

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**GARRY COBLE,**

**Respondent,**

**v.**

**NCI BUILDNG SYSTEMS, INC.,**

**Appellant.**

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DOCKET NUMBER WD74845

**Date: October 2, 2012**

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Appeal from:  
Vernon County Circuit Court  
The Honorable James R. Bickel, Judge

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Appellate Judges:  
Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

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Attorneys:  
Jonathan B. Milbourn and Paula L. Brown, Kansas City, MO, for appellant.  
Judy R. Ullmann, Nevada, MO, for respondent.

**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**COURT OF APPEALS -- WESTERN DISTRICT**

**GARRY COBLE**

**Respondent,**

v.

**NCI BUILDING SYSTEMS, INC.,**

**Appellant.**

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Gary Coble was employed as a commissioned salesperson for NCI Building Systems. He resigned from NCI in January 2011. He received a final paycheck from NCI which purported to pay him all of the unpaid commissions he had earned, and deducted sums for personal charges Coble had allegedly incurred on an NCI credit card.

Coble disputed that he had been paid all of the commissions NCI owed him, and that the credit-card charges were properly deductible from his paycheck. He also contended that NCI had failed to return to him certain training manuals he had prepared, and provided to his supervisor. After his efforts to informally resolve these issues were unsuccessful, Coble sued NCI.

Coble served NCI's Missouri registered agent with a summons and petition. Although the documents were forwarded by Federal Express to NCI's Houston, Texas headquarters, NCI failed to respond to the petition. NCI also failed to respond to a notice of default hearing Coble later sent to its registered agent, which was also received in the mailroom of NCI's Houston headquarters.

After it became aware of the entry of a default judgment against it, NCI moved to have the default set aside. The trial court denied the motion to set aside, finding that NCI had failed to establish good cause for its default. NCI appeals.

**AFFIRMED.**

Division Two holds:

NCI bore the burden of proving that "good cause" exists and that it is entitled to the requested relief. NCI sought to satisfy its burden of proving good cause through the affidavit of Bradley W. Graham, an in-house attorney with an NCI affiliate. Graham's affidavit states that NCI receives a large amount of mail delivered 2-3 times daily to NCI's 250 headquarters

employees, and that an “investigation” was conducted to locate the Coble suit papers, but that those documents did not reach the legal department and could not be located.

On this record, the trial court did not abuse its discretion in finding that NCI had failed to satisfy its burden to prove good cause. While Graham indicated that he had conducted an “investigation” into what happened to the two documents in question, his only conclusion was that the “summons and notice of hearing [could not] be located anywhere in the company.” NCI offered no evidence indicating the extent of the “investigation” Graham conducted, including in particular whether he spoke to the specific mailroom employee who signed for the two Federal Express packages delivering the Coble suit papers. Aside from its own speculation of mishandling, NCI offers no evidence as to what actually happened to prevent the summons and Notice of Hearing from reaching the legal department. The only evidence presented by NCI is that the documents disappeared. The trial court could reasonably conclude that NCI had failed to satisfy its burden of proving good cause, given the complete – and completely unexplained – loss of two time-sensitive legal documents addressed to NCI’s general counsel and sent by Federal Express, received more than a month apart, in a company as large and seemingly sophisticated as NCI. The trial court was also entitled to disbelieve the statements in Graham’s affidavit.

Although NCI cites a variety of prior cases in which clerical errors and document mishandling have been found to constitute good cause, in those cases the party seeking relief from a default judgment offered some evidence of specific circumstances that explained the negligence of the defendant’s agents or employees, and explained the actual disposition of the relevant documents. NCI offers no similar evidence here.

Before: Division Two: Joseph M. Ellis, P.J., Alok Ahuja and Mark D. Pfeiffer, JJ.

Opinion by: Alok Ahuja, Judge

**October 2, 2012**

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