

**IN THE COURT OF APPEALS OF IOWA**

No. 9-918 / 09-0279  
Filed February 10, 2010

**GREATAMERICA LEASING CORPORATION,**  
Plaintiff-Appellee,

**vs.**

**ROBERT A. BERKOWITZ, D.D.S.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Fae Hoover Grinde,  
Judge.

The defendant appeals from district court rulings denying his motion to  
dismiss and granting the plaintiff's application for default judgment. **AFFIRMED.**

Robert Berkowitz, D.D.S., Anderson, South Carolina, pro se.

Randall Armentrout of Nyemaster, Goode, West, Hansell & O'Brien, P.C.,  
Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**VAITHESWARAN, J.**

GreatAmerica Leasing Corporation sued Robert Berkowitz, D.D.S. for breach of contract and unjust enrichment. GreatAmerica alleged that Berkowitz, a dentist living in South Carolina, entered into a written finance agreement but failed to make the required payments. GreatAmerica requested a money judgment in its favor.

Berkowitz moved to dismiss the petition “for failing to state a claim under which relief can be granted and for the lack of subject matter jurisdiction.” The district court denied the motion.

When Berkowitz did not file a timely answer, GreatAmerica notified Berkowitz of its intent to request a default and subsequently filed an application for default judgment. The district court granted the application and entered a default judgment against Berkowitz for \$91,903.66, plus \$5285.76 in attorney fees and \$100 in costs.

Berkowitz appealed. Although he raises a number of issues, they boil down to whether the district court erred in (1) denying his motion to dismiss, and (2) entering the default judgment.

***I. Motion to Dismiss***

In denying Berkowitz’s motion to dismiss, the court reasoned as follows:

[Berkowitz] argues that this Court lacks subject matter jurisdiction to decide this dispute, but does not cite any authority or grounds in this regard. . . . The Court finds that Defendant has failed to raise any specific ground or argument to support that this Court is without jurisdiction over the present contract dispute.

. . . .  
The Court finds that the [remaining] issues raised by Defendant involve determinations to be made by the trier of fact. Noting that a motion to dismiss will be upheld only if the petition, on

its face, fails to state a cause of action upon which relief could be granted under any circumstances and that the petition should be construed in the light most favorable to the plaintiff, the Court finds that there exists a conceivable set of circumstances under which relief could be granted to Plaintiff, and that dismissal is not appropriate.

We review the district court's ruling for errors of law. See *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 7 (Iowa 2006).

We first begin with Berkowitz's request for dismissal based on lack of subject matter jurisdiction. Subject matter jurisdiction "refers to the authority of a court to hear and determine cases of the general class to which the proceedings in question belong." *In re Marriage of Engler*, 532 N.W.2d 747, 749 (Iowa 1995) (internal citations omitted). Iowa district courts clearly have subject matter jurisdiction to hear the general class of cases involving contract disputes. See Iowa Code § 602.6101 (2007) (establishing a unified trial court with exclusive, general, and original jurisdiction over all civil and criminal proceedings, except where the legislature has otherwise provided); *J.R. Watkins Co. v. Kramer*, 250 Iowa 947, 950, 97 N.W.2d 303, 305 (1959) (finding in a contract dispute that the "district court of Iowa has jurisdiction to hear and determine cases of this general class"). Accordingly, the district court did not err in rejecting this ground for dismissal.

We turn to Berkowitz's request to dismiss for failure to state a claim. The district court correctly stated the law governing this ground for dismissal. See *Kingsway*, 711 N.W.2d at 7–8; *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). As GreatAmerica's petition alleged sufficient facts to show a right of recovery, the district court did not err in denying Berkowitz's motion to dismiss on

this ground. See, e.g., *Rees v. City of Shenandoah*, 682 N.W.2d 77, 80 (Iowa 2004).<sup>1</sup>

## **II. Default Judgment**

As a preliminary matter, we note that this is not an appeal from a denial of a motion to set aside a default judgment. See *Dolezal v. Bockes Bros. Farms, Inc.*, 602 N.W.2d 348, 353 (Iowa 1999) (contrasting an appeal of a default judgment from an appeal of a denial of a motion to set aside a default judgment). Although Berkowitz filed such a motion, he did so after he appealed the default judgment. Therefore, the district court declined to rule on it and error is not preserved. See *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 628 (Iowa 2000) (“[O]nce the appeal is perfected, the district court loses jurisdiction to rule on the motion, and any such ruling has no legal effect.”). Our review is only of the default judgment and we review it for an abuse of discretion. See *Wright v. Waterloo Water Works*, 493 N.W.2d 889, 892 (Iowa Ct. App. 1992).

The default judgment was premised on Berkowitz’s failure “to answer the Petition within the time granted by the Iowa Rules of Civil Procedure.” The pertinent rule states that a party “shall be in default whenever that party . . . [f]ails to serve and, within a reasonable time thereafter, file a motion or answer.” Iowa R. Civ. P. 1.971(1). “[W]hen a defendant has filed a motion to dismiss and the

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<sup>1</sup> On appeal, Berkowitz also asserts that the district court should have dismissed the petition for lack of personal jurisdiction. This ground was not preserved for our review. See *In re Marriage of Ivins*, 308 N.W.2d 75, 77 (Iowa 1981) (“It is true that subject-matter jurisdiction cannot be waived or conferred by consent. However, this is not true in the case of objections to personal jurisdiction . . . which will be deemed waived unless raised ‘at the first opportunity, or in due or reasonable time.’” (citation omitted)); see also Iowa R. Civ. P. 1.421(4) (stating if a pre-answer motion does not raise lack of personal jurisdiction, that matter shall be deemed waived).

motion is denied, as in this case, the answer is due within ten days following notice of the district court's ruling." *McElroy v. State*, 637 N.W.2d 488, 493 (Iowa 2001); see also Iowa R. Civ. P. 1.441(3).

The district court denied Berkowitz's motion to dismiss on December 30, 2008, and the clerk served the order on December 31, 2008. Berkowitz did not file an answer within ten days of either date or at any time thereafter. Although his multiple filings reflect an intent to defend the action, see *Wright*, 493 N.W.2d at 892, none of those filings was an answer to GreatAmerica's petition. Nor could any of those filings be construed as an answer. See *Kagin's Numismatic Auctions, Inc. v. Criswell*, 284 N.W.2d 224, 226 (Iowa 1979) (stating Iowa courts "look to the substance of a motion and not to its name"). Berkowitz's closest filing in time to the dismissal ruling was a motion to reconsider that ruling, but it was filed more than ten days after an answer was due and it did not admit or deny every allegation of GreatAmerica's petition, as required of an answer. See Iowa R. Civ. P. 1.405. We conclude the district court did not abuse its discretion in granting GreatAmerica's application for default judgment.

We find it unnecessary to address the remaining issues raised by Berkowitz. We affirm the district court's denial of his motion to dismiss and entry of default judgment.

**AFFIRMED.**