IN THE COURT OF APPEALS OF IOWA

No. 7-485 / 06-1383
Filed July 25, 2007

THE CBE GROUP, INC.,

Plaintiff-Appellant,

vs.

LANA M. ANDERSON,

Defendant-Appellee.

Appeal from the Iowa District Court for Webster County, Kurt J. Stoebe, District Associate Judge.

The CBE Group, Inc. appeals the district court's entry of default judgment and partial dismissal of its claim against Lana Anderson. **AFFIRMED.**

Kevin Ahrenholz, Waterloo, for appellant.

Lana M. Anderson, Badger, pro se.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

The CBE Group, Inc. appeals the district court's entry of default judgment and partial dismissal of its claim against Lana Anderson. We affirm.

I. Background and Facts

The CBE Group, Inc., filed a petition against Lana Anderson on February 13, 2006, for the collection of $6,638.99 in medical and utility debt assigned to CBE as a collection agent for MidAmerican Energy and Trinity Regional Medical Center. The district court, on its own motion, scheduled a pretrial conference for July 24, 2006. The order for the conference stated the purpose was to consider the subjects listed in Iowa Rule of Civil Procedure 1.602(3).[1] The order also

[1] Pursuant to rule 1.602(3), subjects discussed at pretrial conference may include:

a. The formulation and simplification of the issues, including the elimination of frivolous claims or defenses.
b. The necessity or desirability of amendments to the pleadings.
c. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence.
d. The avoidance of unnecessary proof including limitation of the number of expert witnesses and of cumulative evidence.
e. The identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial.
f. The advisability of referring matters to a master.
g. The possibility of settlement and imposition of a settlement deadline or the use of extrajudicial procedures to resolve the dispute.
h. The substance of the pretrial order.
i. The disposition of pending motions.
j. Settling any facts of which the court is to be asked to take judicial notice.
k. Specifying all damage claims in detail as of the date of conference.
l. All proposed exhibits and mortality tables and proof thereof.
m. Consolidation, separation for trial, and determination of points of law.
n. Questions relating to voir dire examination of jurors.
o. Filing of advance briefs when required.

made it clear that settlement would be discussed. The order further stated that Iowa Rule of Civil Procedure 1.971 was applicable to the order.[2] Anderson appeared for the pretrial conference; CBE did not.

In its brief to this court, CBE asserts that its counsel, Kevin Ahrenholz, had a scheduling conflict. Ahrenholz's legal assistant contacted the district court attendant "to determine whether [Ahrenholz] should seek a continuance, or whether the court would allow his legal assistant to call in on his behalf." The legal assistant and court attendant discussed that Anderson "was not represented by counsel, there was no pending discovery, and that the only matter needing attention was the selection of the trial date." CBE asserts that the court attendant "confirmed that under the circumstances a continuance and personal appearance by Plaintiff's counsel was not necessary for the selection of a trial date, and that his legal assistant could participate by phone." The legal assistant failed to call the court at the designated time for the pretrial conference.

The district court, noting there was no motion for continuance or other explanation for CBE's failure to appear, held CBE was in default for failure to appear pursuant to Iowa Rule of Civil Procedure 1.971. The court entered judgment against Anderson for $890.16, the amount she admitted owing the medical center. "Based on the information provided at the pretrial conference and the plaintiff's failure to appear," the court dismissed the balance, i.e. the amount Anderson denied owing. CBE appeals.

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p. Such other matters as may aid in the disposition of the action.

[2] Pursuant to rules 1.971(3) and (4), "[a] party shall be in default whenever that party . . . [f]ails to be present for trial [or] to comply with any order of court."

II. Merits

Law actions are reviewed for correction of errors at law. Iowa R. App. P. 6.4. Although it is difficult to determine the precise relief sought, it appears this appeal asserts that the trial court erred in granting a default and entering judgment for less than the full amount sought. "We have consistently held that the question of allowing a default is largely within the discretion of the trial court." *Kohorst v. Iowa State Commerce Comm'n*, 348 N.W.2d 619, 622 (Iowa 1984) (citations omitted).

CBE contends the district court erred because it

> (1) made a final determination of the merits based on an evidentiary hearing conducted during a pretrial conference; or (2) decided the matter on the pleadings during a pretrial conference; or (3) dismissed a portion of Plaintiff's claim as a sanction for calling late.

CBE fails to support these contentions with relevant authority, and we find its arguments unpersuasive. *See* Iowa R. Civ. P. 6.14(1)(*c*) ("[f]ailure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue"); *see also Lausen v. Bd. of Supervisors of Harrison County*, 204 Iowa 30, 32, 214 N.W. 682, 684 (1927) (describing appellant's failure to cite authorities to support his contentions as "wholly inexcusable").

The court held CBE was in default for failure to appear pursuant to Iowa Rule of Civil Procedure 1.971. A default judgment is a judgment against the party who has failed to take a step required in the progress of a lawsuit. *Kirby v. Holman*, 238 Iowa 355, 374, 25 N.W.2d 664, 674 (1947). In this case, by failing to appear at the pretrial conference, CBE failed to take a required step.

Additionally, notwithstanding Ahrenholz's reliance on a verbal discussion between his legal assistant and the court attendant, we find that CBE was clearly advised via the order for pretrial conference that rule 1.971 was applicable to the order. The district court did not abuse its discretion in finding CBE in default for failing to appear or in partially dismissing its claim against Anderson.

We also note with concern the notion of a legal assistant representing a client at a pretrial conference.

> [T]he practice of law includes, but is not limited to, representing another before the courts . . . . Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer. The essence of professional judgment of the lawyer is the educated ability to relate the general body and philosophy of law to a specific legal problem of a client.

Iowa Supreme Ct. Comm'n on Unauthorized Practice of Law v. Sturgeon, 635 N.W.2d 679, 681-82 (Iowa 2001).

Pursuant to Iowa Rule of Professional Conduct 32:5.3(c), a lawyer who employs a nonlawyer is responsible for the nonlawyer's conduct that violates the rules of professional conduct if the lawyer orders or ratifies the conduct. Ahrenholz's knowledge and ratification of his legal assistant's participation in this pretrial conference may be construed as aiding in the unauthorized practice of law. We disagree with Ahrenholz's characterization of the pretrial conference as limited to the "selection of a trial date." His brief indicates he came to this conclusion based on a discussion "between the Court Attendant and Plaintiff's counsel's legal assistant." Notwithstanding the alleged discussion, the order for the pretrial conference did not limit the subject matter to the selection of a trial date. In fact, the order clearly stated the purpose was to consider the subjects

listed in Iowa Rule of Civil Procedure 1.602(3) and explore settlement. Even if the legal assistant called in a timely fashion, it would have been tantamount to a failure to appear as she would not have had the authority to perform the acts called for in the pretrial order.

It is a violation of the rule against the unauthorized practice of law to order or allow a nonlawyer to represent a client in court. *See Comm. on Prof'l Ethics & Conduct v. Baker*, 492 N.W.2d 695, 701 (Iowa 1992) ("[T]he practice of law includes the obvious: representing another before the court."); *see also Bump v. Dist. Ct. of Polk County*, 232 Iowa 623, 630, 5 N.W.2d 914, 918 (1942) (noting the generally understood meaning of the practice of law includes, but is not confined to, performing services at any stage in a court of justice). It is also a violation to order or allow a nonlawyer to represent a client in settlement negotiations. *See Bergantzel v. Mlynari*, 619 N.W.2d 309, 315 (Iowa 2000) (holding, because "the negotiation of a settlement of an injured party's claim for damages requires the exercise of professional judgment," the defendant engaged in the practice of law when she represented the plaintiff in the negotiation of a settlement of an insurance claim).

In this case, the order clearly referenced Iowa Rule of Civil Procedure 1.602(3), which specifically lists settlement as a subject that may be discussed at a pretrial conference, and requires "[a]t least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed." We question whether the legal assistant could have participated on an attorney's behalf at a pretrial conference.

The public interest is best served by allowing only licensed attorneys to act in matters involving professional judgment, such as representing clients before the courts and negotiating settlements, where the benefits of their legal education and skills can be used to serve their clients. *Sturgeon*, 635 N.W.2d at 682; *Bergantzel*, 619 N.W.2d at 316; *see also* Iowa Rules of Prof'l Conduct 32:5.5 cmt. 2 ("[L]imiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons."). We are concerned, based on the facts presented in CBE's brief to this court, about the legal assistant's planned participation in the pretrial conference. We admonish Ahrenholz, and the bar generally, to refrain from conduct that may be construed as aiding in the unauthorized practice of law. *See Comm. on Prof'l Ethics & Conduct v. Liles*, 430 N.W.2d 111, 113 (Iowa 1988) (noting admonitions are used "not so much by way of criticism as to instruct the bar").

III. Conclusion

The district court properly held CBE was in default for failure to appear at the pretrial conference.

AFFIRMED.