FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF FLORENCE M. DAVIS AND NORMAN R. DAVIS

Upon the Petition of)
FLORENCE M. DAVIS,)
Petitioner-Appellee,)
And Concerning)
NORMAN R. DAVIS,)
Respondent-Appellant.)

Filed November 24, 1981

1-387
2-66572

Appeal from Black Hawk District Court - William G. Klotzbach, Judge.

Respondent appeals from an order under Iowa R. Civ. P. 252 which vacated in part the decree dissolving his marriage to petitioner. REVERSED AND REMANDED.

John S. Pieters of Pieters & Pieters, Waterloo, Iowa, for respondent-appellant.

Ronald J. Pepples and Marie A. Condon, Marshalltown, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Respondent. Norman R. Davis, appeals from a March, 1981, order under Iowa R. Civ. P. 252 which vacated in part the May, 1980 decree dissolving his marriage to petitioner, Florence M. Davis. We reverse the order and reinstate the original decree.

The parties' dissolution decree, filed on May 23, 1980, incorporated provisions of a stipulation signed by both, dividing their property and awarding Florence alimony of $100 per month through December of 1985. On July 30, 1980, Florence filed a petition to vacate the judgment pursuant to Iowa R. Civ. P. 252(b) on the ground that it was obtained through "irregularity." The trial court determined, following a hearing on Florence's petition, that "irregularity" had been practiced in obtaining the dissolution decree. On March 18, 1981, the trial court entered an order deleting from the dissolution decree those provisions relating to property division and alimony (both of which were based upon the stipulation filed in the cause). A further hearing was granted for purposes of redetermining those issues at a later time.

A petition to vacate a judgment under rule 252 is not triable de novo on appeal. The trial court's findings have the effect of a jury verdict. Claeys v. Moldenschardt, 260 Iowa 36, 39-40, 148 N.W.2d 479, 482 (1967); Windus v. Great Plains Gas, 255 Iowa 587, 593-94, 122 N.W.2d 901, 905 (1963). In passing upon such a petition, the trial court has considerable discretion, and we will not reverse unless an abuse is shown. This discretion is not final or conclusive, however, and must have some support in the record. Id.

In the present case, the record reflects that prior to trial of the dissolution proceeding, which was a default proceeding with evidence presented to the court by Florence alone, she had expressed some dissatisfaction with the terms of the stipulation to her attorney (not present counsel). She was advised by her attorney at this time that she did not have to accept the stipulation and could ask the court to determine the economic issues. Faced with this choice, Florence elected to proceed to take a default decree on her petition, and she tendered to the court as the basis for the property settlement and alimony award the very stipulation of which she now complains.

In seeking to set aside the decree under rule 252, Florence's principal complaints are that her attorney did not encourage her to litigate the economic issues rather than accept the settlement offered by Norman. We are unable to accept this contention as a sufficient showing of irregularity in obtaining the judgment to warrant the granting of relief under Iowa R. Civ. P. 252(b). We accordingly reverse the trial court's order and remand the matter for entry of an order dismissing Florence's petition.

REVERSED AND REMANDED.