IN THE COURT OF APPEALS OF IOWA

No. 6-640 / 95-2239

IN RE THE MARRIAGE OF JULIE ANN BRASE AND TERRY MICHAEL BRASE

Upon the Petition of JULIE ANN BRASE,

Petitioner-Appellee,

And Concerning TERRY MICHAEL BRASE,

Respondent-Appellant.

FILED
NOV 27 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Terry Brase appeals the district court's refusal to vacate the parties' dissolution decree. **AFFIRMED.**

R. James Sheerer of Correll & Sheerer, Cedar Falls, for appellant.

Donna Lesyshen of Tyler & Lesyshen, Waterloo, for appellee.

Considered by Habhab, P.J., and Huitink and Vogel, JJ.

PER CURIAM

This is an appeal by a father claiming the district court should have granted his motion to vacate the parties' dissolution decree. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Julie and Terry Brase were married in 1983. They have three children. On July 21,1995, Julie filed a petition for dissolution of marriage. The parties signed a stipulation on July 25, 1995, which included a waiver of the ninety-day waiting period. Terry was not represented by an attorney during negotiations. He also signed a consent to the entry of a decree without representation. On July 28, 1995, the district court issued a dissolution decree for the parties which incorporated their stipulation. The parties agreed to joint legal custody, with Julie having primary physical care.

Terry filed a motion for new trial and motion to set aside default on September 26, 1995. The district court determined there had not been a default judgment. The court also determined the motion for new trial was untimely under Iowa Rule of Civil Procedure 247.

Terry then filed a motion to vacate the dissolution decree under rule 252. After the ruling on the previous motion, Julie moved with the children to Arizona. Terry claimed Julie knew of the proposed move, but did not tell him, in order to induce him to enter into the stipulation. No hearing was held on this motion. The

district court determined the motion was untimely. The court also found Terry had not alleged a sufficient basis to vacate the decree. Terry now appeals.

I. Terry claims his motion to vacate was not untimely. Under rule 253, a petition to vacate a decision must be filed within one year after the decision is issued. *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa App. 1992). We conclude the motion to vacate was not untimely.

II. Terry also claims the district court should have held a hearing on his motion. We conclude there was no need for a hearing in this case, because even if Terry's allegations are accepted as true, he still has not shown sufficient grounds to vacate the dissolution decree.

Terry's motion to vacate the decree is based on a claim of extrinsic fraud. Extrinsic fraud is some act or conduct of a party which has prevented a fair submission of a controversy, and includes lulling a party into a false sense of security or preventing him from making a defense. *In re Marriage of Heneman*, 396 N.W.2d 797, 800 (Iowa App. 1986). Only the most egregious misconduct will justify vacating a judgment based on extrinsic fraud. *Johnson*, 489 N.W.2d at 415. Extrinsic fraud must be shown by clear, unequivocal, and convincing evidence. *Miller v. AMF Harley-Davidson Motor Co., Inc.*, 328 N.W.2d 348, 353 (Iowa App. 1982).

Here, even if Julie had been planning to move to Arizona, her failure to share this information did not rise to the level of extrinsic fraud. Julie's conduct did not

prevent a fair submission of the controversy.

We affirm the decision of the district court. Costs of this appeal are assessed to Terry.

AFFIRMED.