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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

9-361 / 88-1787

THE FEDERAL LAND BANK OF OMAHA, A Corporation, n/k/a Farm Credit Bank of Omaha,

Appellee,

vs.

VIRGIL HEFNER; DORA KATHLEEN HEFNER; a/k/a Kathleen D. Hefner,

Appellants.

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Appeal from the Iowa District Court for Clayton County, James L. Beeghly, Judge.

Appellants appeal a district court order denying their motion to set aside default judgment and decree and denying their motion to dismiss appellee's foreclosure petition. **AFFIRMED.**

Kenneth F. Dolezal of Dolezal, Miller & Lewis, Cedar Rapids, for appellants.

Dale L. Putnam of Putnam & Strand, Decorah, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

PER CURIAM

The Hefners appeal from a district court order denying their motion to set aside default judgment and decree and denying their motion to dismiss the Federal Land Bank of Omaha's (Bank) foreclosure petition. Hefners contend the district court abused its discretion in not setting the default decree aside and in failing to dismiss the Bank's petition based on the Bank's failure to comply with the Federal Agriculture Credit Act of 1987. We affirm.

This case began July 6, 1985, when the Hefners filed a complaint in United States District Court for the Northern District of Iowa. They requested a declaratory judgment and a temporary restraining order because of the Bank's alleged failure to disclose information which Hefners maintain is required under the Agricultural Credit Act of 1987. The Bank resisted. No order has been entered in response to the Hefners' complaint.

On August 17, 1988, the Bank filed a foreclosure petition against the Hefners in Iowa district court. The Hefners filed a motion to dismiss the petition based on its federal action, an application for appointment of a receiver, and a motion to strike and for sanctions. The Bank filed resistances to the Hefners' motions as well as its own motion for sanctions. The court heard all motions on September 27, 1988. On October 4, 1988, the court ordered the appointment of a receiver and denied all other

pending motions. No answer to the Bank's foreclosure petition was filed. On October 21, 1988, the district court entered default judgment against the Hefners on the Bank's foreclosure action for failing to file an answer. On October 25, 1988, the Hefners filed a motion to set aside the default. This motion was based on the contention Hefners were considering the appeal of the October 4th order and thus, were actively defending the case. They also alleged they were not informed the Bank would seek a default judgment. After a hearing, the court overruled the motion to set aside the default judgment. The Hefners have appealed.

I. The Hefners ask this court to find the trial court abused its discretion in failing to set aside the default judgment.

The trial court is vested with broad discretion in ruling on a motion to set aside a default judgment. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987). Abuse of this discretion will be found only where there is a lack of substantial evidence to support the trial court's ruling, for the trial court's findings of fact in deciding the motion have the force of a jury verdict. Id. If there is no factual issue, as in this case, the question is one of law and we are not bound by the determination of the trial court. Id.

The Hefners ask us to conclude, as a matter of law, the trial court erred in finding their motion did not fall within the remedial umbrella of Iowa Rule of Civil procedure 236. This rule allows a default judgment to be set aside for "good cause shown" for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. A party moving to set aside a default judgment has the burden to plead and prove good cause by a showing of one of the grounds enumerated in the rule. Dew v. American Heritage Life Ins. Co., 431 N.W.2d 8, 9 (Iowa App. 1988), citing Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974).

In reviewing the record, we find the Hefners have failed to prove any rule 236 grounds. According to Iowa Rule of Civil Procedure 85(c), a movant has ten days from the time of the disposition of a motion to file a further pleading. The Hefners have not, to date, filed an answer to the Bank's petition for foreclosure.

"Good cause" for setting aside a default judgment is a sound, effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect. Id. The movant must show the failure to defend was not due to his or her negligence, want of ordinary care or attention, or to his or her carelessness or inattention. Id.

Hefners' attorney stated at the hearing on the motion to set aside the default judgment he thought "we were

defending and taking the course of action necessary to defend our action and that would have been clear or should have been clear to the Court when it entered the Judgment and Decree." The attorney admitted he should have been aware of the ten-day requirement for filing an answer. As stated in Dew, a lack of understanding by plaintiff's counsel or a failure to read the Iowa Rules of Civil Procedure does not satisfy the showing of good cause necessary to set aside the default. Dew v. American Heritage Life Ins. Co., 431 N.W.2d at 10. In Haynes v. Rohoff, 157 N.W.2d 914, 917 (Iowa 1968), the supreme court distinguished inaction from improper action within the rule 236 context. "Nonfeasance of the movant has not been recognized as excusable neglect or unavoidable casualty as contemplated by rule 236, Iowa Rules of Civil Procedure. In other words, in our former cases neglect has been excused as a result of misfeasance, not nonfeasance, on the part of the defendant." Id.

The trial court did not abuse its discretion in denying the Hefners' motion to set aside the default judgment.

II. Appellants also claim the district court erred when it denied their motion to dismiss plaintiff's petition. We have examined the evidence and exhibits presented to the district court on this issue and determine their claim is without merit.

AFFIRMED.