

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SATURN OF TIFFANY SPRINGS, ET AL.

APPELLANT,

**v.
SHAUN MCDARIS**

RESPONDENT.

DOCKET NUMBER WD72509

DATE: February 22, 2011

Appeal From:

Clay County Circuit Court
The Honorable Anthony R. Gabbert, Judge

Appellate Judges:

Division Three: Cynthia L. Martin, Presiding Judge, James E. Welsh and Gary D. Witt, Judges

Attorneys:

Joseph T. Welsh, Kansas City, MO, for appellant.

Brian J. Klopfenstein, Kearney, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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SATURN OF TIFFANY SPRINGS, ET AL.,

APPELLANT,

v.

SHAUN MCDARIS,

RESPONDENT.

No. WD72509

Clay County

Before Division Three Judges: Cynthia L. Martin, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Saturn of Tiffany Springs appeals from the trial court's judgment setting aside a default judgment entered in its favor and against Shaun McDaris. The default judgment vacated an arbitration award previously entered in McDaris's favor. Saturn contends that the trial court erred in setting aside the default judgment because McDaris failed to satisfy the requirements of Rule 74.05(d) in that McDaris did not demonstrate "good cause" for failing to timely answer Saturn's petition, and in that McDaris did not establish a meritorious defense to Saturn's petition. Saturn further contends McDaris's motion was not verified, or supported by affidavits or sworn testimony.

AFFIRMED.

Division Three holds:

In his motion to set aside default judgment, McDaris explained that two other lawsuits involving the arbitration and its enforcement were pending in other counties before Saturn filed its lawsuit in Clay County, and that since the filing of Saturn's petition, the parties had been in discussions about how to consolidate their disputes. The trial court did not abuse its discretion by concluding that McDaris established "good cause" for his failure to timely file an answer to Saturn's petition.

The trial court's judgment found that the parties were clearly contesting the enforceability of the Arbitration award. Though the trial court did not use the words "meritorious defense," it is evident that the trial court found that the disputes between McDaris and Saturn regarding the enforceability of the arbitration award constituted a meritorious defense. This was not an abuse of discretion.

Rule 74.05(d) does not require motions to set aside default judgment to be verified or supported by affidavits or sworn testimony. However, case law, including Supreme Court precedent, have engrafted this requirement into the Rule.

Although McDaris did not verify his motion to set aside default judgment nor attach any affidavits to the motion, we are unable to discern from this record whether McDaris submitted sworn testimony to support his motion during the hearing as no transcript of the hearing is included in the record on appeal. We view Saturn's failure to include a transcript in the record on appeal as favorable to the trial court's ruling and unfavorable to Saturn. We cannot conclude that the trial court abused its discretion by granting McDaris's motion to set aside default judgment in the absence of verification, affidavits, or sworn testimony when Saturn has failed to provide us with all portions of the record necessary to permit us to reach this conclusion.

Opinion by: Cynthia L. Martin, Judge

February 22, 2011

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