

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 RESISTANCE TO
APPELLANT'S APPLICATION FOR FURTHER REVIEW OF
IOWA COURT OF APPEALS DECISION FILED JANUARY 9, 2020**

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INSUFFICIENT BASIS WARRANTING FURTHER REVIEW

Rule 6.1103(b) provides that the Court, in its discretion, may grant further review, and provides four specific grounds that may weigh on the Court's decision to do so. See Iowa R. App. P. 6.1103(b). None of those stated grounds are present in connection with this case.

First, the court of appeals decision is not in conflict with a prior appellate court decision on a matter of importance. Mr. Hoosman failed to assert, and the court of appeals determined that he failed to provide, any evidence of his incompetence at any time during the pendency of the trial court's proceeding. Further, the court determined that section 447.7(2) nevertheless did provide Mr. Hoosman a remedy afforded to those under a legal disability, yet failed to pursue the same timely and therefore has no good faith defense that would warrant the setting aside of the trial court's judgment.

Second, the court of appeals did not decide a question of law that requires further review. The court's decision was based primarily on an analysis of Rule 1.977 of the Iowa Rules of Civil Procedure, and employed an analysis of prior Supreme Court precedent in doing so.

Further, the court of appeals did not decide an important question of

changing legal principles, or determine a case of the type that would require reexamination by this Court due to broad public importance. Iowa appellate courts consistently have applied the same rules in cases seeking to set aside a default judgment under Rule 1.977 and the court of appeals recognized those cases and applied the same rules in this case.

Based upon the foregoing, Mr. Hoosman's Application for Further Review should be denied.

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 to Wago 131 at tax sale pursuant to Chapter 446 of the Code of Iowa on June 20, 2016, 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 No Boundry's petition. App. 10-11. On February 6, 2019, No Boundry caused notice of 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 APPELLANT CORNELL HOOSMAN PROPERLY WAS NOT SET ASIDE.

Appellant Cornell Hoosman argues that the district court erred in failing to set aside its judgment granting No Boundry immediate and exclusive possession of the Real Estate and directing the clerk of court to issue a writ of possession. The basis for Mr. Hoosman's argument is two-fold. First, Mr. Hoosman argues that there was good cause to set aside the judgment. Second, he argues 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 Mr. Hoosman’s arguments, however, the district court properly refused to set aside the judgment it had entered in favor of No Boundry. Further, the Court of Appeals properly denied Appellant’s appeal and upheld the trial court’s ruling.

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).

In deciding a motion to set aside a default judgment, the trial court’s findings of fact “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 v. Insurance Co. Of North

America, 513 N.W.2d 750, 753 (Iowa 1994). On appeal, the evidence is reviewed in “the light most favorable to the district court’s ruling,” and 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.

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.

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

that he 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 entry of the trial court’s 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 good faith defense.

Mr. Hoosman asserts that he retains the right of redemption despite the prior issuance of a tax sale deed in favor of No Boundry because he has a legal disability. The general rule is that a person with a legal disability retains the right to redeem from a tax sale “at any time prior to one year after the legal disability is removed by bringing an equitable action for redemption.” Iowa Code § 447.7(2) (2019). However, if the tax title holder commences an action to remove that person from possession of the property, that person, in order to preserve his or her right to redeem, must either (i) timely file a counter claim in the removal action, or (ii) file a separate action to assert his or her redemption rights within 30 days after being served with the original notice in the removal action. Iowa Code § 447.7(3) (2019). Mr. Hoosman, despite by his own admission being aware of the pending tax sale, failed to take either action to preserve any such right to redeem. As a result, he cannot argue that he retains the right to redeem based upon any legal disability. Therefore, he has no meritorious defense to the Judgment and therefore no good cause for the setting aside of the Judgment.

Hoosman argues that he should be given more time than is afforded by section 447.7(2) in light of his purported incompetence. Allowing this,

however, would ignore the express language and intent of the statute, which provides a remedy for persons with a legal disability, yet specifically limits the time under which those persons may avail themselves of that remedy. If the Court were to ignore such limitation, it would undermine the legislature's attempt to impose a reasonable statute of limitation that provides certainty to tax titles, and would render them forever subject to the potential of attack from persons claiming a legal disability.

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

Mr. Hoosman asserts that he was entitled to the appointment of a guardian ad litem prior to the entry of the trial court's judgment due to his alleged incompetence. 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 trial court's entry of its judgment by default was not at odds with the provisions of this Rule.

First, the trial court's judgment was not entered against Mr. Hoosman. Rather, it had solely to do with the Real Estate. Specifically, it addressed who was entitled to its possession. Iowa law is clear that Rule 1.211 is

limited to judgments “against a party” and does not require the appointment of a guardian ad litem for a person who otherwise may be entitled to the same where the judgment is not rendered against that person. In re: Hickman, 533 N.W.2d 567, 568 (Iowa 1995).

Even if the trial court’s judgment were determined to be of the type requiring the appointment of a guardian ad litem for a person adjudged incompetent, it did not require such appointment in this case because Mr. Hoosman did not qualify for such appointment. To support his assertions of incompetence, Mr. Hoosman’s points to the report of a psychologist from 2013, that is more than six years old. See App. 27-42. However, there appears to be no certification in said report by Mr. Hoosman’s physician that he was incompetent. Further, there was no evidence presented to the trial court whatsoever that Mr. Hoosman remains in the same condition as described in said report. In addition, although Mr. Hoosman has referenced the dismissal of prior criminal proceedings, there was no evidence presented whatsoever that he had been adjudged incompetent. See App. 28.

Therefore, there was no evidence sufficient to support Mr. Hoosman’s assertion that the trial court’s entry of 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 this Court deny Appellant's Application for Further Review by the Supreme Court and that the trial court's judgment, as affirmed by the Court of Appeals, stand.

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), 6.903(1)(g)(1) or (2), and 6.1103(4) because:

[X] This brief has been prepared in proportionally spaced typeface using Times New Roman in 14 pt. and contains 2,540 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Charles P. Augustine

February 7, 2020

CERTIFICATE OF SERVICE

The undersigned certifies a copy of this Appellee's Final Brief was filed electronically on the 7th day of February, 2020, and was or will be served upon Appellant's counsel electronically by EDMS

/s/Charles P. Augustine