

NOT DESIGNATED FOR PUBLICATION

No. 103,871

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE MARRIAGE OF:

MATTHEW T. MCCLAIN,
Appellee,

and

AIMEE N. MCCLAIN,
Appellee,

and

JOSH MCCLAIN,
Appellant.

MEMORANDUM OPINION

Appeal from Phillips District Court; WILLIAM B. ELLIOTT, judge. Opinion filed April 8, 2011.

Affirmed.

Melissa M. Schoen, of Norton, for appellant.

John T. Bird and *Carol M. Park*, of Hays, for appellee Aimee N. McClain.

Before MALONE, P.J., MARQUARDT and LEBEN, JJ.

LEBEN, J.: Josh McClain's brother, Matthew McClain, owed his ex-wife money as part of their divorce decree. Matthew did not pay Aimee, and in response she filed a garnishment against Josh, because she believed he had assets belonging to his brother that could settle the debt. Josh did not answer within 10 days, so Aimee filed for judgment

against him. Almost a month after the judgment was filed, Josh filed a motion asking the court to allow a late answer to the original garnishment. The district court entered judgment against Josh because he had not shown excusable neglect in failing to respond to Aimee's garnishment filing. But since the judge did not abuse his discretion in determining that Josh lacked excusable neglect, we must affirm the judgment entered against him.

When a litigant obtains a money judgment against someone, that litigant, as a judgment creditor, may garnish property of the judgment debtor that is held by others, like money in a bank account or unpaid wages. The third party is required to answer within 10 days stating what property, if any, it has that belongs to the judgment debtor, and that property generally must be held to be paid toward the judgment debt. If the party against which the garnishment order is served (the garnishee) doesn't answer within 10 days, Kansas law provides that a judgment for the full amount of the judgment creditor's claim may be entered against the garnishee. See K.S.A. 60-741.

Under their divorce decree, Matthew McClain was supposed to pay his former wife, Aimee, \$6,000 within 30 days. Matthew didn't pay, so Aimee filed a garnishment on Matthew's brother, Josh McClain. But he didn't answer within 10 days. When Josh's answer was more than a month overdue, Aimee filed for judgment against him. Nearly a month after that, Josh filed a motion to answer the garnishment out of time. He asked that his failure to answer as required should be excused because "the papers were served on him during summer harvest and he did not understand the nature of the paperwork."

Under K.S.A. 2010 Supp. 60-206(b), the district court may allow a late response when someone fails to act "because of excusable neglect." Josh claimed excusable neglect based on service of the garnishment during the harvest, his lack of understanding of garnishment paperwork, and his belief that he didn't owe his brother "any non-earning

assets." The district court concluded that Josh hadn't shown excusable neglect, and the court entered judgment against Josh.

Whether a party has shown excusable neglect so as to be allowed to make a required response after the deadline is a discretionary call to be made by the district court. On appeal, we review that decision to determine whether the district court abused its discretion, which only occurs when we conclude that no reasonable person would agree with the district court. See *Bank of Whitewater v. Decker Investments, Inc.*, 238 Kan. 308, 315, 710 P.2d 1258 (1985); *South Central Kansas Health Ins. Group v. Harden & Co. Ins. Services, Inc.*, 278 Kan. 347, 354, 97 P.3d 1031 (2004). Whether to grant a default judgment against a garnishee who fails to answer is also a discretionary call for the district court: K.S.A. 60-741 says that the court "may" grant judgment but does not require it. So that decision too is reviewed only for an abuse of discretion.

The district court concluded that Josh had not shown excusable neglect. Josh certainly did not provide any detailed explanation about how the summer harvest had prevented him from filing a response during the 30 days that Aimee waited before she filed her motion for judgment against him. His response could have merely been a "No" to the question of whether he held any nonearning assets belonging to his brother. He also didn't provide an adequate reason why he failed to follow the requirement found in the first full paragraph of the garnishment papers he received that he must file an answer within 10 days. Moreover, after advising him of the 10-day answer requirement, the papers also told him that failure to answer within 10 days "may result in a judgment against you for the full amount of the creditor's claim" In these circumstances, a reasonable person could conclude, as the district court did, that Josh hadn't shown excusable neglect and that it was appropriate to enter judgment against him under K.S.A. 60-741.

On appeal, Josh raises one other procedural objection to the district court's decision. He claims that the district court didn't allow him to present evidence in support of his claim because of a crowded docket; Josh concludes that the district court's finding that he had not proven excusable neglect was caused by this limitation on his ability to present his case. But Josh's summary of the record in the district court overlooks two things. First, the district court asked the parties whether they wanted to present evidence at the hearing, and Josh's attorney said only that he could present evidence regarding the propriety of the garnishment. He did not suggest that he had any evidence beyond Josh's affidavit, already on file, in support of the claim that excusable neglect kept Josh from filing a timely answer. Second, the district court clearly considered Josh's affidavit before concluding that Josh hadn't shown excusable neglect. The court cited Josh's response, which was supported by the affidavit, that he hadn't responded because the papers were served during harvest and Josh didn't understand them. In context, the district court simply found that this wasn't a sufficient excuse for failing to respond to the garnishment.

Josh admitted he received the garnishment papers and failed to respond. He did not attempt to explain why he didn't understand the clear written directions on the garnishment form. The district judge's determination that Josh had not shown excusable neglect was well within the conclusions a reasonable person might make on these facts, so the district court did not abuse its discretion in entering judgment against Josh.

The judgment of the district court is therefore affirmed.