FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ROSE MARIE WALK AND JOHN F. WALK

Upon the Petition of)
ROSE MARIE WALK,
Petitioner-Appellee,)

And Concerning)
JOHN F. WALK,
)
Respondent-Appellant.

Filed March 31, 1986

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85-649

Appeal from the Iowa District Court for Warren County (No. D 5-367) - M. C. Herrick, Judge.

Respondent appeals the district court's denial of his motion to set aside a default judgment in a dissolution action. **AFFIRMED.**

P. F. Elgin, of Elgin, Hoyman, Clogg & Patin, Indianola, Iowa, for respondent-appellant.

Mason J. Ouderkirk, of the Ouderkirk Law Firm, Indianola, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

SNELL, J.

Petitioner Rose Marie Walk and respondent John Walk were married on November 7, 1951. During the marriage, they accumulated a home valued at $50,000 and personal property valued at approximately $7,500.

On August 25, 1983, Rose Marie filed a suit for dissolution of marriage and John answered. John appeared pro se at a pretrial conference held in August of 1984. On October 24, 1984, an attorney made an appearance on behalf of John. On November 21, 1984, John's attorney filed a request for permission to withdraw which was subsequently granted. John never filed his affidavit of financial status, a witness list, and an exhibit list as ordered.

The court sustained Rose Marie's motion to compel discovery on December 26, 1984. On January 7, 1985, the court found John in default and struck his answer as a sanction for failure to comply with discovery. The court orally informed John that trial was scheduled for January 21, 1985, at 1:30 p.m. An order was entered on January 14, which set out the oral findings and ruling made by the court on January 7. A copy of the order was sent to John at the address given in his answer. John did not appear on January 21, and a decree of dissolution was entered.

John filed a motion to set aside default on February 19, 1985, asserted that his failure to appear was a result of mistake and inadvertence. At the hearing on the motion, John testified that he did not receive written notice of the trial since his mailing address had changed. John further stated that he mistakenly appeared at the courthouse at 9:00 a.m. on January 21. He claimed that he spoke with the clerk of court and the bailiff at that time, informed them that he would not be available in the afternoon, and the clerk advised him that he would not be in default. John also testified that he had a memory problem and is receiving treatment by a psychiatrist. The court ruled that, based on the record, it should not grant the motion in the interest of justice.

On appeal John contends that the trial court abused its discretion by denying his motion to set aside default.

Iowa R. Civ. Pro. 230 provides that a party shall be in default whenever he fails to present himself for trial or fails to comply with any order of court. However, Iowa R. Civ. Pro. 236 allows a default judgment to be set aside for "good cause" including "mistake, inadvertence, surprise, excusable neglect or unavoidable casualty."

A trial court is vested with broad discretion in ruling on a motion to set aside a default judgment. Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977).

> Such a ruling will be reversed on appeal only if this discretion is abused. Generally abuse will be found only where there is a lack of substantial evidence to support the trial court's ruling. We view the evidence in the light most favorable to the trial court's ruling and will uphold the same even where the trial court made no findings of fact or based its ruling upon a different ground. (Authorities cited).
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> The burden is upon the movant to show good cause as to one of the grounds stated in rule 236. [R.Civ.P.] 'Good cause' for setting aside a default judgment is a sound, effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect. The movant must show his failure to defend was not due to his negligence, want of ordinary care or attention, or to his carelessness or inattention. The movant must affirmatively show he intended to defend and took steps to do so, but because of some misunderstanding, accident, mistake or excusable neglect failed to do so. (Authorities cited). By the plain language of rule 236 good cause must be based on (1) mistake, (2) inadvertence, (3) surprise, (4) excusable neglect, or (5) unavoidable casualty.

In re Marriage of Huston, 263 N.W.2d 697, 698 (Iowa 1978)(quoting Paige, 252 N.W.2d at 437).

In this case, John's failure to appear and defend was mere inexcusable neglect. John was advised both orally and in writing of the date and time of

trial. John claims difficulty in receiving mail yet throughout the dissolution proceedings he resided at the same address. Furthermore, John discovered on the morning of January 21 for certain that the trial was scheduled for 1:30 that afternoon. A bald assertion of unavailability does not constitute excusable neglect or mistake. The record reveals nothing that prevented John from appearing at the time of trial and acting to avoid default. John's failure to appear and defend was also not caused or induced by any promise or misrepresentation by Rose Marie.

We conclude that no abuse of discretion attended the trial court's refusal to set aside the default decree.

AFFIRMED.