

IN THE COURT OF APPEALS OF IOWA

No. 2-098 / 11-0983
Filed February 29, 2012

**STEVEN ELLIOTT and
DIANE ELLIOTT,**
Plaintiffs-Appellees,

vs.

**HUGHBIS & THE KERNEL, INC.
d/b/a HUGH'S JUNGLE ROOM,**
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

The defendant corporation appeals from the district court's ruling denying
its motion to set aside a default judgment entered against it. **AFFIRMED.**

Drew J. Gentsch of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

Steven P. Brick of Brick Gentry P.C., West Des Moines, for appellees.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

On March 27, 2010, Steven Elliott was injured when his vehicle was struck by a vehicle operated by an intoxicated driver. On September 24, 2010, plaintiffs Steven and Diane Elliott filed a personal injury lawsuit alleging dram shop claims against defendant Hughbis & The Kernel, Inc., d/b/a Hugh's Jungle Room (the corporation).¹ The corporation's registered agent was Kevin Goetzl.² The corporation's 2006, 2008, and 2010 biennial reports filed with the Iowa Secretary of State also listed Goetzl as registered agent as well as director, secretary, and treasurer of the corporation. It is undisputed that on September 24, 2010, the original notice and petition at law in this case were personally served upon Goetzl as registered agent for the corporation.

Having received no responsive pleading from the corporation, the Elliotts, pursuant to Iowa Rule of Civil Procedure 1.972, mailed to the corporation, through Goetzl, its registered agent, their "Notice of Intent to File Written Default" on October 20, 2010. On January 11, 2011, the Elliotts filed their application for default judgment because the corporation had failed to file or serve an answer, appearance, or other pleading. A copy of the Elliotts' application was mailed to the corporation through Goetzl. The corporation did not respond to the Elliotts' application, and on January 28, 2011, the district court entered an order for default judgment against the corporation and set a hearing for February 9, 2011, to determine the Elliotts' damages. A copy of the order, apprising the corporation

¹ The record indicates that within six months of the March 27, 2010 incident, notice pursuant to Iowa Code section 123.93 (2009) was mailed, via certified and regular mail, by the Elliotts' attorney to the bar and its insurance carriers.

² Goetzl was listed as the corporation's registered agent with the Iowa Secretary of State.

of the entry of default and the hearing to determine damages was mailed to the corporation through Goetzl.

No representative of the corporation appeared at the damages hearing. After hearing the Elliotts' evidence, the district court determined the Elliotts' damages to be \$1,133,776.81. The court entered judgment against the corporation for that amount on February 14, 2011. Notice of the judgment amount was mailed to the corporation through Goetzl.

On March 25, 2011, the corporation filed a motion to set aside the default judgment pursuant to Iowa Rule of Civil Procedure 1.977. The motion stated the corporation had "recently received notice of this file" and that had the corporation's president, Hugh Duoblys, received notice of the suit, the corporation would have defended the suit. As to Goetzl receiving notice for the corporation, which the corporation does not debate, the corporation's reply to Elliotts' resistance elaborated that Goetzl had had financial troubles and filed for bankruptcy in 2009. An affidavit from Duoblys stated Goetzl had stopped being involved in the current affairs of the corporation by late 2009, Goetzl had no direct involvement with the day-to-day affairs of the corporation since that time, and Goetzl stopped conducting business in April 2010.

Following a hearing on the matter, the district court entered its ruling denying the corporation's motion to set aside the judgment. The court found the corporation's argument failed, explaining:

[I]t is not Mr. Duoblys as an individual who is the defendant in this action and entitled to service, but rather the corporation he presides over. Moreover, not only was original notice of this action successfully served pursuant to [Rule] 1.305(6) on the registered agent, Mr. Goetzl, but the corporation received two additional

notices of this suit through a notice of intent to file written application for default and a notice of the time and place for the damages hearing. This action should not have come as a surprise to [the corporation] as there was no mistake in ensuring the proper agent received notice of the suit. Additionally, while the court is aware of Mr. Goetzl's personal financial difficulties, they have no bearing on who should be provided notice regarding litigation against Hughbis as a corporation.

The court also expressly determined the corporation could not set aside the judgment on the ground of excusable neglect, as the corporation's registered agent was properly served and received two other notices and did nothing. The court found the corporation failed to meet its burden as required by rule 1.977 and denied its motion.

The corporation now appeals, contending the district court erred in finding the corporation failed to meet its burden as required by rule 1.977. See Iowa R. Civ. P. 1.977. The corporation advances the same arguments it asserted before the district court.

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). We are bound by the district court's factual findings if supported by substantial evidence. *Id.* 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. *Id.*

Upon our review, we find the district court's ruling identifies and considers all the issues presented, and we approve of the reasons and legal conclusions stated therein. Accordingly, we find no abuse of discretion. We therefore affirm

the ruling of the district court denying the corporation's motion to set aside the judgment. See Iowa Ct. R. 21.29(1)(b) and (d).

AFFIRMED.