

RENDERED: July 2, 1998; 10:00 a.m.  
NOT TO BE PUBLISHED

NO. 96-CA-002450-MR

GARY SEWELL

APPELLANT

v.

APPEAL FROM PERRY CIRCUIT COURT  
HONORABLE DOUGLAS C. COMBS, JUDGE  
ACTION NO. 96-CI-000102

H and R OIL COMPANY, INC.;  
and LUCIEN TRUMBO

APPELLEES

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: ABRAMSON, EMBERTON and KNOPF, Judges.

EMBERTON, JUDGE. The appellant, Gary Sewell, appeals from an order denying his motion to set aside a default judgment entered against him in favor of the appellees, H and R Oil Company, Inc., and Lucien Trumbo. We affirm.

On March 1, 1996, the appellees filed this action against the appellant to recover indemnity for the amounts paid by Trumbo to Citizens Bank and Trust in payment of a promissory

note executed by appellant and Trumbo as a co-maker and accommodation party. Appellant was served with summons on March 5, 1997. Acting pro se, appellant did not file an answer with the clerk until April 1, 1996, and did not serve the answer on opposing counsel as required by Ky. R. Civ. P. (CR) 12.01.

On April 11, 1996, Trumbo filed a motion for default judgment. Appellant did not respond to the motion, and on June 25, 1996, a default judgment was entered.

CR 55.02 provides that:

For good cause shown the court may set aside a judgment by default in accordance with Rule 60.02.

"Good cause shown" has been interpreted to require the moving party to show "(1) a valid excuse for the default; (2) a meritorious defense to the claim; and (3) absence of prejudice to the non-defaulting party." S. R. Blanton Development, Inc. v. Investors Realty, Ky. App., 819 S.W.2d 727, 729 (1991).

Appellant's affidavit in support of his motion to set aside offers his ignorance of the civil rules as the only reason for his failure to timely file and serve the answer on the opposing party. Carelessness by a party or his attorney is not reason enough to set aside a default judgment. Perry v. Central Bank & Trust Company, Ky. App., 812 S.W.2d 166, 170 (1991). Appellant offered no other explanation to the trial court. The trial court did not abuse its discretion in refusing to set aside

the default judgment. Howard v. Fountain, Ky. App., 749 S.W.2d  
690, 692 (1988).

The order of the Perry Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gary Sewell, pro se  
Jackson, Kentucky

BRIEF FOR APPELLEE:

Robert E. Maclin III  
Lexington, Kentucky