FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MINNIE IRENE TARBELL AND PAUL STEPHEN TARBELL

UPON THE PETITION OF MINNIE IRENE TARBELL,	)	227
Petitioner-Appellant,	)	Filed September 25, 1986
AND CONCERNING PAUL STEPHEN TARBELL,	)	6-261 85-1724
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Appanoose County (263-1182), Richard J. Vogel, Judge.

Petitioner appeals from an order denying her request to set aside the parties' dissolution decree. **AFFIRMED.**

Donald W. Harris, Bloomfield, for petitioner-appellant.

Greg A. Life, Oskaloosa, for respondent-appellee.

Considered by Oxberger, C.J., Snell, and Sackett, JJ.

OXBERGER, C.J.

The appellant challenges the district court's denial of her petition filed pursuant to Iowa Rule of Civil Procedure 252(b) seeking to set aside the decree dissolving her marriage. We affirm.

Our standard of review is on error. Jacobson v. Leap, 249 Iowa 1036, 1041, 88 N.W.2d 919, 922 (1958). The trial court has considerable discretion in deciding whether to afford relief when vacation of a judgment is sought. In re Marriage of Bauder, 316 N.W.2d 697, 700 (Iowa Ct. App. 1981). A discretionary ruling is presumed correct and will be overturned only where an abuse of discretion has been demonstrated. Sheer Construction, Inc. v. Hodgman and Sons, Inc., 326 N.W.2d 328, 334 (Iowa 1982). "An abuse of discretion is found only where the discretion is exercised on grounds or for reasons clearly unreasonable." Id. The trial court's findings of fact have the effect of a jury verdict and are binding if supported by substantial evidence. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981).

Rule 252(b) of the Iowa rules of Civil Procedure empowers a court to vacate or modify a final judgment influenced by irregularity or fraud. An irregularity within the meaning of rule 252(b) is defined as follows:

> The doing or not doing that, in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. Violation or nonobservance of established rules and practices. The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner.

Forsmark v. State, 349 N.W.2d 763, 767 (Iowa 1984).

The appellant contends that an irregularity occurred in the underlying dissolution action because her husband failed to submit an affidavit of financial affairs, thus preventing the dissolution court from entering a decree which

divided the marital property equitably as provided in Iowa Code section 598.21(1)(1985). In addition, she asserts that the dissolution was influenced by an irregularity because her attorney encouraged her to sign a settlement agreement which divided the parties' assets inequitably.

We agree with the trial court's finding that although the appellee failed to file an affidavit of financial affairs, he provided the same financial information in other forms. The failure to file an affidavit therefore cannot be said to have been of consequence and did not constitute an irregularity under rule 252(b). See Fournier v. Fraternal Order of Eagles Waterloo Aerie No. 764, 368 N.W.2d 849, 852 (Iowa Ct. App. 1985)(where irregularity did not impact upon result, it should not result in reversal); Jacobson v. Leap, 239 Iowa at 1041, 88 N.W.2d at 921-22 (inconsequential procedural irregularity in providing notice held insufficient to warrant vacation of judgment).

The appellant also asserts that an irregularity occurred because the dissolution court failed to independently decide whether the property division in the settlement agreement was equitable. This contention, however, was not presented in the petition to set aside the decree, nor was it ruled upon by the trial court. It is well established that, "[i]ssues must ordinarily be presented to and passed upon by the trial court before they may be raised and decided on appeal." State Farm Mutual Auto Insurance Co. v. Pflibsen, 350 N.W.2d 202, 207 (Iowa 1984). Thus, we are precluded from addressing this issue.

The appellant's final contention is that the conduct of her attorney in encouraging her to sign the settlement agreement constituted an irregularity within the meaning of rule 252(b). There is a presumption that in negotiating a settlement agreement, an attorney is acting with the authority of his client. Dragstra v. Northwestern State Bank of Orange City, 192 N.W.2d 786, 790 (Iowa 1971). This presumption, however, is overcome by clear and convincing evidence

to the contrary, in which event the judgment must be vacated. Id. at 791; Sloan v. Jepson, 217 Iowa 1082, 1084, 252 N.W. 535, 536 (1934). We agree with the trial court that the evidence presented in the instant case fails to support the appellant's contention that her attorney lacked authority to accept the settlement agreement or that he pressured her into accepting it.

AFFIRMED.