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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RAY DEAN,)

Plaintiff-Appellee,) Filed August 26, 1987

vs)

GAROLD FARRINGTON,) 7-17 86-303

Defendant-Appellant)

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Appeal from the Iowa District Court for Monroe County (No. CL 20304), James D Jenkins, Judge

The defendant appeals from the district court's default judgment against him claiming that the trial court erred in refusing to grant defendant's motions to set aside the default judgment and for new trial **REVERSED AND REMANDED.**

Lance Grotewold of Heslinga, Heslinga & Dixon, Oskaloosa, for defendant-appellant

Patrick Life, Oskaloosa, for plaintiff-appellee

Considered by Donielson, P J , and Snell and Sackett, JJ

DONIELSON, P.J.

Appellee, Roy Dean, initiated the present action on March 17, 1982, seeking damages as compensation for an alleged breach of contract by appellant, Garold Farrington. Farrington responded with a motion for more specific statement followed by an answer and counterclaim. As the result of various continuances, the trial date was set for January 8, 1985. On that date, according to allegations contained in his post-judgment motions, Farrington appeared at the courthouse and, following a lengthy wait, was told by the clerk of court that the trial would be rescheduled. Farrington, upon learning this, left the courthouse. The case, however, was called for trial later that morning and, due to Farrington's absence, default was entered against him. The district court instructed Dean's counsel to prepare an appropriate judgment order. Notice of the default was mailed to Farrington on January 9, 1985.

Farrington's wife testified at the hearing on the post-judgment motions that upon receiving the default notice she telephoned the district court, spoke with the judge who had entered the default, and believed, as a result of this conversation, that the trial would be rescheduled. The record contains letters to Farrington from the district court administrator, dated July 22, 1985, and November 21, 1985, rescheduling trial for October 1, 1985, and February 11, 1986, respectively. On December 26, 1985, however, Dean's counsel filed the judgment order which the district court, some eleven months earlier, had instructed him to prepare. Notice of the default judgment entry was mailed to Farrington. Farrington, who had been proceeding pro se since September 1983, then retained his present counsel. Farrington's motions to set aside the default judgment and for new trial were filed on January 13, 1986. The district court denied the motions following a February 7, 1986, hearing. This appeal

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

Farrington maintains the district court abused its discretion in refusing to set aside the default judgment.

Iowa Rule of Civil Procedure 236 provides, in pertinent part, that

> [o]n 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.

Such motions are triable at law in the district court. Hastings v. Espinosa, 340 N W.2d 603, 607 (Iowa App. 1983). The district court is vested with broad discretion in ruling on the motion. Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). We will interfere with the district court's ruling on the motion only in those instances in which an abuse of discretion is demonstrated. Smiley v Twin City Beef Co., 236 N.W.2d 356, 360 (Iowa 1975). Generally, an abuse of discretion will be found only where there is a lack of substantial evidence in support of the district court's ruling. Id. We view the evidence in the light most favorable to the district court's ruling and will uphold that ruling even in those cases in which the district court failed to make findings of fact or based its ruling on a different ground. Paige, 252 N.W.2d at 437.

The task which confronts a movant under Iowa Rule of Civil Procedure 236 was summarized in Paige, 252 N.W.2d at 437, in the following manner:

> The burden is upon the movant to show good cause as to one of the grounds stated in rule 236. "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. The movant must show his failure to defend was not due to his negligence, want of ordinary care or attention, or to his carelessness or inattention. The movant must affirmatively show he intended to defend and took steps to do so, but because of some misunderstanding, accident, mistake or excusable neglect failed to do so. By the plain language of rule 236 good cause must be based on (1) mistake, (2) inadvertence, (3) surprise, (4) excusable neglect, or (5) unavoidable casualty.

(citations omitted). The burden is on the movant to plead and prove such good cause as will not only permit but require a finding of mistake, inadvertence, surprise, excusable neglect, unavoidable casualty. Hastings, 340 N.W.2d at 608. In addition, "good cause" requires "at least a claimed defense [to the underlying action] asserted in good faith." Svoboda v. Svoboda, 245 Iowa 111, 118, 60 N.W.2d 859, 863 (1953); Hastings, 340 N.W.2d at 609.

The district court assumed for the purposes of its ruling that good cause had been shown. We think substantial record evidence supports this assumption. The testimony of Farrington's wife, as noted above, established that appellant intended to defend the action and took steps to do so. The substance of this testimony is corroborated by testimony elicited from a district court bailiff at the hearing on the post-judgment motions.

The district court, however, denied Farrington's motion to set aside the judgment for the following reasons:

> Nevertheless, defendant failed to offer one word of evidence to show that he had a meritorious defense to plaintiff's claim. The purpose of Rule 237 is to give a defendant his day in court if he in fact had a meritorious defense. The purpose of the rule is not merely to postpone his day of reckoning. Otherwise, setting a default aside is a mere futile gesture. Since defendant has failed to show a claimed defense asserted in good faith, setting aside this default would indeed constitute a futile gesture. For this reason, defendant's motion to set aside the default and the judgment based thereon must be overruled.

We think this reasoning reflects a misunderstanding of the applicable law on the part of the district court. We are not bound, of course, by a district court's erroneous applications of the law. Flexsteel Indus., Inc. v. Morbern Indus. Ltd., 239 N.W.2d 593, 598 (Iowa 1976); Connie's Const. v. Fireman's Fund Ins. Co., 227 N.W.2d 207, 209 (Iowa 1975).

In Flexsteel, our supreme court disagreed with a district court's conclusion that no meritorious defense had been shown in a situation much like the present

case. There, the district court had concluded that:

> . . . absolutely no proof has been offered by anyone cognizant of the facts setting forth what facts exist which create a prima facie defense for Defendant nor is the Court in any way, apprised of what the theory of the defense will be.

239 N.W.2d at 599. Our supreme court, adopting a liberal standard for the analysis of the issue, disagreed. The court held that defendant's general denial, contained in its answer, "served to put in issue existence of . . . elements essential to plaintiff's maintenance of its action," and therefore constituted a prima facie showing of a meritorious defense. 239 N.W.2d at 601. Similarly here Farrington's pleadings raised affirmative defenses which, if established at trial, "would prima facie constitute a defense." Handy v. Handy, 250 Iowa 879, 881, 96 N.W.2d 922, 925 (1959). Farrington accordingly has asserted a claimed defense in good faith, which is all our cases require. Sher v. Burche, 353 N.W.2d 859, 862 (Iowa App. 1984). The district court abused its discretion in requiring more.

We are not persuaded by Dean's reliance, apparently shared in by the district court, on the fact that Farrington did not follow notice of default with legal action to set it aside. In light of the sequence of events as testified to by Farrington's wife and the district court bailiff, along with the letters sent to Farrington by the district court administrator twice rescheduling trial following the default, it was reasonable for Farrington, particularly given his pro se status, to believe no such action was necessary. See Hastings v. Espinosa, 340 N.W.2d 603, 609 (Iowa App. 1983) (non-lawyer cannot be held to the same standard of legal competency in proceedings to set aside default judgment). His motion to set aside the default judgment was filed within sixty days of judgment entry, which is all our rule requires. Iowa R. Civ. P. 236.

Because of our holding, we do not address Farrington's claim of district court error in the denial of his motion for new trial.

REVERSED AND REMANDED.