

IN THE SUPREME COURT OF IOWA

No. 19-0431

Upon the Petition of

**NO BOUNDARY, LLC,
Plaintiff - Appellee,**

And Concerning

**CORNELL HOOSMAN,
Defendant - Appellant.**

**APPEAL FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE ANDREA DRYER, DISTRICT COURT JUDGE**

APPELLEE'S FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE DEFAULT JUDGMENT AGAINST DEFENDANT- APPELLANT CORNELL HOOSMAN PROPERLY WAS NOT SET ASIDE

CASES

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STATUTES

Iowa Code § 447.1 (2019)

Iowa Code § 646.1 (2019)

RULES

Iowa R. Civ. P. 1.211

Iowa R. Civ. P. 1.977

ROUTING STATEMENT

This case should be transferred to the Court of Appeals because it does not involve provisions of the Iowa Constitution or any specific statutes that grant exclusive jurisdiction to the supreme court and it does not involve any of the specific matters described in Rule 6.1101(2). Iowa R. App. P. 6.1101(1)-(2). Further, it concerns the application of existing legal principles; particularly in connection with the interpretation of Rules 1.211 and 1.977 of the Iowa Rules of Civil Procedure. Iowa R. App. P. 6.1101(1)-(3).

STATEMENT OF THE CASE

Appellee, No Boundry, LLC (hereinafter “No Boundry”), filed a petition for recovery of real property pursuant to Chapter 646 of the Code of Iowa on January 14, 2019. On February 21, 2019, the district court entered a judgment in favor of No Boundry declaring that No Boundry was entitled to immediate possession of the real property that is the subject matter of this proceeding and ordering the clerk of court to issue a writ of possession directing the removal of Appellant Cornell Hoosman and any other parties in possession and the placement of No Boundry in possession. The clerk of

court issued a writ of removal and possession on February 25, 2019. On March 13, 2019, prior to execution on the writ, Mr. Hoosman filed an application for injunction. On March 14, 2019, Mr. Hoosman filed a motion requesting that the district court's judgment be set aside and requesting that the court stay execution of the writ of removal and possession. Following hearing, on March 15, 2019, the district court entered an order denying Mr. Hoosman's application and motion.

Following the district court's ruling, on March 15, 2019, Mr. Hoosman filed a motion to enlarge and amend. On March 18, 2019, the office of the Black Hawk County Sheriff executed on the writ of possession and removal, removing Mr. Hoosman and placing No Boundry in possession of the property. Thereafter, Mr. Hoosman filed a notice of appeal and asked this Court to stay execution of the writ. This Court initially stayed execution on the writ but later withdrew that stay following submission of written arguments by the parties.

STATEMENT OF THE FACTS

This matter concerns real property locally known as 343 Albany Street, Waterloo, Iowa and legally described as The West 30 feet of Lot 11

in Shilliam's Second Subdivision, Waterloo, Black Hawk County, Iowa (hereinafter the "Real Estate"). App. 6. Due to the non-payment of real estate taxes assessed to the Real Estate, it was sold at tax sale pursuant to Chapter 446 of the Code of Iowa on June 20, 2016, to Wago 131 in return for Wago 131's payment of all such outstanding taxes and interest. App. 8-9. Thereafter, Wago 131 served notice of expiration of right of redemption from the tax sale on Hoosman and all other necessary parties by regular and certified mail pursuant to section 447.9 of the Code of Iowa, and filed an affidavit reflecting said completed service with the office of the Black Hawk County Treasurer on August 31, 2018. Id.

Despite having been served with notice of the expiration of right of redemption, neither Hoosman nor any other party redeemed from the tax sale, and on November 30, 2018, following the assignment of the tax sale certificate to No Boundry, the county treasurer issued a tax sale deed conveying to No Boundry fee title to all of the Real Estate. Id.

No Boundry filed a petition for recovery of real property pursuant to Chapter 646 of the Code of Iowa on January 14, 2019. App. 6-9. On January 16, 2019, Mr. Hoosman was served by means of personal service with original notice and a copy of the No Boundry's petition. App. 10-11.

On February 6, 2019, No Boundry caused notice of its intent to file written application for default judgment to be mailed to Mr. Hoosman. App. 12-13. Thereafter, no answer or other response having been filed by Mr. Hoosman or any other party, No Boundry filed a motion for default judgment on February 19, 2019. App. 14-15.

On February 21, 2019, the district court rendered judgment in favor of No Boundry. App. 16-17. In the district court's judgment, it declared that No Boundry was entitled to immediate possession of the Real Estate and it ordered the clerk of court to issue a writ of possession commanding the county sheriff to remove Mr. Hoosman and other parties in possession and place No Boundry in possession. Id. The clerk issued the writ on February 25, 2019. App. 18.

On March 13, 2019, prior to execution on the writ, Mr. Hoosman filed an application for injunction. App. 20-21. On March 14, 2019, Mr. Hoosman filed a motion requesting that the court's judgment for recovery of real property be set aside and requesting that the court stay execution of the writ of removal and possession. App. 22-24. Following hearing on March 15, 2019, the district court entered an order denying Mr. Hoosman's requests. App. 25-26.

Following the district court's ruling, on March 15, 2019, Mr. Hoosman filed a motion to enlarge and amend. App. 27-42. As a part of that motion to enlarge and amend, Mr. Hoosman provided a report entitled "Competency to Stand Trial." App. 31-42. No evidence was provided at the hearing on March 15 or in the motion to enlarge and amend that Mr. Hoosman presently was adjudicated, or certified by his physician, to be incompetent or mentally incapable of conducting a defense.

On March 18, 2019, the office of the Black Hawk County Sheriff executed on the writ of possession and removal, thereby removing Mr. Hoosman and placing No Boundry in possession of the Real Estate. Resistance to Application to Stay. Thereafter, Mr. Hoosman filed a notice of appeal and asked this Court to stay execution of the writ. Notice of Appeal. This Court initially stayed execution on the writ but later withdrew that stay following submission of written arguments by the parties. Order Denying Application to Stay.

ARGUMENT

- I. **THE DEFAULT JUDGMENT AGAINST DEFENDANT-APPELLANT CORNELL HOOSMAN PROPERLY WAS NOT SET ASIDE.**

Error Preservation, Scope of Review and Standard of Review.

Appellee agrees with Appellant's position as to preservation of error. A trial court has wide discretion in ruling on a motion to set aside a default judgment under Rule 1.977 of the Iowa Rules of Civil Procedure. Central Nat. Ins. Co. of Omaha v. Insurance Co. of North America, 513 N.W.2d 750, 753 (Iowa 1994). Such a ruling may be reversed only upon a finding that the trial court abused its discretion. Id. The appellate court is bound by the district court's findings of fact and will uphold the trial court's ruling even when the court has made no specific findings of fact. Id.

Argument.

Appellant Cornell Hoosman argues that the district court erred in failing to set aside its judgment granting Appellee immediate and exclusive possession of the Real Estate and directing the clerk of court to issue a writ of possession. The basis of Appellant's argument is that there was good cause to set aside the Judgment and that the district court's entry of the Judgment was contrary to Rule 1.211 of the Iowa Rules of Civil Procedure, which prohibits the entry of a judgment without defense against a person adjudged incompetent. Contrary to the Appellant's arguments, however, the

district court properly refused to set aside the Judgment it had entered in favor of the Appellee.

A. Appellant Cornell Hoosman Failed to Show Good Cause For Setting Aside the Judgment.

Rule 1.977 of the Iowa Rules of Civil Procedure provides that a default judgment may be set aside “for good cause shown . . . for [the grounds of] mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.” Iowa R. Civ. P. 1.977. A movant shows “good cause” under Rule 1.977 “only if one of said grounds in the rule is proved.” Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974). In addition, good cause requires the existence of a meritorious defense asserted in good faith. Svoboda v. Svoboda, 60 N.W.2d 859, 863 (Iowa 1953).

Although the rule is construed to favor trials on the merits, in moving to set aside a default judgment, the burden is on the movant to prove good cause on one of the specifically permitted grounds under Rule 1.977.

Dealers Warehouse Co., v. Wahl and Associates, 216 N.W.2d 391, 394 (Iowa 1974). To be successful, the movant must show that “his failure to defend was not due to his negligence or want of ordinary care or attention or to his carelessness or inattention . . . [and that] he did intend to defend and

took steps to do so.” Id. at 394-395. The “[t]rial court findings of fact in deciding the motion have the force of a jury verdict and, under those facts, a trial court is vested with wide discretion in ruling on the motion.” Id. at 394. A trial court’s decision should be reversed only based upon an abuse of discretion. Central Nat. Ins. Co. of Omaha, at 753. On appeal, the evidence is reviewed in “the light most favorable to the district court’s ruling” Id. An appellate court “will uphold the district court’s ruling even when the court has made no findings of fact.” Id. The task of the appellate court “is to decide, viewing the evidence in its light most favorable to the [trial court’s] ruling, whether a rule [1.977] ground exists in the record to support the exercise of trial court discretion in ruling as it did.” Williamson, at 640.

Mr. Hoosman failed to show that his failure to defend at district court was due to mistake, inadvertence, surprise, excusable neglect or unavoidable casualty as opposed to his negligence, carelessness, or inattention. Further, he failed to show that he intended to defend himself or took steps to do so. He was served with original notice by personal service. App. 10-11. He made no objection to the contents of the notice or its service. No Boundry properly caused notice of intent to seek a default judgment to be mailed to Mr. Hoosman. App. 12-13. Mr. Hoosman raised

no objection to the contents of said notice or on the basis that it was improperly served. According to Mr. Hoosman, he “has been trying to defend himself in this action for many months,” and he previously had tried to submit a petition to abate and suspend his property taxes. App. 28.

However, despite being entirely aware of No Boundry’s actions adverse to his interest in the Real Estate, and despite having received the original notice, petition, and No Boundry’s notice of intent to seek default, Mr. Hoosman took no steps to present a defense in the district court proceeding until well after the entry of the Judgment when execution on the writ of possession issued by the clerk of court was imminent.

The “good cause” required by Rule 1.977 also mandates that the movant have “a claimed defense in good faith.” Central Nat. Ins. Co. of Omaha, at 754. Any such claimed defense must be meritorious in nature. See Svoboda, at 863 (stating that a “default is not to be set aside as a mere futile gesture; which it would be if defendant claims no meritorious defense”). Mr. Hoosman has no such meritorious defense. The basis of No Boundry’s action is for the recovery of real property under Chapter 646 of the Code of Iowa. The purpose of such an action is for the recovery of the possession, and not the determination of title, to real estate. In an action for

recovery or real property under Chapter 646, “the right to possession and not the title [is] the subject matter of such an action.” Larson v. Baker, 16 N.W.2d 262, 265 (Iowa 1944). No Boundry’s petition was for the recovery of possession of real property to which it holds title by tax sale deed; which title is undisputed by Mr. Hoosman. Mr. Hoosman seeks to set aside the Judgment in order to argue his right to redeem from the tax sale upon which No Boundry’s tax title is based. Chapter 646 does not allow for this. Pursuant to section 646.1, “[a]ctions for the recovery of real property shall be by ordinary proceedings, and there shall be no joinder and no counterclaim therein.” Iowa Code § 646.1 (2019). If Mr. Hoosman seeks to redeem from the tax sale upon which No Boundry’s title is based, he cannot do so as a part of an action at law under Chapter 646. Rather, he must do so by an equitable action brought pursuant to section 447.8 of the Code of Iowa. See Iowa Code § 447.1(a) (2019) (“After the delivery of [a tax sale] deed, a person entitled to redeem a parcel sold at a tax sale shall do so only by an equitable action in the district court.”). Because Mr. Hoosman cannot argue his right to redeem from the tax sale upon which No Boundry’s title is based in the district court proceeding from which this appeal was taken, he has no meritorious defense to the Judgment and therefore no good cause for

the setting aside of the Judgment.

B. The Entry of the Judgment by Default Was Not Contrary to Rule 1.211 of the Iowa Rules of Civil Procedure.

Rule 1.211 prohibits the entry of a judgment by default against a party “adjudged incompetent, or whose physician certifies to the court that the party appears to be mentally incapable of conducting a defense.” Iowa R. Civ. P. 1.211. The district court’s entry of the Judgment by default was not at odds with the provisions of this Rule. Although Mr. Hoosman asserted that he previously had been adjudged incompetent there was no evidence that he was incompetent during the pendency of No Boundry’s petition for recovery of real property, and specifically at the time of the district court’s entry of the Judgment. To support his assertions of incompetence, Mr. Hoosman’s points to the report of a psychologist that is more than six years old. See App. 27-42 (including attached Competency to Stand Trial Report from 2013). However, there was no evidence presented that Mr. Hoosman remains in the same condition as described in said report. Further, Rule 1.211 requires an adjudication of incompetency. Although Mr. Hoosman’s Motion to Enlarge and Amend Findings and Conclusions by Court mentions the dismissal of prior criminal proceedings, there was no evidence presented

as to any such adjudication. Further, there was no evidence of the certification of Mr. Hoosman's incompetence by his physician. Therefore, there was no evidence sufficient to support Mr. Hoosman's assertion that the district court's entry of the Judgment by default was contrary to Rule 1.211 of the Iowa Rules of Civil Procedure.

CONCLUSION

For the reasons set forth herein, Appellant No Boundry respectfully requests that the trial court's Judgment be affirmed, and that costs be assessed to Appellant.

REQUEST FOR NON-ORAL SUBMISSION

This case presents no issue of first impression and does not require further explanation. Therefore, Appellee respectfully states that no oral argument is necessary.

COST CERTIFICATE

Pursuant to Iowa R. App. P. 6.903(2)(j) the undersigned certifies that the actual cost of reproducing the necessary copies of this document was \$0.00.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- [X] This brief has been prepared in proportionally spaced typeface using Times New Roman in 14 pt. and contains 2,508 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Charles P. Augustine

July 16, 2019

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Appellee's Final Brief was filed electronically on the 16th day of July, 2019, and was served upon Appellant's counsel electronically by EDMS

/s/Charles P. Augustine