

FILED

DEC 30 1981

CLEAR SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

AMOCO OIL COMPANY,)

Plaintiff-Appellee,)

Filed December 30, 1981

vs.)

LeRUE HUDNUT,)

Defendant-Appellant.)

1-379

2-66189

Appeal from Audubon District Court - E. F. Hanson, Judge.

Defendant appeals from a default judgment entered against her in an action for recovery of an amount allegedly owed to plaintiff on an account. Defendant claims the trial court abused its discretion by imposing the sanction of default judgment under Iowa R. Civ. P. 134(b)(2)(c) after defendant failed to appear for a deposition in violation of a court order. AFFIRMED.

Robert Kohorst of Louis, Moore, Kohorst & Louis, Harlan, for defendant-appellant.

James Van Ginkel of Kluever & Van Ginkel, Atlantic, for plaintiff-appellee.

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

DONELSON, J.

Defendant appeals from a default judgment entered against her in an action for recovery of an amount allegedly owed to plaintiff on an account. Defendant claims the trial court abused its discretion by imposing the sanction of default judgment under Iowa R. Civ. P. 134(b)(2)(c) after defendant failed to appear for a deposition in violation of a court order.

Our review is limited to correction of errors at law. Iowa R. App. P. 4. We affirm.

I.

Plaintiff filed a petition on October 20, 1978, claiming defendant owed a certain amount on one of its accounts and defendant filed an answer on October 24, 1978, denying the material allegations of plaintiff's petition. On July 3, 1980, plaintiff served on defendant's attorney a notice of taking deposition and request to produce, directing defendant to appear at a deposition on August 9, 1980. A letter from defendant's attorney dated July 10, 1980, informed plaintiff's attorney that defendant's attorney did not know defendant's present location so it would be impossible to inform her of the August 9, 1980, deposition date. On August 9, 1980, plaintiff filed a motion for default judgment based on defendant's failure to appear for the deposition. The trial court refused to grant plaintiff's motion, but issued an order on September 8, 1980, requiring defendant to appear for the taking of depositions on October 4, 1980. Defendant failed to appear and on October 8, 1980, plaintiff again filed a motion for default judgment based on defendant's noncompliance with the trial court's order of September 8, 1980.

Defendant's resistance and supplemental resistance to plaintiff's motion for default judgment alleged that: (1) she had moved to California; (2) she was engaged in over the road trucking; (3) her attorney, despite repeated attempts, was unable to inform her of the deposition on October 4, 1980, until October 3, 1980, when she returned to her California home; and (4) it was impossible for her to return to Iowa on such short notice. Defendant also claimed she was willing to agree to a deposition upon written interrogatories or a deposition over the telephone at her cost, but plaintiff refused such arrangements. Defendant further indicated she was willing to come to Iowa at some future date and that she had a meritorious defense to the action.

On December 12, 1980, the trial court entered a ruling sustaining the plaintiff's motion for default judgment but gave no reason for its ruling. Defendant filed notice of

appeal on January 2, 1981.

II.

Defendant argues that the trial court abused its discretion by imposing the sanction of default judgment under Iowa R. Civ. P. 134(b)(2)(c). We disagree. The imposition of sanctions will not be reversed unless the trial court abused its discretion. Haumersen v. Ford Motor Company, 257 N.W.2d 7, 14 (Iowa 1977). In Smiley v. Twin City Beef Company, 236 N.W.2d 356, 360-61 (Iowa 1975), the Iowa Supreme Court stated:

Generally, abuse of discretion will be found only where there is lack of substantial evidence to support the trial court's ruling [citation omitted]. We view the evidence in its light most favorable to the Court's ruling and will uphold the ruling if any proper ground appears in the record, even if the trial court made no finding of fact or based its ruling on a different ground.

Defendant argues that imposition of the severe sanction of default judgment for refusal to comply with Iowa R. Civ. P. 134 should not be ordered in absence of willfulness, bad faith, or fault. Id.

The trial court did not specify its reasons for sustaining plaintiff's motion for a default judgment; however, our examination of the record indicates that the trial court did not abuse its discretion by granting the motion. Defendant left the state after this action was filed and allegedly failed to maintain contact with her attorney. Defendant's attorney was first informed plaintiff wanted to depose defendant in early July of 1980 and was unable to contact her. The trial court denied plaintiff's first motion for default and fashioned an order requiring defendant to appear for taking of deposition to remedy the situation. At some point after August 9, 1980, defendant's attorney discovered her California address, but claims to have had no contact with her until less than twelve hours before her deposition was to be taken in Iowa.

Under this questionable set of circumstances, defendant's failure to appear seems to be at the very least due to fault on her part for not keeping in contact with her attorney. At the most, the circumstances are evidence of either bad faith or willfulness on the part of defendant. In any event, the facts in this case are sufficient to find the trial court did not abuse its discretion.

AFFIRMED.

All judges concur, except Oxberger, C.J., and Snell, J., who dissent.

OXBERGER, C.J., (dissenting).

I dissent. When defendant was finally contacted by her lawyer and notified she was to appear at a discovery deposition, she had twelve hours to get to Iowa from California. She said she would return to Iowa for the deposition but needed more time to make the trip. She said she had a valid defense to plaintiff's claim. I would set aside the default and grant the defendant her day in court.

Snell, J., joins this dissent.