

## Supreme Court

**PROCEDURE: Wife's insurance claim not barred by default judgment against husband finding arson/concealment... new rule on deemed admitted facts in default judgment and legal conclusions... Colberg reversed.**

A house in Billings owned by Brad & Nancy Lane was severely damaged by fire in 2/95, 5 days before cancellation of the Farmers Union policy was to have taken effect. They had not occupied the same home for much of their 22-year marriage; Nancy was living in Glendive at the time of the fire; Brad was living in the Billings house. Both, named insureds, submitted claims. Farmers Union denied them based on "gathered evidence" which allegedly demonstrated that Brad had intentionally set the fire "with apparent knowledge by Nancy," and had failed to disclose information regarding past claims on the policy application. It asserts that he was "investigated and prosecuted" for intentionally setting the fire, which it claims was "declared arson." Nancy asserts without contradiction that Brad was never convicted of arson. Nancy, pro se, sued Farmers Union asserting breach of contract and bad faith and contending that \$180,000 of the \$220,000 claim belonged to her. Farmers Union counterclaimed against Nancy and filed a third-party complaint against Brad alleging that he had intentionally set the fire and committed "fraud, concealment, misrepresentation, and false swearing" in the application. For this reason it asserted that Nancy, pursuant to policy conditions & exclusions, was also barred from recovery. It obtained a default judgment against Brad which decreed that there was no coverage for his claims "because of his fraud, concealment, misrepresentation, false swearing, and intentional setting of fire." It then moved for summary judgment based on the deemed admissions in the default judgment. Nancy, in the process of obtaining counsel, did not file a brief or appear at the summary judgment hearing. Judge Colberg granted summary judgment for Farmers Union, finding that it was "undisputed that ... Brad Lane intentionally caused the fire" and thus there was no coverage under the policy for Nancy's claims. Nancy appeals.

Colberg erred in granting summary judgment in that material facts remain in dispute.

Although we have not squarely addressed identical procedural circumstances, *Aldrich* (Mont. 1989) held that deemed admissions resulting from one party's failure to respond to a counterclaim due to a technicality could not sustain a claim for fraud in a subsequent motion for summary judgment. We have also often relied on 6 *Moore's Federal Practice* §55.10 as authority for the proposition that a Rule 8 default is not appealable until a final judgment is entered. Accordingly, we adopt the general rule that although "at the time of entry of default, the facts alleged by the plaintiff in the complaint are deemed admitted, plaintiff's conclusions of law are not deemed established." 10 *Moore's* 55.12(1). The argument that legal conclusions may be deemed admitted pursuant to a default judgment runs contrary to principles espoused by this Court and the spirit & intent of civil procedure rules in this country dating

back to at least 1885. Accordingly, the determination of whether one has committed arson, fraud, concealment, misrepresentation, or false swearing—each subject to criminal or civil liability—is a conclusion of law that can only be reached after applying particular rules of law to specific findings of fact. These acts cannot as a matter of law be "deemed admitted" pursuant to a default judgment merely because a party failed to answer or otherwise appear.

Colberg erred in finding as a matter of law, based solely on the legal conclusions alleged in Farmers Union's pleadings and subsequently decreed in the default judgment, that Brad had admitted to setting the fire. While it is uncontested that police investigated Brad, the allegation that he *intentionally* set it is not only contested by Nancy but Farmers Union has provided no substantiating evidence. Further, although Farmers Union did not allege in its complaint or summary judgment brief that Brad committed arson, which would have been a legal conclusion, it has claimed in its appeal brief that the "fire was declared an arson," "an arson fire [was] caused by [Brad]," and the fire was a "classic arson fire." The record contains no evidence to support either the allegation that he committed arson as defined under §45-6-103 or "intentionally" set the fire, both of which, absent any factual underpinning, are nothing more than conclusions of law.

Similarly, the allegations of "fraud, concealment, misrepresentation and false swearing" are conclusory statements of law unsupported by any legitimate evidence and therefore were not deemed admitted by Brad pursuant to the default judgment. Even taking Farmers Union's allegations of Lanes' past claims as true—however irrelevant they may be to this claim—the record offers no indication that Brad's application responses were not truthful or intentionally withheld information or that other carriers had ever denied coverage or canceled a policy due to misrepresentations.

**Nelson, Turnage, Gray, Regnier, Leaphart.**

*Lane v. Farmers Union Ins.*, 98-305, 10/21/99.

Kenneth Peterson (Peterson & Schofield), Billings, for Nancy; James Halverson (Herndon, Sweeney & Halverson), Billings, for Farmers Union.