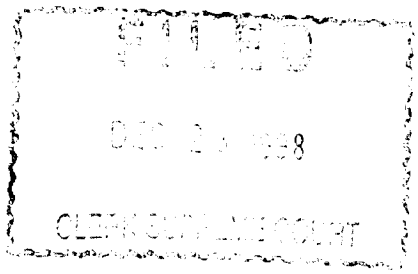
IN THE COURT OF APPEALS OF IOWA

No. 8-551 / 97-1922
Filed December 28, 1998



DEAN A. HUNT and REBECCA J. HUNT,
Appellees,

vs.

KAREN CAPPS,
Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Karen Capps appeals from a default judgment entered against her on Dean and Rebecca Hunts' claim for damages for trespass, and claim for injunctive relief. **AFFIRMED.**

Kellie Rae Taylor, Council Bluffs, for appellant.

Jack E. Ruesch of Telpner, Peterson, Smith & Ruesch, Council Bluffs, for appellees.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

Karen Capps appeals the trial court's denial of her motion to set aside a default judgment entered against her. Because she has asserted no good cause in her motion, oral argument, or brief for her failure to answer the petition, we affirm the trial court.

Dean and Rebecca Hunt filed suit against Capps on August 7, 1997 for trespass and seeking an injunction ordering Capps to remove horses, horse manure, and fencing from plaintiffs' property, to return a boulder Capps removed from the property, and to refrain from entering the property in the future.

Capps retained an attorney, but he failed to answer the petition. Hunts moved for default judgment on September 15, 1997. The court entered the default the same day. A writ of injunction was issued on September 16.

Capps filed a motion to set aside the default and quash the writ on September 19. The motion asserted, in part, Capps' parents owned the property and Capps had been using the property openly and continuously for over ten years. At the motion hearing, Capps' counsel conceded he received the notice and petition, but because a related claim was pending, he did not answer the petition. Other than this reason, Capps had nothing to establish good cause for failure to answer; she neither filed affidavits nor offered evidence to establish good cause. The trial court denied Capps' motion to set aside the default. Capps appeals.

District courts are vested with broad discretion in ruling on a motion to set aside a default, and we reverse such a ruling only if that discretion has been abused.

Millington v. Kuba, 532 N.W.2d 787, 791 (Iowa 1995). Generally, only when a lack of substantial evidence supports the finding do we find such an abuse. *Id.* The supreme court has set forth four factors to determine whether excusable neglect under rule of civil procedure 236 constitutes good cause: (1) did the defaulting party intend to defend? Whether the party moved promptly to set aside the default is significant on this point; (2) does the defaulting party assert a claim or defense in good faith?; (3) did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake?; (4) whether relief is warranted does not depend on whether the attorney or the client made the mistake. *Id.*

Applying these factors to the case at hand, the trial court did not abuse its discretion in refusing to set aside the default. While it does appear Capps intended to defend the suit because she quickly sought to have the default judgment set aside, all other factors are against her. Capps did not allege or prove to the trial court any ground to set aside the default. Her lawyer admitted receiving the notice and petition, but simply did not answer it. This was wilful disregard of the rules of civil procedure, not a mistake. Capps makes the argument it was her lawyer's fault, not hers, the petition went unanswered. Even if true, this does not establish good cause to avoid default judgment. *Id.* Under these circumstances, the trial court did not abuse its discretion in denying Capps' motion to set aside the default judgment.

AFFIRMED.