

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**THE WANDA MYERS LIVING TRUST,  
RESPONDENT**

**vs.**

**NEA LG LE, ET AL.,  
APPELLANTS**

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DOCKET NUMBER WD77385

DATE: APRIL 28, 2015

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Robert L. Trout, Judge

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Appellate Judges:

Division Two: Alok Ahuja, C.J., Joseph M. Ellis, J. and Marco A. Roldan, Sp.J.

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Attorneys:

Benny J. Harding, for Respondent

Stephanie G. Hazelton, for Appellants

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**THE WANDA MYERS LIVING TRUST, RESPONDENT**

**v.**

**NEA LG LE, ET AL., APPELLANTS**

WD77385

Jackson County, Missouri

Before Division Four Judges: Alok Ahuja, C.J., Joseph M. Ellis, J. and Marco A. Roldan, Sp. J.

Nea Lg Le ("Appellant") appeals from a default judgment entered against him in the Circuit Court of Jackson County in favor of the Wanda Myers Living Trust ("Respondent"). Appellant operated a dry cleaning business in a property owned by Respondent for several years. Eventually Appellant fell behind on his rent payments to Respondent. On July 18, 2013, Respondent's attorney sent Appellant a letter notifying him that, pursuant to § 441.060, his month-to-month tenancy was being terminated effective August 31, 2013.

When Appellant failed to timely vacate the premises, on September 10, 2013, Respondent filed a petition against Appellant in the circuit court alleging claims for rent and possession, unlawful detainer, and waste. Respondent contended that Appellant was \$49,700 behind in his rent. Subsequently, on September 18, 2013, after discovering that Appellant had begun operating his business at another location, Respondent changed the locks on the property and thereafter refused to grant Appellant access to the property.

On December 10, 2013, when neither Appellant nor his attorney appeared for a scheduled hearing, Respondent verbally asked the court to enter a default judgment against Appellant. Based upon what was requested in damages by Respondent, the trial court entered its judgment awarding Respondent possession of the property along with \$49,700 in lost rent while lawfully in possession of the property, \$99,400 while unlawfully in possession of the property, and court costs.

On December 13, 2013, Appellant filed his Motion to Set Aside Default Judgment. The trial court denied that motion. On appeal, Appellant contends that the trial court abused its discretion in denying his motion to set aside the default judgment because his motion was filed within a reasonable time, he had demonstrated good cause, and he had meritorious defenses to Respondent's claims.

**REVERSED AND REMANDED.**

#### **Division Four holds:**

(1) A party wishing to have a default judgment set aside is required to 1) file his or her motion within a reasonable time, 2) show the existence of a meritorious defense, and 3) show good cause for the default. In this case, Respondent concedes that the motion was filed within a reasonable time.

(2) Respondent also offers no real challenge to Appellant's contention that he sufficiently showed good cause for the default and did not contest good faith in the trial court. According to Appellant's motion and the affidavit submitted by counsel in support thereof, counsel was tied up in emergency receivership proceedings in Oklahoma, and her secretary was seriously ill. Furthermore, multiple joint motions for continuance filed by the parties reflect that they were involved in settlement negotiations and that Respondent had consented to allowing Appellant to file his answer out of time (which he did the day after the default judgment was entered). Thus, Appellant appears to have a good faith reason for believing he would be allowed to file his answer without opposition from Respondent. In short, nothing in the record would indicate that Appellant's failure to file his answer prior to December 10, 2013, or his failure to appear for a hearing on that date were the result of anything more than a good faith mistake or simple negligence.

(3) "Meritorious defense" has been interpreted liberally to mean any factor likely to materially affect the substantive result of the case. Both Appellant's motion to set aside the default judgment and his proposed answer challenged the length of the period of unlawful possession of the premises alleged by Respondent. Because damages are doubled in an unlawful detainer action for the period of unlawful possession of the property, a reduction of that time period would certainly materially affect the verdict.

(4) In its petition, Respondent claimed to have been entitled to possession of the property as of May 31, 2013, and that Appellant was wrongfully in possession of the property from that date on. At the default hearing, Respondent claimed to be entitled to unlawful detainer damages for a period of several years. The affidavit and exhibits entered into evidence by Respondent at the default judgment hearing, however, clearly reflect that Respondent terminated Appellant's month-to-month tenancy effective August 31, 2013. Thus, Appellant most definitely had a valid defense to Respondent's claim that the period of unlawful possession, for which it was entitled to double damages, began before that date. Likewise, Appellant had a meritorious argument that the period of unlawful possession terminated when Respondent changed the locks and refused Appellant access to the premises.

(5) Given the promptness with which Appellant sought to have the default judgment set aside and his establishment of good cause and a meritorious defense, we are left to conclude that the trial court abused its discretion in

refusing to set aside the default judgment in this case. The judgment is, therefore, reversed, and the cause is remanded for further proceedings consistent with this opinion.

Opinion by Joseph M. Ellis, Judge

Date: April 28, 2015

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