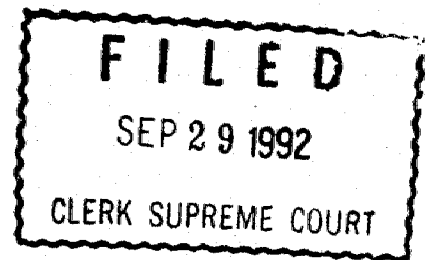


IN THE COURT OF APPEALS OF IOWA

No. 2-361 / 91-1958



LARRY D. MADSEN,

Plaintiff-Appellee,

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vs.

LITTON INDUSTRIES, INC., and LITTON INDUSTRIAL AUTOMATIONS
SYSTEMS, INC.,

Defendants-Appellants,

and

LITTON VONGAL PALLETIZERS, INC., and LITTON INDUSTRIES,
INC. d/b/a VONGAL PALLETIZERS,

Defendants.

Appeal from the Iowa District Court for Linn County,
Paul J. Kilburg, Judge.

Litton appeals a district court order denying their
motion to set aside a default pursuant to Iowa Rule of
Civil Procedure 236. **AFFIRMED.**

Mark McCormick and Margaret C. Callahan of Belin Harris
Lamson McCormick A Professional Corporation, Des Moines,
and Donald G. Thompson of Bradley & Riley, P.C., Cedar
Rapids, for appellants.

James E. Bobenhouse, Cedar Rapids, and Beverly Ogren,
Cedar Rapids, for appellee.

Heard by Donielson, P.J., Hayden, J., and Keefe, S.J.*

*Senior Judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

DONIELSON, P.J.

On December 15, 1988, Larry Madsen, while an employee of Mid-Continent Bottlers, sustained a permanent and disabling injury to his arm when it was crushed by a palletizer machine manufactured by Litton Industrial Automation Systems (Litton Automation). Litton Automation is a subsidiary of Litton Industries.

In November 1989, Madsen (through his attorney) wrote to "Litton Vongal Palletizers" in Alabama giving notice of his intent to file a claim. This letter came to the attention of John Hilinski, counsel for Litton Automation in Kentucky. Hilinski then referred the claim to its insurance carrier, Hartford Insurance. He also advised Litton Industries' associate director of litigation, Steven Estabrook, of the claim. Estabrook's office is in California.

Timothy Rade, a claims representative for Hartford, undertook an investigation of Madsen's claim. Apparently, it was the customary practice for the litigation department to become involved with a claim only after a lawsuit was filed. As of December 1990, Rade's efforts to settle Madsen's claim were unsuccessful.

On December 12, 1990, Madsen filed a petition in Iowa seeking damages. Madsen forwarded a copy of the petition to Rade. In an enclosed letter, Madsen informed Rade he would be serving the named defendants if settlement were not reached within two weeks. In March 1991, Litton

Industries was served in California and Litton Automation was served in Kentucky.

During the period between December 1990 and March 1991, Litton Industries established a "claim file" on this case. However, the file was mislabeled a "litigation file." Upon receiving service of the original notice and petition, the office administrator for the litigation department at Litton Industries placed these papers in the mislabeled file. The papers were neither discovered by nor brought to the attention of Estabrook or any other attorney in the litigation department until the default judgment had been entered.

Upon Hilinski's receipt, both on behalf of Litton Automation and the non-existent "Litton Vongal Palletizers," of the original notice and petition, he placed the papers in a file he had maintained relating to the Madsen claim. Hilinski believed the case was already in litigation and was being handled by Estabrook and outside counsel. Therefore, he took no further action.

None of the defendants filed an appearance or answer. On June 19, 1991, the district court entered a default judgment against the defendants for \$137,155.75 plus interest. In July 1991, defendants filed a motion to set aside the default judgment pursuant to Iowa Rule of Civil Procedure 236. Following a hearing, the district court denied the defendants' motion finding no "good cause" for the default.

After a denial of its posttrial motion, defendants have filed this appeal. On our review, we affirm the district court.

I. Motion to Set Aside Default Judgment. Litton contends the district court erred in not finding good cause to set aside the default. Litton also claims the district court improperly held the conduct of Litton's insurance carrier, Hartford, against Litton in deciding this case.

Trial courts have broad discretion in ruling on motions to set aside a default judgment. We will set aside such rulings only upon a showing of abuse of discretion. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987) (citing Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977)). Because the trial court's findings of fact have the force of a jury verdict, the movant generally must show a lack of substantial evidence supporting the ruling to show such abuse of discretion. Id.; Dealers Warehouse Co. v. Wahl and Assocs., 216 N.W.2d 391, 394 (Iowa 1974).

A. Good Cause to Set Aside Default Judgment. Litton first contends the district court erred in failing to find good cause to set aside the default.

Under Iowa Rule of Civil Procedure 236, a court may set aside a default judgment only for "good cause shown" based on "mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty." Thus, good cause requires "a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the

resulting effect." Dealers Warehouse Co. v. Wahl & Assocs., 216 N.W.2d 391, 394 (Iowa 1974). 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. Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). "[W]here the failure to appear is attributable solely to the litigant's error, then the court is less likely to set aside the judgment." Bank of Craig v. Hughes, 398 N.W.2d 216, 217 (Iowa App. 1986).

In addition, the movant must present "at least a prima facie showing of a meritorious defense as a condition to setting aside a default." Hallett Constr. Co. v. Iowa State Highway Comm'n, 258 Iowa 520, 530, 139 N.W.2d 421, 428 (1966).

In our analysis, we focus only on the first element, whether "good cause" existed to set aside the default judgment. Here, the event which began the chain of events ultimately leading to the default judgment was the mislabeling of the "claim file" as a "litigation file." However, this error could have been alleviated if the original notice and petition had been brought to Estabrook's attention. The original notice and petition could have been brought to his attention if either Hilinski, the attorney for Litton Automation, or the office administrator had contacted Estabrook about these papers. Furthermore, if Estabrook had simply contacted Madsen or Hartford or taken any other reasonable steps to inquire

about the status of the claim, he might have received notice that a petition had been filed.

We agree with the district court's observation that all the individuals who came into contact with Madsen's claim were "trained professionals whose job it was to deal with claims made against the corporation." Clearly, the failure to appear was caused by not just one error, but by a series of errors. These errors were made by persons who knew a lawsuit was an impending possibility. Furthermore, these errors could have been alleviated without the involvement of Hartford, the insurance company.

In general the failure to appear was caused by a lack of organization, a lack of coordination and a lack of communication. We simply do not find these factors constitute "good cause." We do not find the district court abused its discretion in denying Litton's motion to set aside the default judgment.

B. Imputing Hartford's Conduct against Litton. Litton also contends the district court improperly held the conduct of Litton's insurance carrier, Hartford, against Litton in denying Litton's motion to set aside the default judgment.

In making its decision to deny Litton's motion to set aside the verdict, the district court did discuss the conduct of Hartford. However, we do not believe the conduct of Hartford was determinative in the district court's decision. Furthermore, we do not find the conduct

of Hartford is determinative in our review of the district court's decision.

Several of the events which led to the default judgment occurred completely apart from the conduct of Hartford. That is, Estabrook's mislabeling of the file, the failure of the office administrator to inform Estabrook of the petition, the failure of Hilinski to inquire about the petition, and the failure of Estabrook to follow-up on the claim were not directly caused by the conduct of Hartford.

Considering only the conduct of Litton, and not the conduct of Hartford, we still find good cause for setting aside the default did not exist. We will affirm the district court if any reason for affirmance appears in the record. See Hewitt v. City of Des Moines, 300 N.W.2d 121, 126 (Iowa 1981); Kelly v. Brewer, 239 N.W.2d 109, 113 (Iowa 1976). Therefore, it is not necessary to address the issue of whether the negligence of Hartford may be imputed to Litton in ruling on a motion to set aside a default judgment.

The costs of this appeal are taxed to Litton.

For all reasons stated, we affirm the judgment of the district court.

AFFIRMED.