

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

2026 CO 50 · No. 24SC747 · Decided August 3, 2026

SUMMARY

The Colorado Supreme Court held that a defendant against whom default had been entered could testify at a codefendant's trial, even when the testimony contradicted facts admitted by the default. The court also upheld setting aside the default judgment based on excusable neglect and entering judgment for the defaulting defendant consistent with the codefendant's jury verdict. The court affirmed the judgment of the Colorado Court of Appeals.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Hood; Justice Boatright; Justice Gabriel; Justice Samour; Justice Berkenkotter; Justice Blanco
JURISDICTION	Supreme Court of Colorado
DECIDED	August 3, 2026
DOCKET	24SC747
DISPOSITION	affirmed
PROCEDURAL POSTURE	J.B. sought certiorari review of a Colorado Court of Appeals decision affirming the district court's admission of defaulting defendant Ortiz's testimony at MKBS's trial, the setting aside of Ortiz's default judgment, and the entry of judgment in Ortiz's favor based on the jury's verdict for MKBS.
STANDARD OF REVIEW	Questions of law concerning whether a defaulting defendant may testify at a non-defaulting codefendant's trial and whether judgment may be entered in favor of a defaulting defendant are reviewed de novo. The more fact-driven decisions to permit testimony, set aside a default judgment, and enter judgment for a defaulting defendant are reviewed for abuse of discretion. A district court abuses its discretion

	when its decision rests on a misapplication or misinterpretation of law or is manifestly arbitrary, unreasonable, or unfair.
PRECEDENTIAL VALUE	published precedential opinion
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 appellate procedure

PRACTICE AREAS

civil procedure evidence torts appellate procedure guardianships

QUESTIONS PRESENTED

1. Whether a defaulting defendant may testify at a non-defaulting codefendant's trial contrary to facts deemed admitted by the default.
2. Whether the district court properly set aside the default judgment against Ortiz under C.R.C.P. 60(b) based on excusable neglect, a meritorious defense, and equitable considerations.
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 to testify at the codefendant's trial, including testimony contrary to facts admitted by the default, so long as the testimony is not prohibited by another source of law and the defaulting defendant is not thereby challenging his own liability in a Rule 55(b)(1) damages hearing.
2. The district court did not abuse its discretion by setting aside Ortiz's default judgment under C.R.C.P. 60(b) because it properly considered whether the neglect was excusable, whether Ortiz had a meritorious defense, and whether relief was equitable.
3. When a jury verdict conflicts with the allegations supporting a default judgment, and the defendants are similarly situated or have closely related defenses, the default judgment should be vacated and judgment may be entered for the defaulting defendant to prevent inconsistent judgments.

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 taxi service, and Ortiz was her regular driver for several months. J.B. alleged that Ortiz sexually assaulted E.B. during one of those trips and sued Ortiz and MKBS on claims including assault, battery, negligence, negligent supervision, and respondeat superior liability. Ortiz failed to respond and was held in default, but later testified at MKBS's trial that he had not assaulted E.B.; the jury found for MKBS 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 under C.R.C.P. 55(a). During the later trial against MKBS, the court permitted Ortiz to testify contrary to the facts deemed admitted by his default; the jury found for MKBS. The district court later entered a nearly \$700,000 default judgment against Ortiz, 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 Colorado Supreme Court granted certiorari and affirmed.

DISPOSITION

affirmed

CASES CITED

- Pinkstaff v. Black & Decker (U.S.) Inc., 211 P.3d 698, 703 (Colo. 2009)
- Murray v. Just In Case Bus. Lighthouse, LLC, 2016 CO 47, ¶¶ 32, 41, 374 P.3d 443, 453, 455
- McMichael v. Encompass PAHS Rehab. Hosp., LLC, 2023 CO 2, ¶ 12, 522 P.3d 713, 718-19
- Ehrlinger v. Parker, 327 P.2d 267, 269 (Colo. 1958)
- People v. West, 2025 CO 61, ¶ 13, 578 P.3d 832, 835
- People v. Chavez, 2020 COA 80, ¶ 8, 486 P.3d 377, 378
- Dickinson v. Lincoln Building Corp., 2015 COA 170, ¶¶ 21, 37, 378 P.3d 797, 804, 806
- Bettcher v. State ex rel. Att'y Gen., 344 P.2d 969, 971 (Colo. 1959)
- Public Utils. Comm'n v. Donahue, 335 P.2d 285, 291 (Colo. 1959)
- Warembourg v. Excel Elec., Inc., 2020 COA 103, ¶ 1, 471 P.3d 1213, 1217
- Henry v. Oluwole, 108 F.4th 45, 49-56 (2d Cir. 2024)
- Ferraro v. Frias Drywall, LLC, 2019 COA 123, ¶ 15, 451 P.3d 1255, 1259
- Brown v. Walker Com., Inc., 2022 CO 57, ¶ 15, 521 P.3d 1014, 1018
- People v. Jackson, 2018 COA 79, ¶ 51, 474 P.3d 60, 72, aff'd, 2020 CO 75, 472 P.3d 553
- R.F. v. D.G.W., 560 P.2d 837, 839 (Colo. 1977)
- Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2d Cir. 1993)
- In re Weisbard, 25 P.3d 24, 26 (Colo. 2001)
- Buckmiller v. Safeway Stores, Inc., 727 P.2d 1112, 1116 (Colo. 1986)

- Davis v. Musler, 713 F.2d 907, 916 (2d Cir. 1983)
- Frow v. De La Vega, 82 U.S. 552, 554 (1872)
- In re Water Rights of Elk Dance Colo., LLC, 139 P.3d 660, 667 (Colo. 2006)
- Moore v. Booth, 122 F.4th 61, 67 (2d Cir. 2024)
- Schenck v. Van Ningen, 719 P.2d 1100, 1102 (Colo. App. 1986)
- J.B. v. MKBS, LLC, 2024 COA 117, 563 P.3d 189

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/supreme-court-of-colorado-supreme-court-of-colorado/2026/j-b-as-legal-guardian-and-personal-representative-of-e-b-an-psrdn8f8>