

IN THE COURT OF APPEALS OF IOWA

No. 8-439 / 07-1384
Filed October 29, 2008

CITY OF GRISWOLD,
Plaintiff-Appellee,

vs.

TED E. DAVIES,
Defendant-Appellant.

Appeal from the Iowa District Court for Cass County, Jeffrey L. Larson,
Judge.

Ted Davies appeals from a district court order finding him in default and entering judgment in favor of the City of Griswold. **REVERSED AND REMANDED.**

Aaron W. Rodenburg of Law Offices of Aaron W. Rodenburg, P.C.,
Council Bluffs, for appellant.

Brian J. Daiker of Law Offices of Cambridge, Feilmeyer, Landsness &
Chase, P.L.C., Atlantic, for appellee.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Ted Davies appeals from a district court order finding him in default and entering judgment in favor of the City of Griswold. Upon our review, we reverse the decision of the district court and remand for further proceedings.

I. Background Facts and Proceedings.

Sometime in 2005, Davies purchased a house in the City of Griswold. In March 2005, a fire severely damaged the property. The City issued citations to Davies to cure the property, alleging it had become a nuisance to the public's health and safety. Davies failed to respond to the City's requests to abate the nuisance. On January 12, 2006, the City filed a petition for title to the abandoned property, alleging that Davies's property was abandoned and had become a nuisance. The original notice was posted on the property and published pursuant to the applicable statute. In addition, a copy of the original notice and petition were mailed to Davies at his home address. On April 10, 2006, a scheduling conference order was filed and mailed to Davies. On April 26th, the City issued a notice of intent to file written application for default. Davies received this notice.

On April 30, 2006 Davies called the office of the City attorney complaining he had not been served with the Petition by the Sheriff. The City attorney advised Davies to get an answer on file and that he needed to get an attorney. On May 5, 2006, the City attorney sent another copy of the original notice and petition to Davies by certified mail.

On May 10, 2006, a telephonic trial scheduling conference was held, and Davies appeared pro se. Trial was set for July 14, 2006, with a mandatory

pretrial conference set for July 3, 2006. Despite appearing at the conference, Davies had not filed an answer in the matter.

On May 25, 2006, the City mailed to Davies, by certified mail, a notice of intent to file written application for default. There was no response from Davies. On June 6, 2006, the City filed an application for default judgment. An order of default was entered the same day awarding Davies's property to the City. On June 7, 2006, a certificate of change of title was recorded in the Cass County Recorder's Office, changing title of the property from Davies to the City.

On July 3, 2006, Davies appeared at the courthouse for the pretrial conference and discovered the court had already entered a default judgment. Davies then hired counsel. His counsel filed an appearance and combined motions to set aside the default judgment and to dismiss the City's petition on August 4, 2006. The City resisted and hearing was held on September 18, 2006. After the hearing the court entered an order setting aside the default judgment and granted Davies seven days in which to file an answer. Additionally, the court directed that the City was to take no action with respect to disposition of the property, notwithstanding the change of title that had previously been issued.

Davies filed his answer on September 27, 2006. About six months later, his counsel filed a motion to withdraw. An order granting the motion to withdraw was filed on March 5, 2007, and a copy of the order was provided to the City. On March 7, 2007, the court entered orders scheduling a pretrial conference for July 2, 2007 and trial for July 20th. The clerk of court mailed copies of the orders to Davies as pro se on March 9.

On April 11, 2007, the City filed a notice of service of interrogatories. The body of the notice stated that the City served Davies with twenty interrogatories by mailing the interrogatories to Davies's counsel. The proof of service stamp affixed to the notice stated, "The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on April 11 2007."

On May 31, 2007, the City filed a motion to compel and request for sanctions. The motion stated that interrogatories and a request for production of documents had been served on Davies on April 11, 2007, and that Davies had failed to answer the interrogatories and the request. The motion requested that Davies be compelled to answer the interrogatories and respond to the request for production of documents.

On June 6, 2007, an order was filed setting hearing on the motion to compel, and it appears the clerk of court mailed a copy of the order to Davies on June 7, 2007. However, Davies failed to appear at the June 18 hearing. The court ordered Davies to respond to the request for production of documents and interrogatories by the time of the pretrial conference on July 2, 2007. The order provided that "failure to do so will result in the imposition of sanctions, which may include granting the relief requested by plaintiff in this action." It appears the clerk of court mailed a copy of this order to Davies on June 18, 2007.

On July 2, 2007, the pretrial conference was held, and Davies appeared pro se, though he stated he had retained counsel. The City's motion to compel and request for sanctions were discussed. Davies indicated to the court that he

gave the interrogatories to his attorney, but the attorney had not completed the requests. (“Well, I give them to my attorney but he didn’t fill them out.”) The court again granted the City’s motion to compel, and ordered Davies to provide answers to interrogatories and the requested documents to the City attorney within seven days or sanctions would be imposed. Davies was again informed that sanctions could include a default judgment being entered against him. Davies again said, “Well, I give them to my attorney, and he didn’t follow up because I thought he would do it.” The court responded, “That’s an excuse I don’t need to hear anymore. You need to get that to him within a week, or I could find you in default and you’re going to lose without proceeding to trial. Do you understand that?” Davies responded, “Yeah.” Davies then asked if he could “get them files, them papers today so I can have them filled out?” The court responded, “That’s between you and [the City attorney] or your attorney.

On July 16, 2007, four days before trial was scheduled, the district court entered an order finding Davies to be in default pursuant to Iowa Rule of Civil Procedure 1.971(4). The order stated that Davies had not responded to the City’s discovery requests, and consequently Davies had failed to comply with the court’s previous orders regarding discovery. There is nothing in the record establishing how the district court determined that Davies failed to comply with its previous order.¹ Judgment was entered in favor of the City, and title of the real estate was awarded to the City.

Davies appeals.

¹ At oral argument, the City’s attorney informed this court that the district court asked him during a court services day whether Davies had complied with its order regarding the discovery requests. He responded that Davies had not complied with the order.

II. Merits.

Davies contends, among other things, that the district court erred in entering a default judgment sanction. “We have consistently held that the question of allowing a default is largely within the discretion of the trial court.” *Kohorst v. Iowa St. Commerce Comm’n*, 348 N.W.2d 619, 622 (Iowa 1984) (citations omitted). We do not reverse the district court’s imposition of discovery sanctions unless there has been an abuse of discretion. *Sullivan v. Chicago & N.W. Transp. Co.*, 326 N.W.2d 320, 324 (Iowa 1982).

Here, the district court’s previous orders specifically provided that Davies’s failure to respond to the discovery requests as ordered would result in the imposition of sanctions against him. The court then found that Davies failed to comply with its previous orders regarding discovery, and as a sanction entered the default judgment. Iowa Rule of Civil Procedure 1.517(2)(b)(3) (2007) provides that a court may, as a discovery sanction, dismiss the action or proceeding or any part thereof, or render a judgment by default against the disobedient party, if a party fails to obey an order to provide or permit discovery. However, the default was entered pursuant to rule 1.971(4), which provides that a party is in default whenever that party fails to comply with any order of the court. Because the entry of the default judgment was specifically a sanction against Davies for failing to comply with the court’s orders regarding discovery, we conclude that the entry of a default judgment should have been entered pursuant to rule 1.517(2)(b)(3).

“Because the sanctions of dismissal and default judgment preclude a trial on the merits, the range of the trial court’s discretion to impose such sanctions is

narrow.” *In re Marriage of Williams*, 595 N.W.2d 126, 129 (Iowa 1999). “Where failure to comply with a discovery order is based on a party’s inability to comply, the harsh sanction of a default judgment should not be imposed.” *State ex rel. Parcel v. St. John*, 308 N.W.2d 8, 10 (Iowa 1981). However, the discovery sanction of default is justified when a party’s noncompliance with a court’s discovery orders is the result of willfulness, fault, or bad faith. *Williams*, 595 N.W.2d at 129. “Before a court can impose discovery sanctions, an affected party must be afforded the opportunity of a hearing.” *Schwarz v. Meyer*, 500 N.W.2d 87, 89 (Iowa Ct. App. 1993).

In the present case, Davies was not afforded the opportunity of a hearing to determine whether he had complied with the district court’s July 2, 2007 order, and there is no evidence in the record that establishes that Davies failed to comply with the order. Furthermore, there was no finding of willfulness, fault, or bad faith on the part of Davies by the district court in entering the discovery sanction of default. Consequently, we conclude the district court abused its discretion in imposing the default judgment discovery sanction against Davies without affording Davies the opportunity of a hearing and without a finding of willfulness, fault, or bad faith on the part of Davies. Accordingly, we reverse the decision of the district court and remand for further proceedings.²

III. Conclusion.

For the foregoing reasons, we reverse the decision of the district court and remand for further proceedings.

REVERSED AND REMANDED.

² We therefore need not and do not address the remaining grounds urged by Davies for reversal of the court’s ruling.