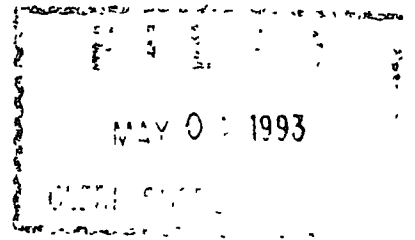


IN THE COURT OF APPEALS OF IOWA

No. 3-080 / 92-910



STATE OF IOWA, ex rel.,
DEPARTMENT OF HUMAN SERVICES and
CAROL KAY KLECKNER, Mother and Next Friend
of CODY JAMES KLECKNER,

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Appellees,

vs.

MARK KLEIN,

Appellant.

Appeal from the Iowa District Court for Mitchell
County, John S. Mackey, Judge.

Defendant appeals district court's denial of his motion
to set aside default judgment. **AFFIRMED.**

Kevin E. Schoeberl of Anderson, Story & Schoeberl,
Cresco, for appellant.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Robert R. Huibregtse,
Assistant Attorney General, and Mark R. Schoeller,
Assistant County Attorney, for appellees.

Heard by Oxberger, C.J. and Donielson and Hayden, JJ.

PER CURIAM.

A default judgment was entered against Mark Klein. The judgment established paternity and ordered Klein to pay child support for a minor child, Cody Kleckner. The district court denied Klein's motion to set aside the default judgment. We affirm.

On August 21, 1991, the State filed a petition to establish paternity, support and reimbursement of AFDC sums pursuant to chapter 252A of the Iowa Code. The State alleged Mark Klein was the father of Cody Kleckner, born on August 25, 1985, to Carol Kleckner. Klein received notice of the petition.

On September 3, 1991, Klein filed, pro se, a handwritten note with the clerk of district court. The note said: "I have notified the court I would like to have time to consult an attorney. Signed Mark Klein." Klein took no further action.

On December 19, 1991, the district court sent Klein a 120-day notice of civil trial setting conference. The notice scheduled a trial conference on March 18, 1992, at 9:30 a.m.

On February 20, 1992, the State filed a motion for default judgment. Klein did not receive notice of the State's application for judgment. On February 25, 1992, the district court entered a default order establishing paternity, and setting Klein's current and accrued child support obligation. Klein received notice of the default

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order on February 27, 1992. On March 18, 1992, the State filed an order for immediate withholding of Klein's income pursuant to chapter 252D of the Iowa Code.

On March 26, 1992, Klein filed a motion to set aside the default order, a motion to quash the order for immediate income withholding, and an answer to the petition to establish paternity. The State filed a motion to strike Klein's answer, and a resistance to the motion to set aside default and the motion to quash. Klein filed a resistance to the State's motion to strike.

A hearing was held. Klein testified he had received a copy of the 120-day notice of civil trial setting conference and it was his understanding he would have to go to court by reason of the notice. Klein, however, made no inquiries with the court administrator's office. Klein admitted he took no action to retain an attorney until after the court entered the default order. Klein did not attempt to retain legal counsel until six months after he filed his handwritten note.

On May 4, 1992, the district court entered an order denying both of Klein's motions. The district court determined Klein failed to demonstrate good cause sufficient to set aside the default order. The court found Klein understood his responsibility to respond within twenty days of the filing of the original notice and petition. The district court found Klein's failure to act within the time period was not the result of mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

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Klein has appealed.

A 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). The court's ruling will be reversed only if there is an abuse of discretion. Id.

We address whether Klein's handwritten note filed with the clerk on September 3, 1991, constituted an appearance pursuant to the Iowa Rules of Civil Procedure. If the note is an appearance, Klein was entitled to notice of the State's application for a default judgment. Iowa R. Civ. P. 87, 232(b). Rule 87, in pertinent part, provides:

Notice and opportunity to respond to any motion for judgment under R.C.P. 232(b) shall be given to any party who has appeared.

Iowa R. Civ. P. 87. The State's default motion was filed under rule 232(b) in that the motion requested the court to enter an order for judgment. If a party has made an appearance in an action, the failure to give the notice prescribed by rules 87 and 232(b) renders a subsequent default judgment void.

An "appearance" is defined as an "overt act by which a party against whom a suit has been commenced submits himself to the court's jurisdiction." Annotation, What Amounts to "Appearance" Under Statute or Rule Requiring Notice, to Party Who Has "Appeared," of Intention to Take Default Judgment, 73 A.L.R.3d 1250, 1254 (1976) (citing 5 Am. Jur. 2d, Appearance § 1 (1962)). In determining

whether a party's conduct constitutes an appearance, courts have looked to matters of substance, rather than form. Id. As a basis for determining whether conduct constitutes an appearance, courts focus on the intent of the party as evidenced by the party's conduct, such as an indication of a purpose to defend, a request for affirmative action from the court, or a denial of liability. Id. at 1257-59.

Applying these principles to the facts of this case, we hold Klein's handwritten note did not constitute an appearance. Defendant's note did not contain an expression of intent to defend the case. In addition, the note did not concede liability in any manner. Klein did not make an appearance and was not entitled to notice of the State's application for a default judgment. Consequently, the default judgment is not voided for a failure to provide notice pursuant to Iowa Rule of Civil Procedure 87.

Defendant contends he has shown good cause to justify setting aside the default judgment. We disagree. Iowa Rule of Civil Procedure 236 provides, in pertinent 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.

Iowa R. Civ. P. 236.

Our courts have established a clear standard by which we identify good cause:

Good cause is a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the

resulting effect. The movant must show his failure to defend was not due to his negligence or want of ordinary care or attention, or to his carelessness or inattention. He must show affirmatively he did not intend to defend and took steps to do so, but because of some misunderstanding, accident, mistake or excusable neglect failed to do so. Defaults will not be vacated where the movant has ignored plain mandates in the rules with ample opportunity to abide by them.

Dealers Warehouse Co. v. Wahl & Assocs., 216 N.W.2d 391, 394-95 (Iowa 1974) (citations omitted). Klein admitted he knew he needed to respond to the original petition but failed to do so. He did not attempt to retain legal counsel until six months after he filed his handwritten note and after a default judgment had been rendered. Defendant has failed to meet his burden of proof by showing good cause to set aside the default judgment. See Wharff v. Iowa Methodist Hosp., 219 N.W.2d 18, 22 (Iowa 1974).

The district court did not abuse its discretion in finding Klein's failure to act within twenty days of the filing of the original petition and notice was not the result of mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty.

We affirm the decision of the district court.

AFFIRMED.