IN THE COURT OF APPEALS OF IOWA

No. 6-149 / 04-1946
Filed April 26, 2006

CITY OF COLFAX,
Plaintiff-Appellee,

vs.

MICHAEL JOSEF BROWN,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Martha L. Mertz, Judge and Thomas W. Mott, District Associate Judge.

A defendant appeals from the district court's order denying his motion to set aside default judgment and forfeiture of his appearance bond. **AFFIRMED.**

Daniel J. Gonnerman of Gonnerman, Owen & Stonehocker, L.L.P., Ames, for appellant.

John Billingsley of Walker & Billingsley, Newton, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

Michael Brown appeals from the district court's denial of his motion to set aside entry of default judgment on one count of failure to provide proof of insurance (a simple misdemeanor) and forfeiture of his appearance bond, pursuant to Colfax Municipal Code section 62.01 and Iowa Code sections 321.20B and 811.9 (2003). We affirm.

Brown was cited for failure to provide proof of insurance in April 2004, to which he executed an unsecured appearance bond to guarantee his presence at hearing on the citation. Brown failed to notify the officer issuing the citation that his address in Ankeny, Iowa, was not current on his driver's license, as he had moved to Colfax, Iowa.[1] In addition, it appears that the officer wrote over the court appearance date on the citation, which was scheduled for May 4, 2004. When Brown failed to appear for his court hearing regarding the citation, the district court found him in default, forfeited his $504 appearance bond, and sent notice of the judgment to Brown. Brown claims he did not receive this notice until early June 2004 and failed to appear because he believed the citation listed his court date as August 4. Although Brown claims confusion over his court date due to the illegibility of the citation, he did not contact any court official to confirm or clarify the date scheduled for his hearing.

Brown filed a motion to set aside the judgment and forfeiture of bond or in the alternative, to arrest judgment or set the matter for hearing. District Associate Judge Mott denied the motion in June 2004 on the basis of the plain

[1] The record does not disclose when Brown's residence changed. Iowa Code section 321.182(1)(b) provides that a licensee shall notify the Department of Transportation of a mailing address change within thirty days of obtaining a new address.

language of section 811.9, which District Judge Mertz affirmed on appeal in November 2004. Brown argues before this court that the provisions of section 811.9 are not mandatory, but directory, so the district court erred when it affirmed the denial his motion. We review a question of statutory interpretation for correction of errors at law. *State v. Wiederien*, 709 N.W.2d 538, 540 (Iowa 2006).

Section 811.9 reads in pertinent part:

> When a defendant fails to appear as required in such cases, the court, or the clerk of the district court, shall enter a judgment of forfeiture of the bond or bail. The judgment shall be final upon entry and shall not be set aside.

Id.

We have interpreted the term "shall" in a statute to create a mandatory duty, not a discretionary one. *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000) (citing *State v. Moyer,* 382 N.W.2d 133, 134-35 (Iowa 1986)). Particularly, when addressed to public officials such as district court judges, the uniform interpretation of “shall” is mandatory and excludes the idea of discretion. *Id.* at 522 (quoting *Hansen v. Henderson*, 244 Iowa 650, 665, 56 N.W.2d 59, 67 (1952)). In refusing to set aside Brown’s judgment, the district court carefully examined not only the plain language of section 811.9 but also considered the underlying intent of the legislature in promulgating such a law. We agree with the district court’s conclusion that the provisions of section 811.9 are mandatory and any other interpretation would undermine the main objective of the statute, that is to secure appearances at court hearings on traffic citations. *See generally Taylor v. Iowa Dep’t of Transp.*, 260 N.W.2d 521, 522 (Iowa 1977).

Brown also argues that we have a unique opportunity to determine his actual innocence of the underlying citation because he had insurance coverage in place at the time of the citation in April 2004. However, Brown overlooks the fact that failing to provide proof of that insurance in the time allotted by statute (thirty days) is also a violation of the law. Iowa Code § 321.20B(1). *See Lee v. Grinnell Mut. Reins. Co.*, 646 N.W.2d 403, 408 (Iowa 2002) (noting that under section 321.20B any person using the insured vehicle with the named insured's consent must carry a card in the vehicle proving the purchase of insurance coverage). Brown did not provide such proof until June 14, 2004.

Brown also contends Iowa Rule of Criminal Procedure 2.33(1) allows the court to dismiss any pending prosecution "in the furtherance of justice." We conclude this rule inapplicable at the point Brown argues it should be applied, as judgment had already been entered. To the extent that Brown argues the rule and statute conflict, we believe the more specific provisions of section 811.9 pertaining to appearance bond forfeiture control in this case. *See City of Des Moines v. City Dev. Bd. of State*, 633 N.W.2d 305, 311 (Iowa 2001) (stating when one statute deals with a subject in a general fashion and another statute in a more minute way, the special statute prevails over the general statute absent clear legislative expression to the contrary).

We affirm the district court's decision declining to set aside the judgment entered against Brown.

AFFIRMED.