IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

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STATE OF IOWA, ex rel. IOWA DEPARTMENT OF HUMAN SERVICES, CONNIE M. KREBS, on behalf of **JODY RAE KREBS**,

Petitioners-Appellees,

vs.

KENNY LENZ,

Respondent-Appellant.

8-498
88-72

Appeal from the Iowa District Court for Webster County (No. 52881), R. K. Richardson, Judge.

Respondent in a paternity action appeals from the district court's refusal to set aside a default judgment against him. **AFFIRMED.**

C. Joseph Coleman, Jr. of Mitchell, Coleman, Perkins & Enke, P.C., Fort Dodge, for respondent-appellant.

Thomas J. Miller, Attorney General; Robert R. Huibregtse, Assistant Attorney General; and Ralph H. Allen of the Child Support Recovery Unit, for petitioners-appellees.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

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DONIELSON, J.

The respondent in a paternity action appeals from the district court's refusal to set aside a default judgment against him. He contends the inactivity of his attorneys, which he did not authorize, constituted good cause for setting aside a default under Iowa Rule of Civil Procedure 236.

The State of Iowa, acting on behalf of a mother and child who receive public assistance, filed this paternity and child support action against Kenny Lenz. The State's petition was filed on March 7, 1986, and was personally served on Lenz in Illinois on May 21, 1986, within the twenty-day period after service for filing an answer. Lenz contacted both an Illinois lawyer and an Iowa lawyer. He directed the Iowa lawyer to seek an extension of time to file an answer, asserting that the Illinois lawyer needed extra time. The Iowa lawyer did obtain an extension of time. Lenz asserts that the extension was open-ended, allowing Lenz whatever time he needed to file an answer; however, Lenz's Iowa attorney expressed the intention to file an answer within ten days of the twenty-day deadline, or within thirty days of service.

Lenz did not file an answer within thirty days of service; in fact, he never filed an answer at all. Lenz allegedly believed that his attorneys were doing whatever was necessary to represent him in the case. The State also took no further action in the case for over a year.

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In August of 1987, more than fourteen months after service of the petition, the district court clerk sent both sides a notice pursuant to Iowa Rule of Civil Procedure 215.1 that the case would be subject to dismissal if not tried by January 1, 1988. Lenz allegedly interpreted this notice to mean he had won the case. However, in October of 1987 the State obtained a default judgment against Lenz. Lenz then filed the present motion to set aside this default judgment pursuant to Iowa Rule of Civil Procedure 236. The district court refused and Lenz has appealed.

The rules regarding the review of this type of action are well settled. They provide:

> A proceeding under rule 236 is at law. A trial court has wide discretion in making its ruling. The burden is on the movant to plead and prove good cause to set aside the default or judgment thereon. Good cause is shown only if one of the grounds in the rule is proved. We are bound by the trial court's findings of fact if supported by substantial evidence. We view the evidence in its light most favorable to the court's ruling. 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. [citations omitted]

Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974).

A good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect and requires at least a claimed defense asserted in good faith. Svoboda v. Svoboda, 245 Iowa 111, 118, 60 N.W.2d 859, 863 (1953).

The trial court found no showing of good cause for failure to file an answer. Also there was no showing of mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty as required by Iowa Rule of Civil Procedure 236.

No answer was filed during the sixteen and one-half month period between the letter confirming the extension and the entry of default. In June of 1986, the attorney for Mr. Lenz secured an open extension of time but indicated a desire to file an answer within ten days. It was not until October of 1987 that Lenz discovered that no answer had been filed by his Illinois attorney and in fact no work had been done in Lenz's behalf. Lenz immediately sought new Illinois counsel and had the Iowa counsel file the motion to set aside the default. Lenz claims it is unfair to deprive him of his opportunity to be heard on the matter due to the failure of his Illinois counsel to proceed to defend Lenz.

The Iowa courts distinguish attorney and client error as it relates to reinstatement and setting default aside. The current point of view is:

> In general, the distinction between client error and attorney error is relevant in determining whether a default judgment should be overturned. It would not seem to be the sole factor, however; rather, it is part of the overall situation which might include prompt attention to the default, existence of a meritorious defense, appellate court's reliance on trial court's discretion and the policy of trial on the merits. Furthermore, there are limits on the extent to which the distinction will be carried.

Wharff v. Iowa Methodist Hospital, 219 N.W.2d 18, 24 (Iowa 1974), cited in Matter of Estate of Bearbower, 376 N.W.2d 922, 924 (Iowa App. 1985).

Therefore, we look at the circumstances of this case as a whole. We take into consideration the efforts Lenz made to secure counsel and his Illinois counsel's failure to defend. However, we are not persuaded that Lenz has met his burden to show good cause.

We find it significant that over sixteen months passed before Lenz fired his Illinois counsel for inaction. In Dealers Warehouse Co. v. Wahl & Associates, 216 N.W.2d 391, 395 (Iowa 1974), almost nine months expired after the petition was filed without any action on the part of the plaintiff. Even though in that case the plaintiff's excuse for failure to act was a breakdown in communication with his lawyer, the court found it more significant that the plaintiff did nothing to assure that his interests were being protected until fifteen days after receiving his attorney's application to withdraw. Id.

Lenz did nothing between the grant of the extension and receipt of the default notice. He did not take any affirmative steps upon receipt of the 215.1 notice. Lenz has proffered nothing more than an excuse, plea, apology, extenuation, or some justification for his lack of action. We find no abuse of discretion; therefore, the decision of the district court denying the motion to set aside the default judgment is affirmed.

AFFIRMED.