

IN THE COURT OF APPEALS OF IOWA

No. 9-981 / 09-0837
Filed February 10, 2010

**CHAMPION TRANSPORTATION SERVICES,
INC., d/b/a CHAMPION LOGISTIC CORP.,**
Plaintiff-Appellee,

vs.

**ALISA SHAKESPEARE d/b/a SHAKESPEARE'S
GOURMET CHOCOLATE,**
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire
(default judgment) and Nancy S. Tabor (denial of motion to set aside), Judges.

Alisa Shakespeare d/b/a Shakespeare's Gourmet Chocolate appeals from
the denial of her motion to set aside default judgment. **AFFIRMED.**

R. Douglas Wells of Gomez, May, Schutte, Yeggy, Bieber & Wells,
Davenport, for appellant.

Piper Lori Hughes and James H. McDonald of Litow Law Office, P.C.,
Cedar Rapids, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, J.

Alisa Shakespeare d/b/a Shakespeare's Gourmet Chocolate (Shakespeare) appeals from the denial of her motion to set aside the default judgment entered against her. We affirm.

I. Background Proceedings.

On January 9, 2009, default judgment was entered against Alisa Shakespeare d/b/a Shakespeare's Gourmet Chocolate. The district court entered judgment by default "having considered the plaintiff's moving papers and argument and the defendant's lack of opposition, and good cause appearing."

On March 5, 2009, Shakespeare moved to set aside the default judgment, arguing the judgment was not authorized by Iowa Rule of Civil Procedure 1.517(2), under which Champion sought entry of default. In the alternative, Shakespeare argued mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.

On March 30, 2009, after a hearing, the district court denied the motion to set aside. On April 28, 2009, on Shakespeare's motion to amend and enlarge, the court again denied the motion to set aside, concluding Shakespeare had "not shown any mistake, inadvertence, surprise, excusable neglect or unavoidable casualty."

Shakespeare now appeals, arguing default judgment as a discovery sanction was improperly granted in the first instance. However, the issue before us is whether Shakespeare met her burden to prove good cause to set aside default judgment. See *Sheeder v. Boyette*, 764 N.W.2d 778, 780 (Iowa Ct. App. 2009).

II. Analysis.

Iowa Rule of Civil Procedure 1.977 provides “[o]n motion and for good cause . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.” 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. We are bound by the district court’s factual findings if supported by substantial evidence. 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. (internal citations omitted).

It was Shakespeare’s burden to plead and prove good cause under rule 1.977. *Id.* Good cause is a “sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect.” *Cent. Nat’l Ins. Co. of Omaha v. Ins. Co. of N. Am.*, 513 N.W.2d 750, 754 (Iowa 1994). In *Sheeder*, we noted the underlying purpose of rule 1.977 is to allow a determination of controversies on their merits, but “this objective is qualified because it cannot be extended to the point where a default judgment will be vacated when the movant has ignored the rules of procedure with ample opportunity to abide by them.” *Id.* (citing *Haynes v. Ruhoff*, 261 Iowa 1279, 1282, 157 N.W.2d 914, 916 (1968)).

We agree that Shakespeare has failed to prove “good cause” for setting aside the default judgment. Shakespeare failed to appear at a December 5, 2008 deposition.¹ In support of her March 5, 2009 motion to set aside the

¹ On May 27, 2008, Shakespeare appeared at the time and place noticed for a scheduled deposition but was “unprepared to proceed with any meaningful deposition.” The parties agreed to reschedule the deposition and trial date so long as defendants paid Champion’s attorney fees. Those fees were eventually paid. A deposition

default, Shakespeare asserted she assumed the deposition would be rescheduled due to the withdrawal by prior counsel.²

On December 17, 2008, Champion moved for entry of default. The notice of the motion to have default entered as a sanction was served upon Shakespeare twenty-four days prior to the entry of the order. She neither resisted nor defended against this motion. Nor did she appeal from the entry of default judgment. Shakespeare did not move to set aside the default “promptly after the discovery of the grounds thereof” as required by rule 1.977.

Shakespeare has ignored the rules of procedure with ample opportunity to abide by them and has failed to establish good cause. *See Easton v. Crystal River Resources, Inc.*, 360 N.W.2d 138, 140 (Iowa Ct. App. 1984) (noting that while movant may have shown grounds for confusion, “[t]o permit one to set aside a default when he admits he took no reasonable steps to appear and defend would abrogate completely the rules of civil procedure”).

We conclude the district court did not abuse its discretion in denying Shakespeare’s motion to set aside the default judgment.

AFFIRMED.

scheduled for September 4, 2008, a date consented to by Shakespeare, did not occur. Shakespeare’s deposition was re-scheduled for December 5, 2008.

² The record reflects that Shakespeare’s prior counsel assured the court before his withdrawal that Shakespeare was aware of the deposition scheduled for December 5, 2008.