IN THE COURT OF APPEALS OF IOWA

No. 7-739 / 96-2019

IN RE THE MARRIAGE OF MARCIA RUTH SCHEPPELE AND JAMES E. SCHEPPELE

Upon the Petition of
MARCIA RUTH SCHEPPELE,

Appellant,

And Concerning
JAMES E. SCHEPPELE,

Appellee.

FILED
SEP 30 1998

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

Marcia Scheppele appeals from the district court's denial of her motion to vacate an order regarding division of profits from the sale of the parties' marital home. **AFFIRMED.**

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

Eric W. Johnson of Beecher, Rathert, Roberts, Field, Walker & Morris, P.C., Waterloo, for appellee.

Considered by Cady, C.J., Huitink, J., and Hayden, S.J.* Mahan, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HAYDEN, S.J.

Marcia Scheppele appeals from the district court's denial of her motion to vacate an order regarding division of proceeds from the sale of the parties' marital home. She contends the district court improperly modified the decree as modified by the court of appeals. She also requests interest be awarded to her on her share of the property award. Marcia further contends the court erred in failing to vacate its earlier order. We affirm.

In September 1992 Marcia and James Scheppele's marriage was dissolved. Among other things, the dissolution decree awarded the family residence to James and ordered him to pay Marcia her share of the equity in the home. Paragraph 9 of the order provided, in relevant part:

> [James] shall be required to pay [Marcia] the sum of $47,459.00 as her share of the equity in the property within 90 days of the date of this decree and shall further be required to refinance the property so that her name is removed from the mortgage and he shall further be required to extinguish the debt of $13,500.00 to [her] parents within 90 days . . . . In the event [James] fails to comply with this [sic] provisions of the Decree in the time frame set out, then the property shall be immediately listed for sale at its fair market value and sold as soon as possible with the parties to share equally in the proceeds after payment of the sales costs and property debts.

In March 1993 the district court entered an order regarding supersedeas bond in which it found James had refinanced the mortgage to acquiesce with the decree. The court stated Marcia executed a quit claim deed with respect to her interest in the property to achieve refinancing and, upon securing additional funds, James paid the

money due to Marcia's parents. However, the court found James halted compliance with the payment provisions when Marcia filed a notice of appeal from the decree as the provisions were placed in dispute on appeal. The district court opined Marcia's quit claim deed may have been rendered defective by the appeal.

The court of appeals affirmed the decree as modified:

> [W]e modify paragraph 9 of the . . . decree by deleting the amount of $47,459 (the amount [James] was to pay [Marcia]) and insert in lieu thereof the sum of $83,525 . . . . Paragraph 9 is further modified by inserting after the words "sales costs" . . . the words "payment to Marcia of $4276."

Following this ruling, James was unable to assume ownership and put the house up for sale on the open market. This was required by the decree because he had not fulfilled the earlier provisions. The parties could not agree on how the sale proceeds should be divided and James filed an application for clarification of the decree as modified by the court of appeals. In January 1996 the district court filed an order finding the house would be disposed of according to the alternative provision of the decree addressing equal division of proceeds on sale. The court stated the only modification made by the court of appeals to the alternative provision was the $4276 equalization payment James was to make to Marcia. Therefore, the court held the sale proceeds were to be divided equally after payment of sales costs, $4276 to Marcia, and property debts.

Upon sale of the house, Marcia would not release any liens unless she was paid $83,526 plus interest. The district court ordered her to execute a release of her

liens and authorized James to complete the sale in August 1996. In September Marcia filed a motion to vacate the district court's prior order clarifying the disposition of sale proceeds. She claimed James had fraudulently led the court to believe he was unable to assume ownership of the house. Marcia also claimed that the district court only had the power to enforce the court of appeals' judgment, not render a new one as she claims it did following the appeal. She thus argued the district court's orders following the appeal must be vacated for lack of jurisdiction. The court denied her motion to vacate in October 1996.

We review a proceeding to vacate a judgment on assigned errors; our review is not de novo. *In re Marriage of Kinnard*, 512 N.W.2d 821, 823 (Iowa App. 1993); *In re Marriage of Heneman*, 396 N.W.2d 797, 799 (Iowa App.1986). A trial court has considerable discretion in determining whether to afford relief when a vacation of judgment is sought. *Heneman*, 396 N.W.2d at 799. The trial court's findings of fact have the effect of a jury verdict, and those findings are binding upon us if substantial evidence supports them. *Id.* at 799-800 (citation omitted). From our review of the trial court's findings and the record as a whole, there is substantial evidence supporting the court's finding James had not committed fraud upon the court. The court found no evidence of fraud, either intrinsic or extrinsic. We conclude the court did not abuse its discretion in overruling Marcia's motion to vacate under Iowa Rule of Civil Procedure 252.

Marcia also claims the court should have vacated the January and February 1996 orders. She argues the court "exceeded its jurisdiction by substantially amending the property settlement awarded to the petitioner by the district court as modified by the Court of Appeals." The court found "the orders of the district court from and after September 16, 1994, have been in keeping with the directives of the trial court's decree as affirmed and modified by the Court of Appeals." We determine there is substantial evidence in the record to support this finding. Although the January and February 1996 orders of the court clarified how the proceeds from the sale of the house should be allocated, nothing in the orders changed the decree as originally issued or as modified by this court. Marcia essentially argued James should be forced to pay only under the first portion of paragraph nine and the last part of paragraph nine is moot. The district court found James did not fulfill the requirements of the first portion of paragraph nine and, therefore, properly sold the home on the open market and divided the proceeds according to the decree as modified. We determine the court did not abuse its discretion in overruling Marcia's motion to vacate on jurisdictional grounds.

Marcia also argues in her brief the district court erred in exercising jurisdiction over the issues in dispute, effectively rendering a new judgment after the appeal. We do not address this claim because it was not raised within the time for appealing the January and February 1996 orders. Iowa R. App. P. 5(a). We are without jurisdiction

to entertain this argument on appeal. *In re Estate of DeTar*, 572 N.W.2d 178, 182 (Iowa App. 1997).

Finally, Marcia asserts the district court erred in not awarding interest on the judgment for equity in the marital home. There was no interest provided for in the original decree. Marcia did not raise the issue when she appealed the decree. The January and February 1996 orders did not provide for interest on the award. Marcia did not appeal those orders. She cannot raise this claim in her appeal from the court's refusal to grant her motion to vacate because she waived the claim by not raising it on appeal and we are without jurisdiction to consider it. *Id.*

AFFIRMED.