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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CRAIG J. SONKSEN and MARY SUE SONKSEN,	)	Filed December 29, 1982
Plaintiffs,	)	305
vs.	)	2-271 2-67504
HON. MATTHEW M. McENIRY, Judge of Associate District Court of Polk County,	)	
Defendant.	)	

Appeal from Polk District Court, Matthew M. McEniry, Judge.

Plaintiffs in this certiorari action challenge the legality of trial court's order setting aside a default judgment in the underlying small claims action. WRIT SUSTAINED, CAUSE REMANDED.

William H. Michelson, Des Moines, for plaintiffs in underlying small claims action.

George W. Appleby, Assistant County Attorney, for defendant Clark Rasmussen in underlying small claims action.

Robert W. Powers, Des Moines, for intervenors in underlying small claims action.

Considered en banc.

Plaintiffs in this certiorari action challenge the legality of trial court's order setting aside a default judgment in the underlying small claims action. Plaintiffs claim that a small claims court has no authority or jurisdiction to act on motions to set aside default; they raise a number of other issues as well. We conclude that the writ of certiorari should be sustained and the case remanded for further proceedings.

To fully understand the issues in this procedurally complicated case, it is necessary to set forth the factual background in detail. On December 1, 1980, William Turner and Scott Jenkins filed a petition in the Polk County District Court seeking declaratory and injunctive relief against Craig and Mary Sonksen (plaintiffs in this certiorari action). Turner and Jenkins claimed that they were tenants residing at certain property which was at that time being purchased by the Sonksens and charged various violations of Iowa Code ch. 562A, the Iowa Residential Landlord and Tenant Law. They obtained a temporary restraining order under which the Sonksens were to restore utility services to the property. Two days later, on December 3, the court modified the order and ordered petitioners to post bond in the amount of $485. On December 30, the Sonksens filed a motion to dissolve the temporary restraining order and a motion to condemn the bond. With regard to the latter motion, they alleged that the bond required of petitioners was to indemnify them against damages resulting from any wrongful issuance of an injunction and further claimed that the restraining order here was wrongfully issued, thus entitling them to the bond corpus. Under the court's ruling of January 5, 1981, the restraining order was to stay in effect but only if Turner and Jenkins filed additional bond of $300, which they did, and satisfied another condition not relevant here.

The tenants voluntarily dismissed their petition on April 30, 1981. A final hearing on the merits of the petition was nevertheless held four days later, the court determining that the dismissal could not prevent it from ruling on the motion to condemn bond which was still pending. On July 23, 1981, the court held that it in fact had no jurisdiction to consider that motion because the case was terminated by dismissal of the petition. It was further held that the court had no authority to assess Sonksens' damages at this point and that they would have to file a separate action in order to recover on the bond.

The Sonksens proceeded to do this by filing an original notice in the small claims division of the Polk County District Court. They named as defendant Clark R. Rasmussen, but only in his official capacity as clerk of court acting as trustee of the $785 in bond money posted by Turner and Jenkins and demanded that defendant turn over the bond to them. Under Iowa Code § 631.4(1)(a), a defendant in a small claims action for money judgment "shall be required to appear not later than twenty days following the date of filing of the original notice." On September 29, the twentieth and last day, defendant appeared by filing a motion to dismiss, alleging that the action should have been brought as a proceeding in rem against the bond corpus or, in the alternative, against Turner and Jenkins. On the same day, the latter individuals filed a petition of intervention in the small claims action, asserting that they were entitled to the bond. These two September 29 filings, however, were apparently not recorded that day, for Judge McEniry entered a default judgment against defendant on September 30, the record at that time not yet showing any timely appearance or response to the September 9 notice. Defendant was thus ordered to pay the $785 to the Sonksens.

On October 2, 1981, defendant filed a motion in small claims to set aside the default judgment under the alleged authority of Iowa R. Civ. P. 236 on the grounds of mistake; i.e. default was entered because the court mistakenly believed there had been no timely appearance in response to the notice when in fact such appearance was made on the last day of the twenty-day period. The small claims court on October 6 ruled in defendant's favor, set aside the September 30 default, ordered the Sonksens to return the bond money which had been disbursed to them upon the default judgment, and set a hearing on the merits of the Sonksens' claim. Despite this ruling, intervenors on October 7 filed an appeal to the district court, pursuant to Iowa Code § 631.13, challenging the entry of the default judgment. Defendant filed a similar appeal two days later. On October 29, the district court dismissed defendant's appeal as moot since the default had already been set aside.

The Sonksens (hereinafter "plaintiffs") applied to the supreme court for a writ of certiorari on November 4, alleging that defendant, Judge McEniry, had no authority to set aside the default as he did on October 6. The proceedings below were stayed, and the supreme court granted the writ on December 8.

I. Iowa Code ch. 631 is the enabling act for the small claims division of the district courts in this state. It is important to note that the small claims court is one of limited jurisdiction; see § 631.1(1)(civil actions for money judgment where the amount in controversy is $1000 or less, exclusive of interest and costs) and § 631.1(2)(concurrent jurisdiction in certain actions for forcible entry and detainer), and "shall determine small claims according to the statutes and the rules prescribed in [ch. 631]." § 631.2(1).

After examining the provisions of ch. 631, we agree with plaintiffs that a district court sitting in small claims has no jurisdiction to entertain a motion to set aside a default judgment. In determining this issue, we are guided by the familiar principles of statutory construction.

> Our task is to search out [legislative] intent and, wherever possible, give it effect. To do so we construe the statute as a whole, with a view to the objects and goals of the legislature and any evils the legislature wished to remedy. We are bound by whatever reasonable or liberal construction best squares with the legislative purpose.

Barnes Beauty College v. McCoy, 279 N.W.2d 258, 259 (Iowa 1979).

The Barnes court was presented with an analogous issue; i.e. whether a small claims court could entertain a motion for a new trial under Iowa R. Civ. P. 244. It was held that such motions are inappropriate in small claims for three reasons. First, the court discerned a legislative intent to provide the public with a simpler and less expensive method for dealing with small claims than provided in the regular district court of general jurisdiction. Allowing for new trial motions in small claims "would be a step toward formalism, expense and delay in obtaining final judgment. And new trial motions are incompatible with the legislature's desire that any party wishing so could appear without counsel." 279 N.W.2d at 260. Second, § 631.7(2) clearly sets forth how motions in small claims shall be determined: "[m]otions, except a motion under rule 34 of the rules of civil procedure [relating to third-party practice], shall be heard only at the time set for a hearing on the merits." (emphasis added). It is not possible for a new trial motion to be heard at the same time as a hearing on the merits of the claim. 279 N.W.2d at 260. Third, the relief requested in a motion for new trial is basically the same as that provided in § 631.13 by which adverse judgments in small claims may be appealed to the district court. Id.

We believe that the first two rationale employed by the Barnes court support our conclusion that motions to set aside default are inappropriate in small claims procedure. First, such motions would lead to the same, if not greater, "formalism, expense and delay in obtaining final judgment" that concerned the Barnes court. We are also doubtful about a party's ability to pursue or defend against a motion

to set aside default in small claims without the assistance of an attorney. Second, § 631.7(2), which establishes the exclusive procedure by which motions are to be handled in small claims, obviously does not contemplate motions to set aside default judgments to be heard in small claims since there would be no "hearing on the merits" in which to hear the motion.

Our conclusion in this regard is strengthened by reference to § 631.5(7) which clearly provides for the entry of default judgments in small claims actions but just as clearly makes no provision for such courts to hear motions to set aside defaults. We believe this omission on the part of the legislature evinces their intent to disallow small claims courts from hearing such motions. We do not imply, of course, that a default judgment in a small claims action may never be set aside; relief in such cases may be obtained by following the procedure in § 631.13 relating to the appeal of a small claims judgment to the district court. In fact, both the defendant and the intervenors in the small claims action perfected timely appeals to the district court from entry of the default judgment. These appeals were deemed moot by the district court, however, by the ruling setting aside the default.

Therefore, we hold that ch. 631 does not authorize a small claims court to entertain a motion to set aside a default judgment which it previously entered. It follows, then, that Judge McEniry also was without authority to order plaintiffs to return the bond corpus.

II. The question remains as to the proper disposition of this case. Iowa R. Civ. P. 316 provides:

> Unless otherwise specially provided by statute, the judgment on certiorari shall be limited to sustaining the proceedings below, or annulling the same wholly or in part, to the extent that they were illegal or in excess of jurisdiction, and prescribing the manner in which either party may proceed further, nor shall such judgment substitute a different or amended decree or order for that being reviewed.

(emphasis added). It has been held that a case on certiorari may be remanded for further proceedings. State v. Iowa District Court in and for Linn County, 236 N.W.2d 54, 56 (Iowa 1975).

Plaintiff's writ challenging the legality of defendant's order setting aside the default judgment is sustained. Since the set-aside order was the only basis for the district court's ruling of October 29, 1981, which dismissed the appeal of defendant to the small claims action as moot, that October 29 dismissal is vacated. The case is remanded for further proceedings on the two appeals to the district court from entry of the default judgment.

WRIT SUSTAINED, CAUSE REMANDED.