in trial court's finding that defendant failed in its burden of proof on good cause. At the hearing on defendant's motion, David Corwine, a member of defendant's legal staff in its Chicago office, testified that communications from defendant's registered agents from the various states are always addressed to Kenneth Light, another member of the legal staff, but that Light was gone on a business trip for a two-week period beginning on November 5, 1979. In Light's absence, his secretary was to look through the incoming correspondence and forward that which appeared to be important to Corwine. Someone at defendant's Chicago office did sign for the original notice and petition, although the evidence did not show who signed for them or when they were received. It was not until December 4 that Corwine discovered the notice and petition in the middle of a "pile of stuff" on his desk. Corwine admitted that the "pile" began to accumulate in the middle of November and that he did not know how long the notice and petition had been on his desk.

Under these circumstances, we believe that trial court properly overruled defendant's motion to set aside the default. Defendant was unable to explain why the

notice and petition apparently arrived during November but was not discovered until the following month. Although defendant admittedly intended to defend this action and acted promptly once the notice and petition were discovered, we find there is substantial evidence to support trial court's conclusion that defendant failed to carry its burden of proving the existence of good cause or excusable neglect. Defendant did not establish that its "failure to defend was not due to [its] negligence, want of ordinary care, intention, or to [its] carelessness or inattention." Paige, 252 N.W.2d at 437. We therefore affirm the trial court's order and remand this case to trial court for further proceedings.

AFFIRMED AND REMANDED.