

OREGON LAW UPDATE

Setting Aside Default Judgment – What is “Excusable Neglect”?

From the desk of Joshua P. Hayward: While the courts impose deadlines on parties to file their pleadings, they also prefer to decide cases on their merits and are generally reluctant to grant default judgments. In this case, the court analyzed whether a defendant’s or a defendant’s attorney’s negligence was sufficiently excusable to set aside a default judgment.

Claims Pointer: In this personal injury case arising out of a car accident, a defense attorney’s assistant sent a letter of intent to appear to the wrong address. As a result, the plaintiff did not send notice of their intent to seek a default judgment. The trial court refused to set aside the default judgment. The Court of Appeals held that where the defendant took reasonable steps to respond to the Complaint, her attorney’s later neglect was excusable and the default judgment should be set aside. This case provides insight into a court’s analysis of “excusable neglect,” one of several grounds for setting aside a default judgment.

case in point...

Hoddenpyl v. Fiskum, 281 Or App 29 (2016).

Gerald Hoddenpyl (“Hoddenpyl”) and Kathleen Fiskum (“Fiskum”) were involved in a car accident, after which Hoddenpyl filed a personal injury lawsuit against Fiskum. After being served with the Complaint, Fiskum tendered the claim to her insurer, Farmers Insurance Company (“Farmers”). Farmers directed its in-house counsel to respond to the complaint, and the matter was assigned to attorney Thompson. Thompson asked his staff to prepare a letter to plaintiff’s attorney, Copeland, that contained a written notice of intent to file an appearance under Oregon Rule of Civil Procedure (“ORCP”) 69 B. Under that rule, if an intent to file an appearance is provided, then notice of the intent to apply for an order of default must be filed and served at least 10 days before seeking an order of default. The letter was prepared by staff, signed by Thompson, and mailed to Copeland. Unfortunately, it was sent to the wrong address. Instead of using Copeland’s address located on the Complaint, Thompson’s staff used an outdated address from the firm’s electronic directory.

As a result, Hoddenpyl did not provide Fiskum with any notice of their intent to apply for default. An ex parte order of default was entered, followed by a judgment for \$37,296 in favor of plaintiff. When Fiskum learned of the default, her attorney immediately moved to set aside the judgment under ORCP 71 B(1) on the grounds that the clerical error of using the wrong address was “excusable neglect.” The trial court denied the motion without explanation, and Fiskum appealed.

On appeal, Fiskum argued that the clerical error was “excusable neglect” and therefore grounds to set aside the judgment because she took reasonable steps to respond to the complaint and it was not until later that the process broke down due to her attorney’s mistake. Hoddenpyl responded that Fiskum presented insufficient evidence that her initial steps to respond to the Complaint were reasonable. According to Hoddenpyl, Fiskum failed to present evidence identifying the person who committed the error, why the error was reasonable, whether her attorney’s office had policies and procedures in place for updating its databases, or whether the unidentified employee was complying with office policies or procedures in relying on the address in the database rather than the address on the pleadings or on file with the Oregon State Bar.

Under Oregon law, whether certain conduct or inaction constitutes “excusable neglect” is a question of law and therefore reviewed on appeal for legal error. Prior Oregon case law has explained that neglect leading to default will be deemed “excusable” when a defendant, or someone acting on a defendant’s behalf, took reasonable initial steps to ensure that an appropriate response would be filed to a Complaint, *even when the process later breaks down*. This principle applies even when one person acting for the defendant takes reasonable steps to get the process underway, but another person later fails to adequately perform his or her duties. The converse is also true: when a defendant fails to take any reasonable steps to respond to a complaint, such neglect is inexcusable. These principles reflect the judicial system’s preference of



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deciding cases on their merits and allowing parties their day in court, while still requiring parties to meet deadlines and perform their due diligence.

In this case, the Court of Appeals identified the central issue in the case as whether there were reasonable steps taken to respond to the complaint, even if one of those steps was negligently undertaken. The court ultimately agreed with Fiskum that the initial actions to respond to the complaint—tendering the Complaint to her insurer, the insurer assigning the case to counsel, and counsel preparing and sending the ORCP 69 B letter—were reasonable, and therefore the subsequent negligence in sending the letter was excusable under ORCP 71 B(1). Thus, as a matter of law, Fiskum’s (and her attorney’s) negligence was excusable, and the trial court’s refusal to set aside the default judgment was reversed.

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