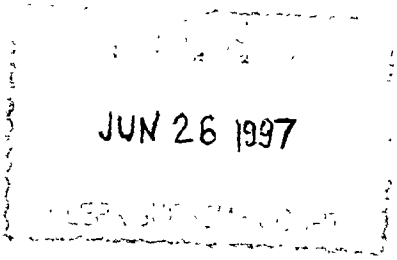
IN THE COURT OF APPEALS OF IOWA 000239

No. 6-787 / 96-0241



WILLIAM F. HOWARD,

Plaintiff-Appellant,

vs.

KATHERINA MARIE HOWARD
n/k/a KATHERINA MARIE GRESHAM,

Defendant-Appellee.

Appeal from the Iowa District Court for Buchanan County, William G. Klotzbach, Judge.

William Howard appeals a district court ruling dismissing his petition for equitable relief which challenged the dissolution of his marriage by a default decree.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Mark A. Tarnow of Wessels, Stojan & Stephens, P.C., Rock Island, Illinois, for appellant.

Robert J. Murphy of Roberts & Murphy Law Firm, Independence, for appellee.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

STREIT, J.

This is an appeal by a husband challenging the dissolution of his marriage by a default decree. He claims the district court did not have personal jurisdiction over him and the dissolution decree is invalid. We affirm the decision of the district court in part, reverse in part, and remand.

William and Katherina Howard were married in 1971. During the marriage they purchased an annuity in the amount of $15,000 from Pacific Fidelity Life Insurance Company. The parties owned the annuity as joint tenants, although Katherina was to receive the payments. The parties separated in 1988, and William moved to California. In March 1988, Katherina had the annuity transferred to her name alone.

William received correspondence from Katherina's attorney concerning a dissolution of the marriage. William claims he refused to sign the acceptance of service. A signed acceptance of service was placed in the court file. A default dissolution decree was entered on January 9, 1989. The decree awarded Katherina the parties' real estate, and awarded the parties the personal property and vehicles in each party's possession. The annuity was not specifically awarded to either party, but because the annuity had previously been placed in Katherina's name alone she received this asset.

William admitted he received a copy of the dissolution decree in January 1989. He gave a copy of the decree to his tax preparer. On his 1989 tax return he began listing Judy Howard as his common-law wife. Katherina remarried in February 1989, and is now known as Katherina Gresham.

In May 1991, William made some inquiries about the annuity. His representative, John Tuve, asked Katherina to surrender the annuity and divide the proceeds equally. On November 18, 1991, Katherina cashed in the annuity for $20,934. Pacific Fidelity informed William's attorney in June 1992 that the annuity had been surrendered.

On July 8, 1993, William filed the present action claiming Katherina defrauded him of his equitable share of the marital property. An expert witness testified the signature on the acceptance of service was not William's signature. The district court found the expert's testimony was credible. The court found William did not sign the acceptance of service, but specifically made no finding as to who might have signed William's name. The court determined that although no notice was given, William was nonetheless barred by the doctrines of laches and estoppel from asserting his claims. The court then dismissed William's petition. William's post-trial motions were denied. He now appeals.

Our review of this equitable action is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight

to the fact findings of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

William contends the dissolution decree was improperly obtained because personal jurisdiction over him was not obtained. He believes the dissolution decree is void and unenforceable. While an application to set aside a voidable judgment must be filed within one year under Iowa Rule of Civil Procedure 253, a judgment may be vacated at any time if it is void. *Holmes v. Polk City Savings Bank,* 278 N.W.2d 32, 35 (Iowa 1979). A judgment is void where it is rendered in violation of due process of law. *Johnson v. Mitchell,* 489 N.W.2d 411, 414 (Iowa App. 1992).

Restatement (Second) of Judgments section 65 provides that a judgment in default may be avoided if it was rendered without compliance with the rules regarding adequate notice. Comment b to this section states:

> Relief sought on the ground of the invalidity of the judgment may be obtained without regard to time limits, except when a statute of limitations applies to the claim for relief from judgment itself. . . . When the person against whom judgment was rendered did not have adequate notice, then the judgment is unjust because there was a denial of a fair opportunity to defend the action.

Restatement (Second) of Judgments § 65 cmt. b (1982). A substantial defect renders an original notice fatally defective; any judgment based thereon is void. *Morris Plan Co. v. Bruner,* 458 N.W.2d 853, 856 (Iowa App. 1990). Under this rule, the

dissolution decree is in question because William did not receive notice of the dissolution action.

The conventional method of attacking a judgment claimed to be void is by a suit in equity. *City of Chariton v. J.C. Blunk Construction Co.,* 253 Iowa 805, 817, 112 N.W.2d 829, 835 (1962); *In re Marriage of Thrailkill,* 438 N.W.2d 845, 848 (Iowa App. 1989). A party attempting to vacate a judgment in an equity suit has a heavy burden. *Johnson,* 489 N.W.2d at 415.

In some circumstances, a party may be denied relief in an action to set aside a void judgment. Our supreme court has held that a decree which was void for lack of legal notice must nevertheless be attacked within a reasonable time under the circumstances. *In re Marriage of Ivins,* 308 N.W.2d 75, 77 (Iowa 1981). The supreme court's decision is based on a comment in the first version of Restatement of Judgments:

> If a court would have jurisdiction to render a judgment over the defendant but for a technical failure of service, and the ensuing judgment would be void . . . , equitable relief may be denied to a person who has failed to intervene at the proper time.

Id. (quoting Restatement of Judgments §129 cmt. b (1942)).

The present case does not involve a mere technical failure of service. William did not receive notice of the pending dissolution action. Section 129 in the first

Restatement of Judgments corresponds to section 66 of Restatement (Second) of Judgments. Section 66 provides:

> Relief from a default judgment on the ground that the judgment is invalid will be denied if:
>
> (1) The party seeking relief, after having had actual notice of the judgment, manifested an intention to treat the judgment as valid; and
>
> (2) Granting the relief would impair another person's substantial interest of reliance on the judgment.

Restatement (Second) of Judgments § 66. Thus, the present Restatement makes it clear that a party should be denied relief from a void judgment only when that party had notice of the judgment. We determine the dissolution decree was void because the district court lacked jurisdiction over William.

We next turn to the question of whether the doctrines of laches or estoppel may bar William from attacking the decree. *See Swift v. Swift,* 239 Iowa 62, 68-69, 29 N.W.2d 535, 539 (1947). Laches is an equitable doctrine premised on unreasonable delay in asserting a right, which causes disadvantage or prejudice to another. *Sahu v. Iowa Bd. of Medical Examiners,* 537 N.W.2d 674, 676 (Iowa 1995). Equitable estoppel is a doctrine based on fair dealing, good faith, and justice. *In re Marriage of Halvorsen,* 521 N.W.2d 725, 728 (Iowa 1994).

We determine William is barred by the doctrine of laches from challenging the dissolution of the marriage. William did nothing for a substantial period of time

although he knew of the dissolution, was aware Katherina had remarried, and filed joint income tax returns with his common law wife. While William delayed seeking relief, Katherina acted in reliance on the dissolution decree and remarried. Neither party is asking to have the marriage reinstated.

In *Swift,* 239 Iowa at 67, 29 N.W.2d at 538, the supreme court determined the parties' dissolution decree was void because the husband had not received proper notice. The court went on to find that the husband was barred by the doctrines of laches and equitable estoppel from challenging the dissolution because he did not proceed with the utmost promptness to show the invalidity of the dissolution. *Id.* at 71, 29 N.W.2d at 540. The court found the husband had waited until after his former wife remarried, then sought to set aside the divorce based on a spirit of revenge and a desire to annoy and harass his former wife. *Id.* at 71-72, 29 N.W.2d 540-541. The wife was found to have acted in good faith throughout. *Id.* at 72, 29 N.W.2d at 541. Thus, the equities supported applying the doctrines of laches and equitable estoppel. *Id.* at 73, 29 N.W.2d at 541.

We find the present case is distinguishable from *Swift.* We make a distinction in this case between the application of the doctrine of laches regarding the dissolution of the marriage itself and the division of property in the dissolution decree. When weighing the equities in this case regarding the division of property, the weight goes to preserving William's claims. One who seeks equity must enter court with clean

hands. *In re Marriage of Phillips,* 493 N.W.2d 872, 878 (Iowa App. 1992). A party may be denied equitable relief based on his or her inequitable, unfair, dishonest, fraudulent, or deceitful conduct. *In re Marriage of Farr,* 542 N.W.2d 828, 832 (Iowa 1996). In particular, parties whose misleading tactics, concealment and misrepresentation exacerbate the situation cannot invoke estoppel and laches. *Kimm v. Kimm,* 464 N.W.2d 468, 474 (Iowa App. 1990).

Although the district court specifically did not make a finding concerning who had signed William's name to the acceptance of service, the court found it was not William. This means William's name was forged on the document. Katherina denied writing William's name on the acceptance of service. She did admit, however, that during the marriage she would sign and endorse his name on checks. We note that Katherina is the only party with a motive to sign William's name on the acceptance of service. Based on the inferences clouding the forged acceptance of service, we conclude Katherina did not come to court with clean hands. We do not believe she should be able to invoke the equitable doctrines of laches or estoppel on the issue of the division of property.

We determine the parties' dissolution of marriage was valid. We affirm in part, reverse in part, and remand for further proceedings on William's action for an accounting and an equitable division of the parties' marital property.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.