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IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-0431
Black Hawk County No. EQCV136470

NO BOUNDRY, LLC,
Plaintiff-Appellee,

and concerning

CORNELL HOOSMAN,
Defendant-Appellant.

FROM THE IOWA DISTRICT COURT
FOR BLACK HAWK COUNTY
THE HONORABLE ANDREA DRYER, DISTRICT COURT JUDGE

APPELLANT'S APPLICATION FOR FURTHER REVIEW BY THE SUPREME COURT OF IOWA

IOWA COURT OF APPEALS DECISION ISSUED JANUARY 9, 2020

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QUESTIONS PRESENTED FOR REVIEW

I. Did the court properly deny Cornell Hoosman's motion to set aside the default judgment?

a. Did Cornell establish good cause to set aside the default, based on his disability?

b. Does an initial failure to file a responsive pleading deprive a litigant of the opportunity to timely do so should a default be set aside?

c. Does a motion to set aside a default judgment require the movant to prove the facts of their defense at the time of set aside, or merely to plead facts sufficient to show a good faith prima facie defense?

d. Does a statement that a litigant made efforts to defend themselves, albeit ineffectively, constitute evidence of an intent to defend or evidence of a willful

II. Was the default judgment valid in light of the failure to appoint a guardian ad litem?

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BASIS FOR FURTHER REVIEW

This Court should grant further review in this case for three reasons. First, "[t]he court of appeals has entered a decision in conflict with a decision of this court… on an important matter[.]" Iowa R. App. P. 6.1103(1)(b)(1). Specifically, the underlying decision creates a much more restrictive interpretation of Iowa Rule of Civil Procedure 1.977 than is justified by the text of the rule or existing precedent. As written, this decision holds that defendant-appellant Cornell Hoosman must have fully proved his good faith defense at the time he moved to set aside the default. This is a substantially higher burden than that established by controlling precedent, which requires only that the movant has made allegations that would constitute a good faith prima facie defense to the action. *See e.g. Flexsteel Industries, Inc. v. Modern Industries, Ltd.*, 239 N.W.2d 592 (Iowa 1976). The court of appeals decision also provides that Cornell's statement that he had undertaken action showing his intent to defend showed that he willfully defied the rules of procedure, a finding that is in direct contravention of *Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 586-587 (Iowa 1999).

In addition, this Court should review the court of appeals decision because it "has decided … an important question of law that has not been, but should be, settled by the supreme court[,]" specifically the first

interpretation of the extended tax sale redemption period for persons under a legal disability appearing at Iowa Code § 447.7. Given that this statute is meant to protect a class of individuals who have heightened challenges engaging with the legal system, it is highly likely that the scenario that has transpired here will happen again. People like Cornell will default in removal actions despite the extended redemption period because they have an especially limited ability to engage in litigation unaided. This Court must create clarity as to how these vulnerable people will be protected.

Finally, Cornell stands to lose his home – the only major asset he possesses – due to $220 in unpaid property taxes, without having had a meaningful chance to defend himself. In this respect, he stands in the shoes of many elderly and disabled Iowans, for whose benefit the Legislature has enacted special protections to ensure that they would not lose their homes and all of the equity invested therein without due consideration to the limitations imposed by their age or disability. Given the extreme vulnerability of the population Cornell represents, and the devastating nature of the potential loss of both the home and all equity acquired therein, this case presents an issue of broad public importance that the supreme court should ultimately determine.

FACTS AND PROCEDURAL HISTORY

Cornell owns his home at 343 Albany Street, Waterloo, Iowa. App. 43. It is his only major asset. *Id*. His sole income is $771 per month in disability income, and $64 in food assistance. *Id*.

Cornell has several impairments that affect his cognitive functioning. These impairments may be related to "intercranial surgery," before which he apparently functioned at a much higher level. App. 32. In a report prepared in connection with a competency hearing in a criminal case, Cornell "struggled with spelling his children's names and could only remember the age of 1 of 5 of his children." App 34. During the assessment, "Cornell repeatedly required directions to the bathroom despite having used it on multiple occasions." App. 35. He had "lapses in concentration and staring episodes during which time he was unresponsive to verbal stimulation[,]" leading the examiner to "suspect seizure activity." *Id*. "Cornell was unable to remember any of 3 unrelated words following a five minute delay." *Id*. The examiner determined his operation judgment to be impaired, and his insight limited. *Id*. Cornell "required [the] examiner to repeat many words to [him] after he started spelling the word secondary to losing track of what he was doing and forgetting what he was trying to spell." App. 37. The examiner suspected "organic confusion or delirium[.]" App. 38. Cornell was later

found to be incompetent to stand trial in this and a related criminal charge. App. 23.

Due to unpaid property taxes from 2014, the Black Hawk County Treasurer sold Cornell's home at tax sale in June 2016. App. 8-9. A company called Wago 131 purchased the parcel at tax sale on June 20, 2016 for $220. *Id*. On November 30, 2018, the Black Hawk County Treasurer issued a tax deed to Wago 131, who contemporaneously transferred interest to Plaintiff-Appellee No Boundry. *Id*. The tax deed was recorded on December 11, 2018. *Id*.

No Boundry filed this action on January 14, 2019 under Iowa Code Chapter 646. App. 6-9. Cornell was personally served on January 16, 2019. App. 10. No Boundry sent a notice of intent to file for default judgment to Cornell by mail on February 6, 2019, and filed a motion for default 13 days later. App. 12; 14-15. The district court entered a default judgment on February 21, 2019. App. 16-17. The district court issued a writ of removal on February 25, 2019, commanding the sheriff to remove Cornell from the property. App. 18-19.

On March 14, 2019, Cornell obtained an attorney through Iowa Legal Aid. At 8:05 PM the following day, he filed a motion to set aside default through counsel. App. 22-24. The motion stated that he had good cause to set

aside the default, as well as a good faith defense – namely, the extended redemption period for persons under legal disability under Iowa Code 447.7. *Id*. The motion also argued that the default judgment was invalid as no guardian ad litem had been appointed. *Id*.

The district court denied Cornell's motion on Friday, March 15, 2019 at 9:07AM. App. 25-26. The motion was heard at order hour, without a record. *Id*. The district court did not provide any reasons for the denial. *Id*. Cornell's counsel offered medical evidence, but the district court declined to admit it. App. 27-28.

Later that day, Cornell filed a motion to enlarge and amend. App. 27-30. Cornell provided additional details to the allegations made in his earlier motion, and attached a "Competency to Stand Trial Evaluation" from May 2013 as an exhibit. *Id*.

Before the district court could rule on the motion to enlarge and amend, the Black Hawk County Sheriff was directed to execute the writ. Resistance to Application to Stay Writ. Faced with immediate removal from his home, Cornell filed a notice of appeal on Monday, March 18, at 11:40 AM, and requested but was ultimately unsuccessful in getting a stay. Notice of Appeal; Order Denying Stay.

The case was briefed, and ultimately transferred to the Iowa Court of Appeals on August 20, 2019, with oral argument on December 11, 2019. An opinion was issued by the court of appeals on January 9, 2020, affirming the district court's denial of Cornell's motion to set aside.

ARGUMENT

I. THE DEFAULT JUDMENT AGAINST CORNELL SHOULD HAVE BEEN SET ASIDE

The purpose of Rule 1.977 is to allow determination of a controversy on its merits rather than on the basis of nonprejudicial inadvertence or mistake. *Paige v. City of Chariton*, 252 N.W.2d 433 (Iowa 1977). The enactment of Rule 1.977 was intended to liberalize setting aside of default judgments. *Hobbs v. Martin Marietta Co.*, 131 N.W.2d 772, 775 (Iowa 1965). Cornell's case deserves to be heard on its merits.

The district court has broad discretion in ruling on a motion and will be reversed only for abuse of discretion. *Central Nat. Ins. Co. of Omaha v. Insurance Co. of North America*, 513 N.W.2d 750, 754 (Iowa 1994). However:

> We are more reluctant to interfere with a court's grant of a motion to set aside a default and a default judgment than with its denial. In that sense, we look with disfavor on a denial of such a motion, and we think all doubt should be resolved in favor of setting aside the default and default judgment. This attitude reflects our view of the underlying purpose of rule 236: 'to allow a determination

> of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake.'

Brandenberg, 603 N.W.2d 580 (internal citations omitted).

Although not an element of the test as to when a default judgment is appropriately set aside, it is important to note that granting the motion to set aside would involve minimal prejudice to No Boundry. Through the tax sale system, No Boundry has acquired Cornell's home and all the equity therein for a paltry $220. Moreover, even should Cornell be allowed to raise his counterclaim, No Boundry would be compensated for this amount, plus interest and costs as allowed by statute, through the mechanism of redemption. On the other hand, the loss of his home and only major asset is devastating to Cornell. Given his limited income and disability, it is a loss from which he may never recover.

Cornell alleges that he has good cause to set aside the default judgment entered against him under the theory of excusable neglect. The three relevant factors to be considered as to whether good cause is met under this theory are:

> first, whether defaulting party actually intended to defend, on which point whether party moved promptly to set aside default was significant, second, whether defaulting party asserted claim or defense in good faith, [and] third, whether defaulting party willfully ignored or defied rules of procedure or whether default was simply result of mistake[.]

Central Nat. Ins. Co. of Omaha v. Insurance Co. of North America, 513 N.W.2d 750 (Iowa 1994). Even under the constraints imposed by the nature of the proceedings, Cornell met all of these factors, and thus the denial of his motion to set aside was error and should be reversed.

Finally, the court of appeals ruling notes several times that the record below does not support a set aside of the default judgment. Cornell concedes that the record is far from perfect. However, in large part this reflects the reality of how many low-income and disabled Iowans facing eviction experience these informal and extremely quick proceedings. The rules of civil procedure provide that a default judgment can be set aside within 60 days. Iowa R. Civ. P. 1.977. However, when facing the imminent loss of a home, the timeline to prepare and argue such a motion shrinks to a matter of days or – as in this case – hours. Here, the only hearing that Cornell could obtain within this tight timeline was a short, unrecorded argument at order hour. His attempt to submit relevant written evidence about his disability was rejected by the court. App. 27-28. To the extent that the record is thin, the practical constraints imposed by the nature of the proceedings must be considered.

A. The Court of Appeals Erred in Finding That Cornell Did Not Show Good Cause to Set Aside the Default

In its decision, the court of appeals provides that the record contains no proof that any court has found Cornell incompetent, and no explanation for Cornell's delay in engaging in this case. Even given Cornell's limited opportunity to make a record, this statement is not accurate. For example, in his motion to set aside default, Cornell alleged that he was disabled, and that he had been found incompetent to stand trial in a criminal case twice in the last six years. App. 22-23. This means that he was "determine[d]… [to be] suffering a mental disorder which prevent[ed him] from appreciating the charge, understanding the proceedings, or assisting effectively in [his] defense." Iowa Code § 812.3.

This determination was based at least in part on the 2013 competency report. App. 27-28; App. 33-38. This report creates serious doubts as to Cornell's ability to understand and fully participate in litigation unaided. App. 33–38. Cornell was found incompetent to stand trial three years after this initial evaluation, in 2016. App. 23. The cause of Cornell's disability, the aftereffects of intra-cranial surgery, is moreover not a fleeting condition. This evidence supports the notion that, without counsel, Cornell was unable to effectively defend himself.

B. The Court of Appeals Erred in Finding That Cornell Did Not Adequately Plead Facts That Demonstrated a Good Faith Prima Facie Defense

The court of appeals also determined that Cornell did not meet the required showing of a good faith defense. The redemption statute for people with legal disabilities provides an extended right to redeem a property that has been sold at tax sale. Iowa Code § 447.7(3). After an action for possession has been commenced by the tax deed holder, a person seeking to redeem the property must either timely plead the extended redemption period as a counterclaim in that case, or file a separate equitable action within 30 days of service. *Id*.

In its decision, the court of appeals reasoned that because Cornell did not file any responsive pleading whatsoever, he was time-barred from raising the extended redemption counterclaim as a good faith defense in the context of the set aside proceedings. However, this completely misses the point of a motion to set aside default. Should Cornell have been successful in setting aside the default, the effect would be to reopen the case, allowing him to timely file the counterclaim contemplated by Iowa Code § 447.7(3). Under the unnecessarily harsh standard laid out by the court of appeals, there would be no set of facts under which a person claiming the extended redemption period for people with legal disabilities could successfully set aside a default.

There is no justification to read this unwritten limitation into the plain text of the statute, especially given that this statute was specifically enacted to protect those who are particularly vulnerable, less capable of engaging in litigation unaided, and therefore more prone to default.

Second, the court of appeals decision cast doubt on whether Cornell had provided sufficient proof of his disability to invoke the protections of Iowa Code § 447.7. Court of Appeals Decision. ("As support, Hoosman only provided the court with a copy of a six-year-old competency evaluation related to past criminal proceedings… [t]his does not show Hoosman is currently of unsound mind.") However, a motion to set aside default "does not require the allegations of a defense which can be guaranteed to prevail at trial." *Flexsteel Industries, Inc.*, 239 N.W.2d 592 (finding that a general denial of allegations constituted a prima facie showing of meritorious defense in products liability case). It merely requires a prima facie showing of a meritorious defense, which Cornell made here.

C. The Court of Appeals Erred in Finding That Cornell Willfully Disregarded the Rules of Civil Procedure

Finally, the court of appeals decision found that Cornell had willfully disregarded the rules of civil procedure in not participating in the removal action. What information that is available unequivocally shows that Cornell

has significant challenges to understanding simple instructions, struggles to remember basic information, and in general is not equipped to comprehend and navigate the legal system without assistance. *See e.g.* App. 33-38. He is not a sophisticated actor who is attempting to game the system, but rather the kind of person who the Iowa Rules of Civil Procedure recognizes needs additional help to realize the basic protections of the law. *See* Iowa R. Civ. P. 1.211.

The court of appeals decision disregards all of this evidence by pointing out that since Cornell plead that he "has been trying to defend himself in this action for many months… this demonstrates that he was aware of what was going on and chose not to participate in this proceeding." Court of Appeals Decision. In the court of appeals' view, Cornell's showing for the necessary element of intent to defend actually serves as evidence of a willful attempt to gain the system. However, this Court has held that a finding of intent to defend is inconsistent with a finding that defendant willfully ignored and defied rules of procedure. *Brandenburg*, 603 N.W.2d 580, 586-587. Moreover, Cornell tried to defend himself without the assistance of an attorney, but failed to do so effectively and defaulted. There is no indication in the record that this failure was in bad faith, and was anything other than a manifestation of the documented limitations imposed by his disability.

II. THE REFUSAL TO SET ASIDE A DEFAULT JUDGMENT AGAINST CORNELL WITHOUT APPOINTMENT OF A GUARDIAN AD LITEM WAS AN ABUSE OF DISCRETION

In its decision, the court of appeals also ruled that "there was no reason to appoint a guardian ad litem" because "the district court had no reason to question Hoosman's mental capability at the time the court entered default judgment." Court of Appeals Decision. In fact, the district court was presented with evidence that raised serious doubts as to Cornell's mental capability – the 2013 competency evaluation – which it unfortunately refused to admit. App. 27-28. Cornell also alleged that he had been found incompetent to stand trial in two criminal cases. App. 23. In light of this evidence, it cannot be said that there was "no reason to question Hoosman's mental capability" at the time the district court rendered judgment. Rather than conduct further inquiry, the district court simply denied the motion without advancing a rationale. This was error, and must be reversed.

CONCLUSION

For the reasons laid out above, Cornell requests that this Court accept this case for further review, reverse the decisions of both the district court

and court of appeals, and remand so that Cornell can file an answer raising the extended redemption counterclaim under Iowa Code § 447.7(3)(a).

Respectfully submitted,
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CERTIFICATE OF SERVICE

I, Alex Kornya, hereby certify that this Application for Further Review was electronically filed on the 29th day of January, 2020, and was electronically served upon the Appellee's counsel via electronic mail / EDMS.

/s/ Alex Kornya
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) because:

   [X] this application has been prepared in a proportionally spaced typeface using Times New Roman in 14pt font, and contains **2918** words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a), or

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01/29/2020 /s/ Alex Kornya
Date Alex Kornya AT#0009810