MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TIMOTHY G. VOGEL

RESPONDENT,

v.

GREGORY SCHOENBERG

APPELLANT.

DOCKET NUMBER WD83861

DATE: March 23, 2021

Appeal From:

Morgan County Circuit Court
The Honorable Matthew P. Hamner, Judge

Appellate Judges:

Division Four: Cynthia L. Martin, Chief Judge, Presiding, Thomas H. Newton, Judge and Mark D. Pfeiffer, Judge

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Attorneys:

Zane G. Williams, Sunrise Beach, MO, for respondent.

Derek L. Smith and John E. Curran, Osage Beach, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

TIMOTHY G. VOGEL, RESPONDENT,
v.
GREGORY SCHOENBERG, APPELLANT.

WD83861 Morgan County

Before Division Four Judges: Cynthia L. Martin, Chief Judge, Presiding, Thomas H. Newton, Judge, and Mark D. Pfeiffer, Judge

Gregory Schoenberg appeals from the trial court's entry of judgment denying his Rule 74.05(d) motion to set aside a default judgment. Schoenberg argues that the trial court abused its discretion in denying his motion to set aside the default judgment because the motion set forth a good cause for failing to answer the petition. Schoenberg further argues that, because the trial court concluded that Timothy G. Vogel failed to present sufficient evidence supporting a count asserted against Schoenberg's co-defendant, the trial court erred in entering a default judgment against Schoenberg on the same count.

AFFIRMED.

Division Four holds:

(1) The trial court was entitled to disbelieve some or all of the assertions in Schoenberg's affidavit offered to establish "good cause" to set aside the default judgment, including Schoenberg's self-serving assertion that he did not understand the consequences of failing to answer or otherwise respond to the petition. As such, the trial court did not abuse its discretion in concluding that Schoenberg failed to satisfy his burden to establish that good cause existed for failing to answer or otherwise participate in Vogel's suit against him for over a year after he was served with the summons and petition.

(2) Rule 74.05(a) does not authorize Schoenberg to contest liability, which was admitted when he defaulted.

(3) Vogel is not entitled to attorney's fees for responding to Schoenberg's motion to set aside the default judgment, which is an action independent from the claims asserted in the underlying action giving rise to the default judgment. Vogel's motion for attorney's fees is denied.

Opinion by: Cynthia L. Martin, Judge March 23, 2021

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