FILED
JAN 29 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GENERAL DRIVERS, WAREHOUSEMEN and HELPERS, LOCAL 218,

Plaintiffs-Appellees,

vs

CROUSE CARTAGE COMPANY, INC.,

Defendant-Appellant.

Filed January 29, 1986

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5-581
84-1983

Appeal from the Iowa District Court for Des Moines County - William S Cahill, Judge.

Defendant appeals the district court's denial of defendant's petition to vacate a default judgment under Iowa Rule of Civil Procedure 252. **AFFIRMED.**

James R. Van Dyke, Carroll, Iowa, for defendant-appellant.

Neil A. Barrick of Conley & Barrick, Des Moines, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

Defendant appeals the district court's denial of defendant's petition to vacate a default judgment under Iowa Rule of Civil Procedure 252. Defendant contends the judgment should be vacated on grounds of irregularity or fraud. We affirm.

This case involves the enforcement of a grievance arbitration award by plaintiff union against defendant, Crouse Cartage. The union filed the petition to obtain compliance with the award. Crouse did not answer or appear to defend. Plaintiff filed application for default judgment and order for accounting. The trial court entered default judgment, an auditor was appointed to review defendant's records and report to the court, and defendant was charged with court costs and payment for the auditor.

Crouse Cartage then filed a motion to vacate the judgment. It was claimed that irregularity or fraud was used in obtaining the judgment since defendant was not the employer of the individual union members. After a hearing on the matter, the court denied the petition. This appeal resulted.

Motions to vacate default judgments are triable at law. Hastings v. Espinosa, 340 N.W.2d 603, 607 (Iowa Ct. App. 1983). The burden is on the pleading party to plead and prove good cause to vacate or set aside the default judgment. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981). In granting or denying the motion, the trial court is vested with wide discretion; its findings on disputed facts are entitled to the same weight as a jury verdict. Hansman v. Gute, 215 N.W.2d 339, 342 (Iowa 1974). Even where the trial court makes no findings of fact or bases its ruling on a different ground, we will uphold the ruling if any proper ground appears in the record. Hastings, 340 N.W.2d at 608.

In the present case, we cannot say the trial court abused its discretion in failing to vacate the default judgment. Crouse Cartage's sole ground for

vacating the judgment was irregularity or fraud practiced upon the court. See Iowa R. Civ. P. 252(b). This principle was explained in Miller v. AMF Harley-Davidson Motor Co., Inc., 328 N.W.2d 348, 353 (Iowa Ct. App. 1982):

> Where fraud is asserted as the ground for vacating a judgment, it "must be extrinsic fraud or collateral to the matter directly involved in the original case." Sorenson v. Sorenson, 254 Iowa 817, 825, 119 N.W.2d 129, 134 (1963). "Extrinsic fraud is some act or conduct of the prevailing party which has prevented a fair submission of the controversy. It includes lulling a party into a false sense of security or preventing him from making a defense." In re Marriage of Short, 263 N.W.2d 720, 723 (Iowa 1978). See also In re Marriage of Bauder, 316 N.W.2d 697, 699 (Iowa Ct. App. 1981).
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> Such a finding would be justified only by the most egregious misconduct and would have to be supported by clear, unequivocal and convincing evidence.

It is apparent to this court that the standards set forth in Miller have not been met and defendant failed to carry the burden of proof. Crouse Cartage did not present any evidence indicating it was prevented from a fair submission of the controversy or from making a defense. Rather, it relies solely on the fact that it was not the employer of union employees. This is something that was known by defendant prior to entry of the default judgment and which properly should have been attacked by motion or special appearance at that time. Defendant's failure to do so and failure to even appear in this case is not for any reason attributable to the plaintiff.

In essence, defendant's choice not to respond in this action is a decision we view as final. A motion to vacate a default judgment is not a vehicle for asserting known claims or defenses deemed waived by a failure to appear.

We conclude that defendant's claim of irregularity or fraud is without merit. The decision of the trial court is therefore affirmed.

AFFIRMED.