

SUPREME COURT OF COLORADO

J.B., as legal guardian and personal representative of E.B., an adult with a disability v. MKBS, LLC d/b/a Metro Taxi, Inc. a/k/a Metro Transportation Planning and Solution Group and Jesus Manuel Ortiz

J.B., 2026 CO 50 (Colo. 2026) · No. 24SC747 · Decided June 23, 2026

SUMMARY

The Colorado Supreme Court held that a defaulting defendant may testify at a non-defaulting codefendant's trial, even when the testimony contradicts facts admitted through the default, when the testimony is relevant to the codefendant's defense. The court also upheld setting aside the default judgment based on excusable neglect and entering judgment for the defaulting defendant to avoid inconsistent adjudications with the jury verdict favoring the codefendant. Chief Justice Marquez dissented.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hood; Justice Boatright; Justice Gabriel; Justice Samour; Justice Berkenkotter; Justice Blanco; Chief Justice Marquez
JURISDICTION	Supreme Court of Colorado
DECIDED	June 23, 2026
DOCKET	24SC747
DISPOSITION	affirmed
PROCEDURAL POSTURE	J.B. sought certiorari review of a divided Colorado Court of Appeals decision affirming the district court's admission of a defaulting defendant's testimony at a non-defaulting codefendant's trial, setting aside of the default judgment, and entry of judgment in the defaulting defendant's favor. The Colorado Supreme Court granted certiorari and affirmed.
STANDARD OF REVIEW	The admission of testimony and the setting aside of a default judgment are reviewed for abuse of discretion. Whether a defaulting party may testify at a non-defaulting codefendant's trial and whether judgment may be entered in favor of a defaulting defendant to avoid inconsistent adjudications are reviewed de novo. Abuse of discretion occurs when

	the decision rests on a misapplication or misinterpretation of law or is manifestly arbitrary, unreasonable, or unfair.
PRECEDENTIAL VALUE	precedential
PARTIES	J.B., as legal guardian and personal representative of E.B., an adult with a disability v. MKBS, LLC d/b/a Metro Taxi, Inc. a/k/a Metro Transportation Planning and Solution Group, Jesus Manuel Ortiz

TOPICS

default judgment

default

civil procedure

evidence

negligence

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether a defaulting defendant may testify at a non-defaulting codefendant's trial in a manner contrary to facts deemed admitted by the default.
2. Whether the district court properly set aside the default judgment against Ortiz for excusable neglect under C.R.C.P. 60(b).
3. Whether the district court properly entered judgment in Ortiz's favor based on the jury verdict in MKBS's trial to avoid inconsistent judgments.

HOLDINGS

1. A non-defaulting codefendant may call a defaulting defendant as a witness at the codefendant's trial, including to testify contrary to facts admitted by the default, when the testimony is relevant to the non-defaulting defendant's liability and is not otherwise prohibited by law.
2. The district court did not abuse its discretion by setting aside the default judgment because Ortiz established excusable neglect and the court properly considered whether the neglect was excusable, whether Ortiz had a meritorious defense, and whether relief was equitable.
3. When defendants are similarly situated or have closely related defenses, a default judgment against one defendant may not stand if it would be inconsistent with a judgment on the merits in favor of a codefendant; the default judgment should be vacated and judgment entered in favor of the defaulting defendant when the codefendant's jury verdict negates the factual basis of the default judgment.

KEY QUOTATIONS

“Accordingly, a non-defaulting codefendant may call a defaulting defendant to testify, as long as doing so isn't prohibited by other sources of law.” (¶ 24)

“Therefore, when a jury verdict conflicts with the allegations in a plaintiff's complaint, a default judgment based on those allegations should be vacated.” (¶ 40)

FACTUAL BACKGROUND

E.B., a cognitively impaired, blind adult who uses a wheelchair, regularly used MKBS's transportation services, and Ortiz was her driver for several months. J.B. alleged that Ortiz sexually assaulted E.B. during one of the trips and sued Ortiz and MKBS on multiple tort and negligence theories. Ortiz defaulted, but later testified at MKBS's trial that he had not assaulted E.B.; the jury found in MKBS's favor and found that E.B. had no injuries, damages, or losses from the alleged assault.

PROCEDURAL HISTORY

J.B. sued Ortiz and MKBS over an alleged sexual assault. Ortiz failed to respond, and the district court entered a clerk's default against him under C.R.C.P. 55(a). After a jury found in MKBS's favor, the district court entered a nearly \$700,000 default judgment against Ortiz, later set it aside for excusable neglect, and entered judgment in Ortiz's favor based on the MKBS verdict. The Colorado Court of Appeals affirmed, and the Supreme Court of Colorado affirmed that judgment.

DISPOSITION

affirmed

CASES CITED

- Pinkstaff v. Black & Decker (U.S.) Inc., 211 P.3d 698 (Colo. 2009)
- Kwik Way Stores, Inc. v. Caldwell, 745 P.2d 672 (Colo. 1987)
- Murray v. Just In Case Bus. Lighthouse, LLC, 2016 CO 47M, 374 P.3d 443
- McMichael v. Encompass PAHS Rehab. Hosp., LLC, 2023 CO 2, 522 P.3d 713
- People v. West, 2025 CO 61, 578 P.3d 832
- People v. Chavez, 2020 COA 80M, 486 P.3d 377
- Dickinson v. Lincoln Bldg. Corp., 2015 COA 170M, 378 P.3d 797
- Bettcher v. State ex rel. Attorney General, 344 P.2d 969 (Colo. 1959)
- Public Utilities Commission v. Donahue, 335 P.2d 285 (Colo. 1959)
- Warembourg v. Excel Electric, Inc., 2020 COA 103, 471 P.3d 1213
- Henry v. Oluwole, 108 F.4th 45 (2d Cir. 2024)
- Ferraro v. Frias Drywall, LLC, 2019 COA 123, 451 P.3d 1255
- Brown v. Walker Commercial, Inc., 2022 CO 57, 521 P.3d 1014
- People v. Jackson, 2018 COA 79, 474 P.3d 60, aff'd, 2020 CO 75, 472 P.3d 553
- R.F. v. D.G.W., 560 P.2d 837 (Colo. 1977)
- In re Weisbard, 25 P.3d 24 (Colo. 2001)
- Buckmiller v. Safeway Stores, Inc., 727 P.2d 1112 (Colo. 1986)
- Davis v. Musler, 713 F.2d 907 (2d Cir. 1983)
- Frow v. De La Vega, 82 U.S. 552 (1872)

- In re Water Rights of Elk Dance Colorado, LLC, 139 P.3d 660 (Colo. 2006)
- Moore v. Booth, 122 F.4th 61 (2d Cir. 2024)
- Schenck v. Van Ningen, 719 P.2d 1100 (Colo. App. 1986)
- J.B. v. MKBS, LLC, 2024 COA 117, 563 P.3d 189

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