

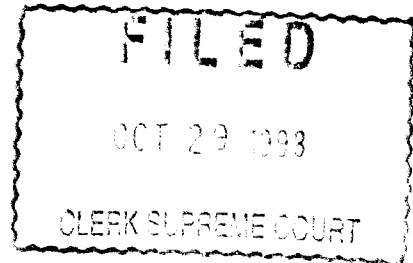
IN THE COURT OF APPEALS OF IOWA

No. 8-335 / 97-1065
Filed October 29, 1998

JOSEPHINE MACARTHY,
Appellee,

vs.

JOSEPH MACARTHY.
Appellant.



Appeal from the Iowa District Court for Johnson County, August F. Honsell,
Judge.

Joseph Macarthy appeals the district court's denial of his motion for retrial.

AFFIRMED.

Dennis A. Bjorklund, Iowa City, for appellant.

Karen Harris-Humphrey, Des Moines, for appellee.

Considered by Streit, P.J., and Vogel and Mahan, JJ.

PER CURIAM

A jury awarded Josephine Macarthy damages totaling \$220,000 for battery, assault, and emotional distress she suffered at the hands of her father, Joseph Macarthy. Joseph appeals from the district court's denial of his motion for a retrial, arguing there was good cause to set aside the judgment and he was denied due process of the law. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

Josephine Macarthy filed a petition at law against her father, Joseph Macarthy. He was served personally. Joseph filed an answer denying the allegations. He personally participated in a telephonic trial setting conference and was mailed a copy of the trial notice. He did not appear for trial. The jury awarded Josephine \$220,000.

Six months after the judgment, Joseph filed a motion for retrial under Iowa Rule of Civil Procedure 251(a),¹ claiming he never received notice of the trial date. Following a hearing, the district court denied the motion, determining rule 251(a) did not apply because Joseph was served personally, not by publication or mail.

¹ RULE 251. RETRIAL AFTER PUBLISHED NOTICE

(a) Retrial. Except in actions for dissolution of marriage and annulment of marriage, if judgment is entered against a defendant who did not appear and was served only by publication or by publication and mailing, as provided in R.C.P. 60.1, he or any person legally representing him may apply for retrial within six months after entry of judgment, and on giving security for costs is then entitled to his defense and trial as though there were no judgment.

We review the district court's ruling on a motion for retrial for an abuse of discretion. *See Bredberg v. Pepsico, Inc.*, 551 N.W.2d 321, 325 (Iowa 1996) (review of a denial of a motion for a new trial is for abuse of discretion). An abuse of discretion occurs when a ruling rests on grounds or reasons clearly untenable or unreasonable. *Squealer Feeds v. Pickering*, 530 N.W.2d 678, 681 (Iowa 1995).

Although Joseph denies being served, the file reveals personal service on him. Iowa Rule of Civil Procedure 251, therefore, does not apply. We affirm the ruling of the district court. Even if we were to consider this a motion for new trial under Iowa Rule of Civil Procedure 244, we would affirm because it would not have been filed timely. *See Iowa R. Civ. P. 247* (motions for J.N.O.V. or for new trial must be filed within ten days after the verdict).

Joseph also claims a violation of due process. This issue was not preserved for review because it was not raised in and decided by the district court. We do not address issues for the first time on appeal, even constitutional issues. *In re N.W.E.*, 564 N.W.2d 451, 455 (Iowa App. 1997).

AFFIRMED.