

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STATE OF MISSOURI, EX REL.  
CHRIS KOSTER, ATTORNEY  
GENERAL, STATE OF MISSOURI**

**RESPONDENT,**

**v.  
DANE S. JOHNSON**

**APPELLANT.**

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DOCKET NUMBER WD72657

DATE: May 29, 2012

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Appeal From:

Cole County Circuit Court  
The Honorable Jon E. Beetem, Judge

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Appellate Judges:

Division Three: Thomas H. Newton, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

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Attorneys:

Megan K. Fewell, Jefferson City, MO, for respondent.

Dane S. Johnson, Appellant Pro Se.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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No. WD72657

Cole County

Before Division Three: Thomas H. Newton, Presiding Judge, James M. Smart, Jr., Judge and Gary D. Witt, Judge

Dane Johnson is incarcerated by the Missouri Department of Corrections. On March 27, 2009, the State filed a petition in Cole County seeking a judgment against Johnson, pursuant to the Missouri Incarceration Reimbursement Act ("MIRA") to reimburse the State for the costs of Johnson's incarceration. On May 31, 2009, the motion court ordered Johnson to respond to the petition in writing on or before June 3, 2009, to show cause why an order should not be entered against him to reimburse the State a certain portion of his cost of imprisonment. On June 2, 2009, Johnson filed his written answers to the State's interrogatories with the motion court but failed to send a copy of those answers to the State. This is the only correspondence Johnson had with the court prior to June 3, 2009. On June 11, 2009, the motion court entered a default judgment against Johnson, ordering him to reimburse the State for the costs of his incarceration pursuant to MIRA.

On June 7, 2010, Johnson filed a Motion to Set Aside Default Judgment, arguing that the default judgment was entered by mistake and he had a meritorious defense to the MIRA action. The motion court denied Johnson's motion because the court found that he had "failed to both demonstrate excusable neglect and a meritorious defense to a MIRA action." Johnson now appeals the motion court's denial of his motion to set aside the default judgment entered against him.

**REVERSED AND REMANDED**

Division Three holds:

In his first Point, Johnson argues the motion court erred in denying his motion to set aside the default judgment because MIRA does not require the response to a show-cause order to be in any specific form and, therefore, his filing of his responses to the State's interrogatories with the motion court asserting he has no assets was a sufficient response to the court's show-cause order. Rule 74.05(d) provides that an entry of default judgment may be set aside "[u]pon motion stating facts constituting a meritorious defense and for good cause shown." Johnson first argues that he

has shown "good cause" to set aside the default judgment because the default judgment was improperly entered in that he had complied with the court's show-cause order. Rather than file a traditional responsive pleading, Johnson filed with the motion court his answers to the State's interrogatories which inquired into his assets. The State argues that this was insufficient.

Under Rule 74.05(d), "Good cause" is defined to include "a mistake or conduct that is not intentionally or recklessly designed to impede the judicial process." In this case, the show-cause order issued by the motion court merely ordered Johnson to "respond to the petition in writing showing cause why an order should not be entered" ordering him to pay the costs of his incarceration. Johnson's written responses to the State's interrogatories, which were filed with the motion court before the deadline established by the show cause order, informed the court that Johnson did not believe he had sufficient assets to warrant a MIRA judgment against him. This complies with the court's order which only required a "response to the petition in writing showing cause why an order should not be entered" against him. We find that Johnson's response, answering the interrogatories given him by the State and explaining why he believed he did not have sufficient assets to warrant a MIRA action against him, is sufficient to constitute a proper response to the motion court's MIRA show-cause order. Because Johnson had complied with terms of the motion court's show cause order, Johnson's conduct cannot have been "intentionally or recklessly designed to impede the judicial process." *Rule 74.05(d)*. Therefore, we find that the motion court erred in determining that Johnson had failed to show "good cause" why the default judgment should be set aside.

However, this is not the end of the inquiry, in addition to the good cause showing required by the Rule, Johnson must also show that he has a meritorious defense to the MIRA petition. *See Rule 74.05(d)*. In Point Two, Johnson argues the motion court erred in denying his motion to set aside his default judgment because he had a meritorious defense to the MIRA petition in that the motion court failed to consider the sworn affidavit of a mortgage broker wherein she conceded that she had made a mistake in preparing the deed to his home and having it signed and, therefore, he did not actually have an interest in that property.

In order to show a meritorious defense, a party need not present extensive and airtight evidence. He or she need only make some showing of at least an arguable theory of defense.

The State discovered that Johnson has an interest in real property in Clay County, Missouri and attached to its MIRA Petition a warranty deed that conveyed the property to him. Johnson has raised a factual issue as to the existence of sufficient assets; whether he indeed has an interest in this real property or he has no interest in it because the conveyance was a mistake in the first instance. This is a factual issue and raises a possible defense to the MIRA judgment which we find justifies an evidentiary hearing on the good cause determination. Again, for a motion to set aside a default judgment, the petitioner need only present an "arguable theory of defense."

Johnson has shown good cause to set aside his default judgment and has presented, in the abstract, an arguably meritorious defense to the MIRA petition, as required by Rule 74.05(d). Therefore, we find the motion court has abused its discretion in rejecting Johnson's motion to set aside the default judgment previously entered against him.

The judgment of the circuit court is hereby reversed and remanded.

Opinion by Gary D. Witt, Judge

May 29, 2012

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