

IN THE COURT OF APPEALS OF IOWA

No. 2-185 / 11-1713
Filed March 28, 2012

**IN RE THE MARRIAGE OF ERIC DALE SMITH
AND LISA LOU SMITH**

**Upon the Petition of
ERIC DALE SMITH,**
Petitioner-Appellee,

**And Concerning
LISA LOU SMITH,**
Respondent-Appellant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

Former wife appeals the district court's denial of her motion to set aside a
default judgment entered in a modification proceeding. **AFFIRMED.**

Louis M. Fusco, Indianola, for appellant.

Reyne L. See of Peglow, O'Hare & See, P.L.C., Marshalltown, for
appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Lisa Smith appeals the district court's denial of her motion to set aside a default judgment entered in a modification proceeding filed by her former husband, Eric Smith. We affirm.

I. Background Facts and Proceedings.

Eric and Lisa Smith divorced in June 2010. They have two children together. The decree dissolving their marriage placed the children in the parties' joint legal custody and Lisa's physical care. Eric was granted liberal visitation with the children. The court cautioned Lisa "that Eric is entitled to regular contact with the children and that it is [in] the best interest of the children to support their relationship with their father."

In September 2010, Lisa moved to Wyoming with the children without informing Eric. Eric filed an application for rule to show cause. Though Lisa was personally served with notice of the application, she failed to appear for a hearing scheduled on the application. A warrant for her arrest was issued.

Eric filed a petition to modify the dissolution decree in January 2011. He noticed a deposition of Lisa for February 2, which Lisa failed to attend. Eric rescheduled the deposition and filed a motion to compel Lisa's attendance pursuant to Iowa Rule of Civil Procedure 1.701(5)(b).¹ The court granted Eric's motion on April 14 and ordered Lisa to "appear at 9:00 a.m. at the office of petitioner's counsel in Marshalltown, Iowa, on May 18, 2011, for the taking of her

¹ Rule 1.701(5)(b) provides that if "the deponent is a party . . . the deponent shall be required to submit to examination in the county where the action is pending, unless otherwise ordered by the court."

deposition. If she fails to appear, she will be subject to sanctions as by rule provided.” The court also granted a motion to withdraw filed by Lisa’s attorney.

In an email informing Lisa of these events, her attorney explained:

[T]he judge granted their request to compel you to return for a deposition. Your failure to return to Iowa for the deposition will result in the court granting a default judgment and Eric being awarded custody.

You should also be aware that if you come to Iowa for the deposition, you will be arrested on the outstanding warrant for failing to appear for the contempt hearing last fall.

A later email from Lisa’s attorney again warned her, “The Order says your failure to appear for deposition could result in sanctions.”

Lisa failed to appear for the deposition. Eric consequently filed a motion for sanctions, requesting the district court to enter a default judgment pursuant to rule 1.517(2)(b)(3).² A hearing on the motion was scheduled for June 6, 2011. On June 2, Lisa wrote the court a letter asking for additional time to secure counsel. The court did not rule on her request. Lisa was not present at the subsequent sanctions hearing, after which the court entered a ruling granting Eric’s request for a default judgment against Lisa.

The district court scheduled a “dispositional hearing” on Eric’s modification petition for June 20, 2011. Following that hearing, which Lisa also failed to attend, the court entered a ruling modifying the dissolution decree. The children were placed in Eric’s sole legal custody and physical care, with supervised visitation for Lisa. The court found that “Lisa has failed, on even the most basic

² This rule states that if a party fails to obey an order compelling discovery “the court . . . may make such orders in regard to the failure as are just,” including an order “rendering a judgment by default against the disobedient party.” Iowa R. Civ. P. 1.517(2)(b)(3).

level, to keep Eric informed as to the children, and has taken affirmative steps to try to exclude him from the children's lives."

Lisa filed a motion to set aside the default judgment one month later, claiming she "was not fully informed as to her rights and was not permitted time by the Court to obtain alternate counsel." The district court denied Lisa's motion, finding while "the law favors a resolution of cases on their merits, Lisa has engaged in repeated acts of defiance and disregard for court orders and our Rules of Procedure." Lisa appeals.

II. Discussion.

Iowa Rule of Civil Procedure 1.977 provides that on "motion and for good cause shown . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty."

In ruling on a motion to set aside a default judgment, the district court is vested with broad discretion and will only be reversed if that discretion is abused. We are bound by the district court's factual findings if supported by substantial evidence. The determination of whether a movant has established good cause is not a factual finding; rather, it is a legal conclusion and is not binding on us.

Sheeder v. Boyette, 764 N.W.2d 778, 780 (Iowa Ct. App. 2009) (internal citations omitted).

The burden was on Lisa to plead and prove good cause. *Id.* 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." *Cent. Nat'l Ins. Co. of Omaha v. Ins. Co. of N. Am.*, 513 N.W.2d 750, 754 (Iowa 1994). The underlying purpose of rule 1.977 is to allow a determination of controversies on their merits. *Sheeder*, 764 N.W.2d at 780. However, "this objective is

qualified because it cannot be extended to the point where a default judgment will be vacated when the movant has ignored the rules of procedure with ample opportunity to abide by them.” *Id.*

At the hearing on her motion to set aside the default, Lisa testified she did not appear for the depositions because she was unemployed and could not afford the trip to Iowa. She further testified that although she knew that she was required to personally appear for the deposition in May, her attorney did not otherwise keep her adequately informed about the case. Lisa testified she attempted to secure alternate counsel following her attorney’s withdrawal but was unable to do so because of her financial circumstances.

The district court found these excuses fell short of establishing good cause for setting aside the default judgment, stating “Lisa intentionally and willfully failed to comply with the Rules of Civil Procedure compounding her previous failure to comply with the divorce decree entered in June 2010.” We agree.

To uphold a denial of a motion to set aside a default and default judgment, there must be substantial evidence the defaulting party willfully ignored or defied the rules of procedure. *Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 585 (Iowa 1999). “‘Willfully’ and ‘defying’ signal conduct that goes beyond negligent or careless conduct. Such words indicate conduct on the part of the defaulting party showing a deliberate intention to ignore, and resist any adherence to, the rules of procedure.” *Id.* A lack of understanding as to the legal process will not “excuse one from taking affirmative action to obtain an understanding and an

attempt to appear as required.” *Haynes v. Ruhoff*, 261 Iowa 1279, 1286, 157 N.W.2d 914, 918 (1968).

In addition to her failure to appear at the two depositions, Lisa failed to appear for a contempt hearing after her move to Wyoming with the children, which resulted in a warrant for her arrest. She did not attend the hearing on Eric’s motion for sanctions. Nor did she appear for the later evidentiary hearing on his petition to modify. She did not appeal the entry of default against her and waited thirty days before moving to set aside the resulting judgment.

This conduct was not the result of inadvertence, surprise, or excusable neglect, as Lisa claimed in her motion to set aside the default. Lisa simply ignored the rules of civil procedure and the court’s order requiring her personal appearance at the May deposition, despite being afforded ample opportunity to abide by them. To permit Lisa to set aside the default under these circumstances “would abrogate completely the rules of civil procedure” and reward her deliberate neglect of this case. *Haynes*, 261 Iowa at 1286, 157 N.W.2d at 918; *see also In re Marriage of Williams*, 595 N.W.2d 126, 130 (Iowa 1999) (holding entry of default judgment appropriate sanction for willful noncompliance with discovery requests).

For the foregoing reasons, we conclude the district court did not abuse its discretion in denying Lisa’s motion to set aside the default judgment.

AFFIRMED.