IN THE COURT OF APPEALS OF IOWA

No. 6-391 / 95-1259

000238

FILED
FEB 26 1997
CLERK SUPREME COURT

IN RE THE MARRIAGE OF BRENDA K. LAURITSEN AND JOHN C. LAURITSEN

Upon the Petition of
BRENDA K. LAURITSEN, n\k\a BRENDA K. BIRCHELL

Petitioner-Appellee,

And Concerning
JOHN C. LAURITSEN,

Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers, Judge.

John Lauritsen appeals from the district court's denial of his application to vacate the parties' dissolution decree entered as a default judgment. **AFFIRMED.**

Paul J. Bieber of Gomez, Mary, Cartee & Schulte, Davenport, for appellant.

Lawrence J. Lammers of McCarthy & Lammers, Davenport, for appellee.

Considered by Cady, P.J., Huitink, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

CADY, J.

Brenda and John Lauritsen were married in 1987. Brenda filed for divorce on August 16, 1994. John signed an acceptance of service on or before August 29, 1994.

John suffered from depression. He was hospitalized for mental health problems after he learned Brenda wanted a divorce. He was released from the hospital on August 23, 1994.

Shortly after John was released from the hospital, Brenda and John met at a park to discuss their divorce. John prepared a list of the parties' assets and brought the list with him to the meeting. John testified he felt the meeting produced some agreement with regard to the division of assets.

Brenda testified she and John discussed a list of property at the meeting held at the park. The meeting lasted approximately thirty minutes and ended badly with Brenda crying. Brenda testified she and John never came to an agreement about the division of assets.

Shortly after the meeting, John drove by himself to Indianapolis for a drag race. He called Brenda frequently, speaking to her at least ten times and frequently leaving messages on her answering machine. He told Brenda he would never give her a divorce. Brenda repeatedly told John he needed to get an attorney and speak with his attorney about his concerns.

Five and a half months after filing the petition, Brenda appeared in court to prove up the divorce. John never spoke to an attorney and never entered an appearance. The district court judge entered the decree.

Brenda subsequently contacted John and informed him about the decree. John then hired an attorney and filed an application to vacate the decree. John asserted he and Brenda had reached an agreement about property division. He argued he would have obtained an attorney earlier if he knew the agreement would not be reflected in the decree. Furthermore, he claimed his psychiatric condition during the pendency of the dissolution was another factor contributing to his failure to act.

John's application to vacate the decree was denied. The district court found no evidence Brenda agreed to the property division prepared by John and presented to her at the meeting in the park. The court further found John was told several times to obtain an attorney and failed to do so. The court concluded John's mental health did not prevent him from obtaining counsel. John appeals.

Trial courts are vested with broad discretion in ruling on a motion to set aside a default and we reverse such a ruling only if this discretion is abused. *Central Nat'l Ins. Co. of Omaha v. INA*, 513 N.W.2d 750, 753 (Iowa 1994). Generally, we find an abuse only when there is a lack of substantial evidence to support the district court's ruling. *Id.* (citing *Paige v. City of Charlton*, 252 N.W.2d 433, 437 (Iowa 1977)). Further, we are bound by the district court's findings of fact if supported by substantial evidence, and we view the evidence in the light most favorable to the

district court's ruling. *Id.* (citing *Flexsteel Indus. Inc. v. Morbern Indus. Ltd.*, 239 N.W.2d 593, 596 (Iowa 1976)).

Iowa Rule of Civil Procedure 236 provides:

> [o]n motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation.

"Good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect. Good cause also requires at least a claimed defense asserted in food faith." *Id.* at 754 (citations omitted).

Substantial evidence supported the findings of fact made by the trial court. The record clearly supports a finding no agreement was reached regarding the distribution of assets. Moreover, John's argument he misunderstood the lack of an agreement is not supported by the evidence. Brenda repeatedly told John, prior to entry of the default judgment, he should secure counsel. Finally, substantial evidence supports the finding John had the capacity to understand the significance of the dissolution proceedings. The record fails to establish good cause to set aside the default decree of dissolution of marriage entered between the parties.

AFFIRMED.