IN THE COURT OF APPEALS OF IOWA

No. 3-722 / 12-2245
Filed September 5, 2013

**STATE OF IOWA, ex. rel.
THOMAS J. MILLER, Attorney
General of Iowa and SUSAN E.
VOSS, Commissioner Iowa
Insurance Division,**
Plaintiffs-Appellees,

vs.

**ALAN LEE LUCAS, in His Individual
and Corporate Capacity; PROSAPIA
FINANCIAL; PORSAPIA CAPITAL;
PROSAPIA ASSET MANAGEMENT;
ASHERLEE MANAGEMENT SERVICES;
IGNEOUS VOP SOLUTIONS; CONVENANT
ASSET MANAGEMENT; COVENANT
INVESTMENT FUND, L.P. (a/k/a
Phalanx Technology Holdings, LP);
EASTERN IOWA CABLE SYSTEMS, INC.;
FYRE WIRELESS, INC., (a/k/a Fyrestorm
Cable & Fire and Fyrestorm Wireless
Internet, Inc.),**
Defendants-Appellants.

Appeal from the Iowa District Court for Linn County, Sean W. McPartland (motion to dismiss), Stephen B. Jackson Jr. entry of default against Lucas), William L. Thomas (entry of default against entity defendants, and Patrick Grady (motion to set aside default judgments), Judges.

The defendants, Alan Lucas and business entities owned or controlled by Lucas, appeal from default judgments entered against them in an action brought by the State pursuant to Iowa Code chapter 706A (2011) (ongoing criminal

conduct), Iowa Code section 714.16(2)(a) (consumer fraud), and Iowa Code chapter 502 ("Blue Sky" law). **AFFIRMED.**

Lawrence F. Scalise and Richard O. McConville of Coppola, McConville, Coppola, Hockenberg & Scalise, P.C., West Des Moines, for appellants.

Thomas J. Miller, Attorney General, and Chantelle Smith and Jessica Whitney, Assistant Attorneys General, for appellees.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

The defendants, Alan Lucas and business entities owned or controlled by Lucas, appeal from default judgments entered against them in an action brought by the State alleging violations of Iowa Code chapter 706A (2011) (ongoing criminal conduct), Iowa Code section 714.16(2)(a) (consumer fraud), and Iowa Code chapter 502 (Blue Sky law). The court had subject matter jurisdiction of the matters asserted. We find no abuse of discretion in the denial of Lucas's motion to set aside default judgment. We therefore affirm.

I. Background Facts and Proceedings.

The State filed a petition on February, 10, 2012, asserting various wrong doings in the state of Iowa by the defendant Lucas and the other defendants, each an entity owned or controlled by Lucas. On March 20, 2012, Lucas filed a motion to dismiss.[1] The motion was denied by the district court as untimely and

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[1] Lucas appeared pro se. He is not an attorney and could not appear on behalf of any of the other business entities. *See Hawkeye Bank & Trust*, *Nat'l Ass'n v*. *Baugh*, 463 N.W.2d 22, 25 (Iowa 1990) (observing that "when a business accepts the advantages of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court," and adopting rule that a corporation may not represent itself through nonlawyer employees, officers, or shareholders); *accord CLD Constr*., *Inc*. *v*. *City of San Ramon*, 16 Cal. Rptr. 3d 555, 557 (Cal. Ct. App. 2004) ("[U]nder a long-standing common law rule of procedure, a corporation, unlike a natural person, cannot represent itself before courts of record in propria persona, nor can it represent itself through a corporate officer, director or other employee who is not an attorney. It must be represented by licensed counsel in proceedings before courts of record."); *Richter v*. *Higdon Homes*, *Inc*., 544 So. 2d 300 (Fla. Dist. Ct. App. 1989) ("A corporation may not represent itself through non-lawyer employees, officers, or shareholders."); *Land Mgmt*., *Inc*. *v*. *Dep't of Envtl*. *Prot*., 368 A.2d 602, 603 (Me. 1977) (noting longstanding rule that "a corporation may appear in court only through a licensed attorney"); *People ex rel*. *Spitzer v*. *Park Ave*. *Plastic Surgery*, *P.C*., 852 N.Y.S.2d 111, 111 (N.Y. App. Term 2008) (finding shareholder "lacks standing to raise any arguments on behalf of these [corporate] entities"). That some of the entities here are other types of statutorily created business entities and not corporations does not negate application of the rule in as much as the rule is generally grounded upon concerns related to the unauthorized practice of

otherwise "utterly without merit." No attorney appeared for any of the entities. No answer was filed by any defendant, even though extra time was granted.

Default judgments were ultimately entered against each of the defendants. On September 18, 2012, an order and judgment was entered, which included monetary damages assessed against Lucas. Motions to set aside the default judgments filed by Lucas on his behalf and on behalf of the entity defendants were denied.

The defendants appeal, contending the court erred in denying a pre-answer motion to dismiss grounded on a claim of lack of subject matter jurisdiction, in granting the default judgments, and in failing to set aside the default judgments.

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law. *See*, *e.g.*, See *Eckles v*. *Atlanta Tech*. *Grp*., *Inc*., 485 S.E.2d 22, 25 (Ga. 1997) ("The qualifications of the individual 'representing a corporation . . . in court is one of vital judicial concern. Such person is clearly engaged in the practice of law in a representative capacity.'" (citation omitted)).

Lucas asserts the entities are Delaware entities. Delaware follows the general rule that counsel must represent corporations. *Parfi Holding AB v. Mirror Image Internet, Inc.*, 966 A.2d 348 (Del. 2009) ("In Delaware, a corporation can act before a court only through an agent duly licensed to practice law."); *Transpolymer Indus., Inc. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990) ("A corporation, though a legally recognized entity, is regarded as an artificial or fictional entity, and not a natural person. While a natural person may represent himself or herself in court even though he or she may not be an attorney licensed to practice, a corporation, being an artificial entity, can only act through its agents and, before a court only through an agent duly licensed to practice law." (citation omitted)).

Limited partnerships established under Delaware law also require counsel to represent them. *See Harris v. RHH Partners, LP.*, No. 1198-VCN, 2009 WL 891810, at *2 (Del. Ch. Apr. 3, 2009) ("By letter dated November 17, 2008, the Court reminded the parties [a limited partnership and a limited partner] of the general rule that artificial business entities may appear in Delaware courts only through an attorney admitted to practice law in Delaware. The result for failing to comply with that order was set forth. The Court instructed that, 'If those [unrepresented] entities do not obtain counsel by January 2, 2009, they will be deemed to no longer have claims which they seek to assert or defenses to claims against them which they seek to assert.' . . . Because no appearance has been entered on behalf of any of the entities, all claims brought by, and all defenses tendered by, those entities will be deemed abandoned, and, thus, dismissed." (internal footnotes omitted)).

II. Scope and Standard of Review.

Our review of a district court's ruling on a motion to dismiss is for the correction of errors at law. *Mueller v*. *Welmark*, *Inc*., 818 N.W.2d 244, 253 (Iowa 2012).

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. *Brandenburg v*. *Feterl Mfg*. *Co*., 603 N.W.2d 580, 584 (Iowa 1999).

III. Discussion.

A. *Motion to Dismiss*.

Lucas's pre-answer motion to dismiss alleged lack of subject matter jurisdiction based on the "internal affairs doctrine." The district court denied the motion as untimely. However, the court also addressed the merits of the motion, finding the lack-of-subject-matter-jurisdiction claim was "utterly without merit." *See State v*. *Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993) (noting subject matter jurisdiction can be raised at any time). We agree with the State's assertion—and the district court's ruling—that the statutory provisions alleged in the petition explicitly provide subject matter jurisdiction to the district court. *See* Iowa Code §§ 706A.3 (providing for civil proceedings in district court for violations of chapter respecting ongoing criminal conduct), 714.16(7) (providing for civil action for consumer fraud), 502.603 (providing for civil action "[i]f administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter").

With regard to the "internal affairs doctrine," the doctrine is generally recognized as an issue of conflict of law rather than subject matter jurisdiction. *See*, *e.g.*, *Edgar v*. *MITE Corp*., 457 U.S. 624, 645 (1982) ("The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation's internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.").

So, for example, in a derivative action against a foreign corporation the doctrine requires that the law of the incorporating state governs internal matters, but does not require a dismissal of the action. *See State Farm Mut*. *Auto*. *Ins*. *Co*. *v*. *Superior Ct*., 114 Cal. App. 4th 434, 454-56 (Cal. Ct. App. 2003) (rejecting claim that internal affairs doctrine required dismissal of California action by policyholders against Illinois automobile insurance company); *cf*. *State ex*. *rel*. *Petro v*. *Gold*, 850 N.E.2d 1218, 1233-34 (Ohio Ct. App. 2006) (concluding the internal affairs doctrine had no application to case involving alleged violations of state's charitable solicitations act).

The statutory provisions asserted in the petition invoked the district court's subject matter jurisdiction. The internal affairs doctrine does not provide a basis for Lucas's motion to dismiss for lack of subject matter jurisdiction.[2]

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[2] As noted above, the motion to dismiss was filed by Lucas only. As to Lucas's claim that there are factual disputes, which, if true, would implicate the internal affairs doctrine, we point out that in ruling on a motion to dismiss, the court is to accept all well-pleaded facts as true. *See Ritz v*. *Bd*. *of Sup'rs*, 595 N.W.2d 786, 789 (Iowa 1999) ("A motion to dismiss is properly granted only if a plaintiff's petition 'on its face shows no right of

B. *Default Judgments*.

An entry of default is a remedy that is warranted when a party fails to file a timely answer. *See* Iowa Rs. Civ. P. 1.303, .971, .972. With the extensions allowed by the district court, Lucas had almost four months to file an answer. He did not do so. The court did not err in entering default judgment against him.

As for the other defendants, no answer was ever filed and no appearance by an attorney made on their behalf. Default judgments were warranted.

C. *Motions to Set Aside Default*.

We have previously summarized the basis and burden regarding a motion to set aside a default judgment:

> Iowa Rule of Civil Procedure 1.977 provides "[o]n motion and for good cause . . . 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.
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> The burden is on the movant to plead and prove good cause. 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." Rather, the reason for default must rise to one of the grounds enumerated in the rule: mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Additionally, good cause requires at least a claimed defense asserted in good faith.
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> The underlying purpose of rule 1.977 is "to allow a determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake." However, this objective is qualified because it cannot be extended to the point

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recovery under any state of facts.' Allegations in the petition are viewed in a light most favorable to the plaintiff and facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it." (citation omitted)).

> where a default judgment will be vacated when the movant has ignored the rules of procedure with ample opportunity to abide by them. "[W]e have never upheld such a grant where the movant fails to show any effort to appear in response to a due and timely notice."

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

The district court thoroughly reviewed the facts and made well-reasoned conclusions in stating:

> This Court finds notable that, between Judge McPartland's ruling denying Lucas's pre-answer motion to dismiss on April 3, 2012 and Lucas filing his initial resistance to entry of the default on August 10, 2012, a period of four months, he failed to file any documents with the court and only appeared at one hearing on April 19, where he was explicitly told he could not represent the corporate defendants and was given additional time to file an answer. Further, he filed the resistance to the entry of the default which indicated his desire to have the default set aside on the sixtieth day following entry of the default. This weighs heavily against Lucas's claim that he consistently intended to defend against this civil action. Next, Lucas has still not filed an answer and has not indicated any type of comprehensible defense other than the State of Iowa has no jurisdiction over his acts, a defense that is without merit. Further, the Court finds that Lucas has shown a pattern of inactivity until deadlines are imminent or past before he takes any formal action. The Court also finds doubtful his claim that he did not receive any correspondence from the court or Plaintiff's counsel as there is no indication or claim that his address has changed. Finally, the Court finds it significant that Lucas did not produce [attorney] Elges to verify his claim that Elges had agreed to take care of the default issue in the civil proceeding. Thus, the Court finds that Lucas has not shown excusable neglect to justify setting aside the default judgment entered against him.
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> This Court finds, first, that Lucas did not have authority as a non-lawyer to attempt to represent the corporate defendants. Thus, his motion to set aside should be stricken on that ground alone. Further, for many of the same reasons set out above, Lucas has not shown excusable neglect for failing to obtain a lawyer or have an answer filed on behalf of any of the business entities.

> In sum, this case has been on file for nine months with only one untimely and frivolous motion to dismiss being filed and without an answer of any kind being filed. Defendant Lucas has failed to show grounds to merit setting aside of the default judgments.

Applying the principles noted above in *Sheeder*, and the specific facts of this case, we find no abuse of the district court's discretion in its refusal to set aside the default judgments.[3] Lucas and the entity defendants have failed to establish good cause to set aside the default judgments.

We therefore affirm.

AFFIRMED.

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[3] Lucas also claimed the State failed to provide notice of default to attorney Elges. We acknowledge rule 1.972(3) requires that before a default is entered, notice be served upon an attorney known to be representing the defaulting party even if an appearance has not been filed. However, we decline to impose notice here where Elges was only known to be representing Lucas on criminal charges. There is no evidence that Elges ever informed the State that he intended to represent any of the defendants in this civil proceeding.