IN THE COURT OF APPEALS OF IOWA

No. 8-698 / 97-1871
Filed July 23, 1999

IN RE THE MARRIAGE OF DENISE RONK n/k/a DENISE McMILLEN AND RICHARD RONK

FILED
JUL 23 1999
CLERK SUPREME COURT

Upon the Petition of
DENISE RONK n/k/a DENISE McMILLEN,

Petitioner-Appellant,

And Concerning
RICHARD RONK,

Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson and Timothy O'Grady, Judges.

Petitioner appeals a district court order granting respondent a default judgment on his petition to modify the child support provisions of the parties' dissolution decree. **AFFIRMED.**

Frank E. Robak, Sr. of Robak & Springer, Council Bluffs, for appellant.

Michael J. Murphy of Rodenburg Law Offices, P.C., Council Bluffs, until withdrawal, then Richard Ronk, Council Bluffs, pro se, for appellee.

Considered en banc.

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HUITINK, J.

Denise Ronk appeals the decision of the district court granting Richard Ronk a default judgment on his petition to modify the child support provisions of the parties' dissolution decree. We affirm the decision of the district court.

The marriage of Richard and Denise Ronk was dissolved by decree on June 1, 1981. Pursuant to the decree, Denise was granted primary physical care of their only child, Ryan, born January 1980. Richard was ordered to pay $150 in monthly child support. In 1982, the parties stipulated Denise would provide medical insurance for Ryan and Richard would pay the amount of the additional cost to Denise.

In January 1995 the parties entered into a new stipulation which transferred physical care of Ryan to Richard. Denise was not required to pay child support. Richard was ordered to provide medical coverage for Ryan, but the parties were to be equally responsible for any uninsured medical expenses.

In September 1996 Richard filed a petition to modify the decree, claiming a substantial change in circumstances had occurred since the last modification and Denise should now be required to pay child support. He alleged Denise was employed full-time and had sufficient income to help support Ryan and that the expenses of raising Ryan, who was then sixteen, had increased dramatically.

Denise filed an answer. The modification hearing was set for June 6, 1997. Denise's counsel telephoned Richard's counsel and left a message stating he wanted a continuance because his daughter's graduation was the same day set for the hearing. Richard's counsel did not return the call. No continuance was filed. Neither Denise

nor her counsel appeared for the hearing on June 6, 1997. The district court entered a default judgment against her.

On August 5, 1997, the district court filed an order modifying the dissolution decree. Based on the statements of Richard's counsel, the court estimated Denise's annual income was $15,000. The court ordered Denise to pay child support of $260 per month. The court ordered these payments would continue until Ryan reached the age of twenty-two if he was a good faith full-time student.

On August 15, 1997, Denise filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial, and for a stay of execution. She alleged Richard had failed to prove a substantial change of circumstances. On September 17, 1997, Denise filed an amendment requesting the court to set aside the default in the event the court did not sustain her other motions.

The district court overruled Denise's motions for judgment notwithstanding the verdict and for new trial. The court also denied her request to set aside the default. The court found Denise failed to demonstrate excusable neglect sufficient to warrant setting aside the default. Denise appealed.

I. Denise contends modification is improper in this case because Richard failed to show a substantial change in circumstances. She points out the district court did not make a specific finding there had been a substantial change in circumstances. No testimony was taken in the case, and Denise asserts there is insufficient evidence to show there had been a substantial change in circumstances.

Modification proceedings are reviewed de novo. Iowa R. App. P. 4. Under Iowa Code section 598.21(8), a court may modify the child support provision of a dissolution decree when there has been a substantial change in circumstances. *In re Marriage of Reitz,* 585 N.W.2d 226, 229 (Iowa 1998). The party seeking modification must prove the change in circumstances by a preponderance of the evidence. *In re Marriage of Walters,* 575 N.W.2d 739, 741 (Iowa 1998).

Section 598.21(9) provides:

> [A] substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to subsection 4 . . . .

Here, Denise was not paying any child support. However, under the child support guidelines she would be required to pay $260 per month. This is clearly a variation of more than ten percent, and we conclude there has been a substantial change in circumstances sufficient to warrant a modification of Denise's child support obligation.

II. Denise claims the district court should have set aside the default judgment against her on the basis of excusable neglect. She states that although a motion for continuance was not filed, her counsel did contact Richard's counsel and advise him of the need for a continuance. Richard's counsel mistakenly believed the case had already been continued on a previous occasion and advised the court he would not agree to a continuance.

We vest district courts with broad discretion in ruling on a motion to set aside a default. *Millington v. Kuba,* 532 N.W.2d 787, 790 (Iowa 1995). We will reverse only if there has been an abuse of discretion. *Id.* Generally, we find an abuse of discretion only when the district court decision is not supported by substantial evidence. *Paige v. City of Chariton,* 252 N.W.2d 433, 437 (Iowa 1977). We review the evidence in the light most favorable to the district court's ruling. *Flexsteel Indus., Inc. v. Morbern Indus. Ltd.,* 239 N.W.2d 593, 596 (Iowa 1976).

Under Iowa Rule of Civil Procedure 236, one of the grounds for setting aside a default judgment is excusable neglect. *Millington,* 532 N.W.2d at 790. There are four factors a court considers to determine whether there has been excusable neglect:

> 1. Did the defaulting party actually intend to defend?
> 2. Does the defaulting party assert a claim or defense in good faith?
> 3. Did the defaulting party willfully ignore or defy the rule of procedure, or was the default simply the result of a mistake?
> 4. Whether relief is warranted should not depend on who made the mistake.

Central Nat'l Ins. Co. v. Insurance Co. of N. Am., 513 N.W.2d 750, 756 (Iowa 1994).

In viewing the evidence in the light most favorable to the district court ruling, we determine Diane willfully ignored the rules of procedure. She did not obtain a continuance and did not appear at the hearing. Although her attorney left a message with Richard's attorney, he did not actually speak to the attorney, and subsequently there was not even an informal agreement for a continuance. We find there was substantial evidence to support the district court's decision Denise failed to show

excusable neglect. The district court's ruling was not clearly unreasonable, and we conclude there was no abuse of discretion.

We affirm the decision of the district court. Costs of this appeal are assessed to Denise.

AFFIRMED.