FILED 245
DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JANET ELAINE BECK AND KENT EDWARD BECK

Upon the Petition of )
JANET ELAINE BECK, ) Filed December 30, 1981
Petitioner-Appellee, )
And Concerning )
KENT EDWARD BECK, ) 1-279 / 2-65392
Respondent-Appellant. )

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Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

The husband appeals from the trial court's refusal to set aside a default modification of the parties' dissolution decree. AFFIRMED.

Ronald E. Runge of Runge & Runge, Sioux City, for respondent-appellant.

Paul W. Deck of Deck & Deck, Sioux City, for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson, Carter, and Johnson, JJ. Snell, J., takes no part.

PER CURIAM

The husband appeals from the trial court's refusal to set aside a default modification of the parties' dissolution decree. We affirm.

The wife filed her application for modification of the dissolution decree on November 30, 1977, which was granted after a hearing in a decision filed August 21, 1978. The husband did not appear, nor was he represented by counsel. On March 13, 1980, the husband filed an application to set aside the modification on the grounds that he was a member of the Armed Forces and subject to the protection of the Soldiers and Sailors Relief Act, and that he had not received notice of the pendency of the action for modification. The trial court, in a ruling filed June 9, 1980, denied the application to set aside the modification. The husband appeals.

The court which heard petitioner's application for modification in 1978 determined that it had jurisdiction to modify the decree based upon mailed notice to respondent at his last known address as prescribed by prior order of the court fixing time and place of hearing. The giving of such notice was established by affidavit. The sufficiency of this notice to confer jurisdiction is not challenged on this appeal. We note that this type of notice comports with that which was approved in Droste v. Droste, 231 Iowa 216, 1 N.W.2d 107 (1941).

The trial court found that at the hearing on the application for modification, the husband was not present, nor was he represented by counsel. The court also found that the husband was at all times a member of the Armed Forces. Further, 50 U.S.C.A. App. § 520(1) requires that the petitioner-wife file an affidavit of military service, which she did not do. These findings are undisputed by either party on appeal.

The husband argues that the above requires that the modification decree be set aside. However, 50 U.S.C.A. App. § 520(4) requires that in order to obtain relief, the person must show that he was prejudiced, and that he has a "meritorious or legal defense to the action." The husband did not make any such claim in the court below, nor does he on appeal. Therefore, the trial court was correct in denying the application to set aside the modification.

AFFIRMED.