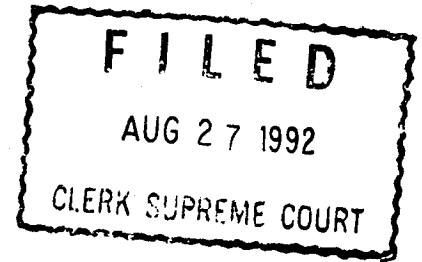


IN THE COURT OF APPEALS OF IOWA

No. 2-083 / 91-827

IN RE THE MARRIAGE OF WENDELL MERLE MEESTER AND
DEBRA JOY MEESTER



Upon the Petition of

WENDELL MERLE MEESTER,

Appellant,

And Concerning

DEBRA JOY MEESTER,

Appellee.

Appeal from the Iowa District Court for Grundy County,
Robert E. Mahan, Judge.

The husband appeals a district court order granting a
new trial after a dissolution decree had been entered
without the wife's knowledge. **AFFIRMED.**

Gary Papenheim, Parkersburg, for appellant.

Donald B. Redfern of Redfern, Mason, Dieter, Larsen &
Moore, Cedar Falls, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

DONIELSON, J.

Wendell and Debra Meester were married in 1978. They have two children. Wendell filed a petition for dissolution of marriage in March 1990. Debra accepted service of the petition, but never answered. For a period of time the parties attempted a reconciliation.

In 1991 the parties decided to proceed with the dissolution. They then entered into a stipulation. Wendell was represented by an attorney, Gary Papenheim, during the stipulation negotiations, but Debra was not represented by counsel. She signed an affidavit, provided by Papenheim, which stated she had decided not to be represented by counsel. On Wendell's suggestion, some additional terms were placed in the stipulation, and both parties signed the revised stipulation on March 6, 1991.

On March 8, 1991, Debra contacted Papenheim and asked if the stipulation could be changed. Papenheim advised her the stipulation could be changed if both parties agreed to the changes. Debra then informed Papenheim she wanted a larger property settlement and a provision concerning health insurance.

On the next day, Saturday, March 9, Debra discussed her proposed changes with Wendell. The parties attempted to negotiate a cash property settlement, but could not agree on an amount. Debra then informed Wendell she no longer agreed to the stipulation and she might obtain counsel before the dissolution proceeded to trial. Shortly after

this discussion, Wendell contacted Papenheim and told him what had occurred. Papenheim advised Wendell the stipulation was binding and they could take it to court in order to "prove up" the divorce.

On Monday, March 11, Wendell and Papenheim appeared before Judge Roger Peterson with the stipulation. They did not inform Debra of their action. Furthermore, they did not advise the court that Debra no longer agreed to the stipulation or that she had indicated she might obtain counsel. The district court entered a decree of dissolution in accordance with the terms of the stipulation.

Once Debra found out the decree had been entered she obtained counsel. She then filed a motion for new trial and a motion to set aside the judgment. The court denied her motion to set aside the judgment, but granted her motion for new trial. At the hearing on her motions, Judge Peterson testified that if he had been advised Debra wanted to make changes to the stipulation he would not have entered the decree. He also testified that if he had been advised she wanted an attorney or that she wanted to be present he would not have entered the decree. Wendell has appealed the grant of the motion for a new trial.

I.

In ruling on a motion for a new trial, the trial court has broad discretion to determine whether the verdict effectuates substantial justice between the parties. Iowa

R. App. P. 14(f)(3). We are slower to interfere with the grant of a new trial than with its denial. Iowa R. App. P. 14(f)(4). Generally, a trial court has broad discretion in passing on motions for new trials and only when there is a clear abuse of discretion will we interfere with a ruling upon the motion. Houvenagle v. Wright, 340 N.W.2d 783, 785 (Iowa App. 1983).

II.

Wendell contends Debra is not entitled to a new trial. He relies on the case of Dragstra v. Northwestern National Bank, 192 N.W.2d 786, 792 (Iowa 1971), which held that a motion for a new trial is not appropriate where there has been no trial in the first place, as where the case is decided by summary judgment. Wendell states there was no actual trial in this case because due to the stipulation there were no issues in dispute.

We first note that Wendell is incorrect in his assertion that the stipulation was binding on the parties. We have previously held that a settlement stipulation in a dissolution proceeding is a contract between the parties and becomes a final contract only when it is accepted and approved by the court. In re Marriage of Hansen, 465 N.W.2d 906, 908 (Iowa App. 1990). It is not sufficient that a party's consent may at one time have been given; consent must exist at the very moment the court undertakes to make the agreement the judgment of the court. Id. Where a party rejects a stipulation at the time of trial

the court has no authority to enter a consent decree based upon the stipulation. Id.

We also note that this dissolution proceeding is not similar to a summary judgment, where there are no genuine issues of material fact and one party is entitled to judgment was a matter of law. We find Dragstra is not applicable to this case.

III.

Wendell also contends Debra is not entitled to a new trial because she has not shown that she comes within any of the listed reasons for granting a new trial in Iowa Rule of Civil Procedure 244. The reasons for granting a new trial must fairly appear in the record. Northrup v. Miles Homes, Inc., 204 N.W.2d 850, 861 (Iowa 1973).

The factual situation of the present case is somewhat similar to that of In re Marriage of Johnson, 311 N.W.2d 697 (Iowa App. 1981). In Johnson, counsel for both parties told the court they were unable to locate the wife. Id. at 698. The dissolution decree was entered without the wife being present. Id. However, later evidence showed the husband's attorney knew how to locate the wife but did not inform the court or opposing counsel. Id. at 699. We concluded the wife was entitled to a new trial on the ground there had been misconduct by the prevailing party. Id.

Rule 244(b) allows for a new trial if there has been misconduct by the prevailing party. In the present case

Wendell and his counsel represented to the court that the stipulation was the agreement of the parties, even though they knew Debra wanted to change the stipulation. They also failed inform the court that Debra had expressed a desire to obtain counsel before the case proceeded to trial. Furthermore, Wendell and his counsel did not tell Debra they were going to "prove up" the dissolution on March 11, 1991. We conclude the district court did not abuse its discretion in granting a new trial.

AFFIRMED.