

**IN THE COURT OF APPEALS OF IOWA**

No. 2-370 / 11-1443

Filed June 13, 2012

**CLEAR LAKE SPECIALTY PRODUCTS,  
INC. and JOE CORBI'S WHOLESALE  
PIZZA, INC.,**

Plaintiffs-Appellees,

**vs.**

**LLOYD PRICE ICON FOOD  
BRANDS, INC.,**

Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland, Judge.

Lloyd Price Icon Food Brands, Inc. appeals a district court's denial of its petition to vacate judgment. **AFFIRMED.**

Robert L. Johnson and Erik P. Bergelan of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellant.

Kevin H. Collins and Sarah Gayer of Nyemaster Goode, P.C., Cedar Rapids, for appellees.

Considered by Vogel, P.J., and Tabor and Bower, JJ.

**VOGEL, P.J.**

Lloyd Price Icon Food Brands, Inc., a New York corporation, appeals a district court's denial of its petition to vacate judgment. As Lloyd Price failed to prove an irregularity in obtaining the judgment based on any action or inaction by the court or court personnel that was contrary to a prescribed rule, mode of procedure, or court practice, we affirm.

**I. Background Facts and Proceedings**

On February 19, 2010, Clear Lake Specialty Products and Joe Corbi's Wholesale Pizza, Inc. (together "Plaintiffs"), filed a petition against Lloyd Price Icon Food Brands, Inc. ("Lloyd Price"), each alleging claims of amount due on an open account, breach of contract, and unjust enrichment. On March 25, Plaintiffs filed a notice of intent to file written application for default.

On March 31, a letter written by Lloyd Price's chief operating officer, Bill Waller, was filed in the Cerro Gordo County Clerk's office; in this letter, Waller denied all allegations in the petition. On April 8, Plaintiffs filed a motion to strike Lloyd Price's March 31 filing, stating, "A business such as Defendant cannot represent itself through an individual who is not an attorney."<sup>1</sup> On April 16, Plaintiffs filed a motion seeking a default judgment. No ruling was made on the motion.

On May 17, Michael Kennedy of New Hampton, Iowa, filed an appearance and answer on behalf of Lloyd Price. The Plaintiffs' first set of interrogatories and request for production of documents were served on Kennedy as counsel of

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<sup>1</sup> Ordinarily, a corporation may appear only by counsel. *Conkey v. Hoak Motors, Inc.*, 637 N.W.2d 170, 173 (Iowa 2001).

record for Lloyd Price on June 8; a request for admissions and a second set of interrogatories were served on July 13. On July 21, Kennedy filed a motion to withdraw as defense counsel, citing communication difficulties regarding discovery, failure to agree on an effective defense, and a “very uncomfortable feeling about the relationship” as reasons for his withdrawal. The district court approved the withdrawal on August 3.

The Plaintiffs moved for summary judgment on August 26. In their “Statement of Undisputed Facts” to support the motion for summary judgment, Plaintiffs noted that they served requests for admission on Lloyd Price on July 14, and that Lloyd Price had not responded or requested additional time to prepare responses. Attached to the motion for summary judgment were copies of the various requested discovery documents. With no resistance, the district court granted the Plaintiffs’ motion for summary judgment on September 22, 2010, and entered judgment against Lloyd Price.

On September 24, a second letter from Waller was filed in district court, in which Waller requested additional time to secure new counsel.<sup>2</sup> This letter also stated, “We answered all the interrogatories requested by the attorney for the Plaintiff[s], they were sent in due time to our former attorney.” As judgment had already been entered, the district court denied Lloyd Price’s request and stated, “[T]he remedies now available to the defendant are post-judgment motions and/or appeal pursuant to the Iowa rules of civil and appellate procedure.” On November 18, Lloyd Price filed a motion to set aside “default” judgment. Plaintiffs resisted. On December 17, the district court denied the motion, stating,

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<sup>2</sup> The letter was dated September 10, 2010.

“Judgment entry was not made in default and timely post-judgment motions were not brought.”

On February 7, 2011, Lloyd Price filed a petition to vacate the September 22, 2010 judgment, stating that there was an “irregularity” in obtaining the judgment because:

- a. The judgment was based on unanswered requests for admission that had never been served on Defendant.
- b. Judgment was entered pursuant to an unresisted Motion for Summary Judgment which was served and ruled upon at a time that Defendant, a corporation, was without legal counsel.

Plaintiffs resisted. The district court detailed the progression of the various filings and denied the petition to vacate judgment, finding “no irregularity in the practice of obtaining judgment, nor any other ground for vacating it.” Lloyd Price appeals.

## **II. Standard of Review**

Actions to vacate a judgment under Iowa Rule of Civil Procedure 1.1012 are law actions and therefore, the district court’s findings are binding on appeal if supported by substantial evidence. *In re Marriage of Cutler*, 588 N.W.2d 425, 429–30 (Iowa 1999). We afford the district court wide discretion in ruling on a petition to vacate a judgment and will only reverse where the district court has abused its discretion. *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 109 (Iowa 2011).

## **III. Analysis**

Lloyd Price asserts the district court abused its discretion by denying Lloyd Price’s petition to vacate judgment as there were facts in the record supporting the existence of irregularities in the proceeding. See Iowa R. Civ. P. 1.1012(2) (stating “upon timely petition and notice under 1.1013 the court may correct,

vacate or modify a final judgment or order, or grant a new trial” based on grounds of “irregularity or fraud practiced” in obtaining the final judgment).

The burden is on the movant to plead and prove good cause to vacate a judgment. See *Embassy Tower Care, Inc. v. Tweedy*, 516 N.W.2d 831, 834 (Iowa 1994) (citing *Hastings v. Espinosa*, 340 N.W.2d 603, 607–08 (Iowa Ct. App. 1983)). With respect to determining whether an irregularity has occurred such that a judgment should be vacated under rule 1.1012, our supreme court has articulated:

First, the rule covers cases in which a party suffers an adverse ruling due to action or inaction by the court or court personnel. Second, the action or inaction must be contrary to (1) some prescribed rule, (2) mode of procedure, or (3) court practice involved in the conduct of a lawsuit. Finally, the party alleging the irregularity must not have caused, been a party to, or had prior knowledge of the breach of the rule, mode of procedure, or practice of the court.

*Cutler*, 588 N.W.2d at 429.

The irregularities alleged by Lloyd Price can be summarized as: (1) it was not represented by counsel during the period in which summary judgment was granted and (2) judgment was entered based on unanswered requests for admission, due to Lloyd Price being unrepresented by counsel. At the heart of each of Lloyd Price’s alleged irregularities is Lloyd Price’s failure to secure representation. However, Lloyd Price’s contention that it “had no procedural ability to challenge the summary judgment motion which was served on its employees absent counsel,” is without merit.

As noted above, an irregularity in a judgment must be attributed to some action or inaction on the part of the court or court personnel. *Costello v.*

*McFadden*, 553 N.W.2d 607, 612 (Iowa 1996). In correspondence filed with the district court on September 24, 2010—two days after summary judgment was entered—Lloyd Price requested forty-five days to secure counsel, stating, “The Labor Day weekend and end of our vacation period delayed the process. Some of the attorneys were out of the office.” The record demonstrates that Lloyd Price’s lack of representation was the result of Lloyd Price failing to secure counsel, not any action or inaction by the district court or court personnel. Further, any claim regarding the failure of Lloyd Price’s previous attorney to respond to discovery requests is a matter that relates solely to the relationship between Lloyd Price and its attorney, and not the court, court personnel, or the conduct of the litigation. See, e.g., *id.* (finding no irregularity where alleged attorney misconduct related solely to the relationship between defendant and his attorney, and not the court, court personnel, or the conduct of the litigation). Lloyd Price failed to prove any action or inaction by the court or court personnel that was contrary to a prescribed rule, mode of procedure, or court practice. See *Cutler*, 588 N.W.2d at 429 (explaining what constitutes irregularity). We therefore find no abuse of the district court’s discretion in its denial of Lloyd Price’s motion to vacate judgment.

**AFFIRMED.**