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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LAURA JEAN CARTER, )
Petitioner-Appellee, ) Filed June 24, 1980
vs. )
JERRY LYNN CARTER, ) 0-164
63854
Respondent-Appellant. )

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Appeal from Guthrie District Court - Thomas A. Renda, Judge.

Respondent appeals trial court order refusing to set aside default dissolution decree, contending there was good cause for his failure to defend. REVERSED AND REMANDED.

F. Richard Lyford of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, for respondent-appellant.

Charles W. Carlberg of Don Carlos & Carlberg, Greenfield, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Respondent, Jerry Lynn Carter, appeals trial court order refusing to set aside default dissolution decree. On appeal, Jerry contends there was good cause for his failure to defend since he mistakenly believed petitioner, Laura Jean Carter, had dismissed her petition. He also argues the dissolution decree should be vacated pursuant to Iowa R. Civ. P. 252 on the ground it was procured by fraud. We reverse the trial court's ruling and remand this case for a new trial on Laura's petition.

I.

The parties established a common-law marriage in 1976. In January 1979 Laura filed a petition in Guthrie County seeking a dissolution of this marriage. Jerry was personally served with notice of this action. On April 16, 1979, the Guthrie County District Court entered a default dissolution decree, noting Jerry had not appeared personally or by counsel. The court awarded Laura custody of the parties' one child and required Jerry to pay child support.

On April 23, 1979, Jerry filed a motion to set aside the default decree, alleging Laura had told him sometime in March 1979 she was dismissing her dissolution petition. In his affidavit attached to the motion, he stated he had filed a separate petition in Polk County on April 6, 1979, after hearing Laura's representations. At a hearing on his motion, Jerry was unable to recall precisely when Laura told him she had dismissed her petition, but alleged her statement occurred during a conversation regarding a temporary child custody and support hearing. Jerry's father testified Laura also told him about dismissing her petition during a separate conversation concerning the temporary child custody and support hearing. Laura denied telling either man she had dismissed the petition. The Guthrie County District Court, without stating its reasoning, overruled Jerry's motion to set aside the default decree.

II.

A trial court is vested with broad discretion in ruling on a motion to set aside a default judgment. In re Marriage of Huston, 263 N.W.2d 697, 698 (Iowa 1978) (quoting Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977)). Such a ruling will be reversed on appeal only if this discretion is abused; generally abuse of discretion is found when there is a lack of substantial evidence to support the trial court's ruling.

This court views the evidence in the light most favorable to the trial court's ruling and will uphold it even where the trial court made no fact-findings or based its ruling on a different ground. Id. Abuse of discretion will be found more readily, however, where a motion to set aside a default has been denied than where it has been granted. Kreft v. Fisher Aviation, Inc., 264 N.W.2d 297, 303 (Iowa 1978); Windus v. Great Plains Gas Co., 255 Iowa 587, 593, 122 N.W.2d 901, 905 (1963).

The burden is on Jerry as the movant here to show good cause existed to excuse his failure to defend. "Good cause" for setting aside a default judgment is a sound, effective, and truthful reason for not defending, something more than an excuse, a plea, an apology, an extenuation, or some justification for the resulting effect. Gaynor v. Gaynor, 246 Iowa 1039, 1042, 70 N.W.2d 923, 924 (1955); Svoboda v. Svoboda, 245 Iowa 111, 118, 60 N.W.2d 859, 863 (1953); Iowa R. Civ. P. 236. The movant must show the failure to defend was not due to his or her negligence, want of ordinary care or attention, carelessness, or inattention. Good cause must thus be based on mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty. Iowa R. Civ. P. 236.

A proceeding to set aside a default judgment under Iowa R. Civ. P. 236 is a proceeding at law. Gateway Transportation Co. v. Phillips and Phillips Co., 261 N.W.2d 175, 177 (Iowa 1978). The findings of the trial court are binding on us if supported by substantial evidence. Id; Lemke v. Lemke, 206 N.W.2d 895, 897 (Iowa 1973); Gordon v. Gordon, 200 N.W.2d 527, 528 (Iowa 1972).

We hold the trial court abused its discretion since its findings are not supported by substantial evidence. Under these facts, we find good cause for setting aside the default judgment on the basis of the mistake by Jerry. See Gordon, 200 N.W.2d at 528-29. Jerry apparently construed Laura's statement the temporary custody and support proceeding had been discontinued to mean the entire dissolution suit was terminated. His father's testimony that he also understood Laura's independent statements to him to mean she had terminated the entire dissolution proceeding collaborates Jerry's testimony. Although Laura denied saying she had withdrawn her petition, she does not deny having a conversation with either person during this period. The fact Jerry filed a petition for dissolution on April 6, 1979, further strengthens our view he thought Laura had dismissed her proceeding: why else would he file a separate action?

We also find defendant intended to defend in the suit, which is a circumstance tending to show good cause. Paige, 252 N.W.2d at 437. He testified he contacted several lawyers after receiving Laura's petition in January, but all of them refused to take his case. He talked to Laura about the case; and, after allegedly misconstruing what she said, he filed his own petition for dissolution of their marriage. We note Laura did not mention the continued existence of her suit after receiving personal notice of Jerry's suit, even though they talked after she received this notice. Laura also did not amend at trial her petition, filed January 3, 1979, which stated a separate action for dissolution of marriage had not been commenced by Jerry and no such action was pending in any court, even though she had received notice of Jerry's action being filed.

We do not find substantial evidence in the record to support the trial court's ruling and, therefore, reverse and remand this case for a new trial on Laura's petition. This result is consistent with our policy of allowing trials on the merits. See Kreft, 264 N.W.2d at 305 (Uhlenhopp, J., concurring specially).

REVERSED AND REMANDED.