

IN THE COURT OF APPEALS OF IOWA

No. 3-789 / 12-1293
Filed November 6, 2013

HARLAN MOTT,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Harlan Mott appeals the district court order dismissing his application for
postconviction relief. **REVERSED AND REMANDED.**

Thomas P. Graves of Graves Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, John P. Sarcone, County Attorney, and Jeffrey K. Noble, Assistant
County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Harlan Mott appeals the district court order dismissing his application for postconviction relief. He argues the district court erred in granting the State's motion for default judgment. Because we find it was error to enter a default judgment against a represented applicant who failed to appear for trial, we reverse and remand.

I. Background Facts and Proceedings

On June 1, 2007, Harlan Mott was convicted of kidnapping in the first degree and assault causing bodily injury. Mott was sentenced to life in prison, and the conviction was affirmed on direct appeal. *State v. Mott*, 759 N.W.2d 140 (Iowa Ct. App. 2008). On January 15, 2009, Mott filed an application for postconviction relief. Trial was initially scheduled for March 22, 2010; however, the trial was continued several times.

Trial was to be held on March 15, 2012. Mott was scheduled to appear via the prison ICN;¹ however, he was not allowed to do so after he failed to comply with search requirements imposed by the staff. After a brief discussion on the record, the district court granted the State time to research whether a motion for default judgment was proper due to Mott's absence. The State filed the motion, and a hearing was held on July 6, 2012.² Mott appeared at the hearing telephonically and testified regarding the circumstances of his failure to appear at the March 15, 2012 trial.

¹ The Iowa Communications Network (ICN) is a data network which allows prisoners to appear at court hearings via video conference while remaining in prison facilities.

² Due to difficulties communicating with his client, Mott's counsel did not file a resistance to the motion for default judgment.

The district court entered a ruling granting the default judgment on July 12, 2012.

II. Standard of Review

We review the district court's decision to grant a motion for default judgment for an abuse of discretion. *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 165 (Iowa 2003).

III. Discussion

Iowa Rule of Civil Procedure 1.971(3) defines a party is in default when they fail to be present for trial. Default judgments are proper when a party has failed to take the next step required in a suit. *Kirby v. Holman*, 25 N.W.2d 664, 674 (Iowa 1947). It is on this basis the district court dismissed Mott's application for postconviction relief. Mott argues the default judgment procedure found in our rules of civil procedure are unavailable in a postconviction relief proceeding.

Application of rule 1.971(3) has never been examined by our supreme court in the context of an applicant failing to appear for a postconviction relief trial. Chapter 822 does not contemplate default, though it does state all rules of civil procedure apply in postconviction proceedings. Iowa Code § 822.7 (2009).

We are persuaded by our supreme court's statement that an applicant has no absolute right to be present at their postconviction relief trial. *Webb v. State*, 555 N.W.2d 824, 827 (Iowa 1996). It is enough that an applicant be afforded an opportunity to "present testimony in compliance with the principles of fundamental fairness." *Id.* As noted in *Webb*, our supreme court has long held personal attendance is not necessary at every postconviction relief trial. *Id.* It

has long been understood there are “numerous trial scenarios in which . . . a party may advance claims through counsel without being personally present.” *Jack v. P and A Farms, Ltd.*, 822 N.W.2d 511, 517 (Iowa 2012). As a result, we find the entry of a default judgment against a represented applicant who fails to appear for trial was improper. Accordingly, we reverse the ruling of the district court and remand for trial on the application.³

REVERSED AND REMANDED.

³ Our findings today should not be construed to indicate a default judgment is never available in postconviction proceedings. A default judgment may be a proper remedy in some situations.