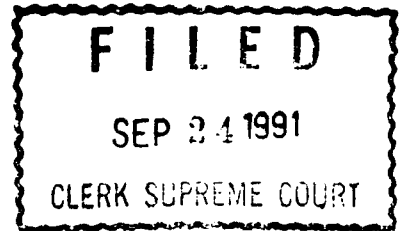


IN THE COURT OF APPEALS OF IOWA

No. 1-225 / 90-1488



IN RE THE MARRIAGE OF JERRY JOCHIMS AND ANITA JOCHIMS

Upon the Petition of

JERRY JOCHIMS,

265

Appellee,

And Concerning

ANITA JOCHIMS,

Appellant.

Appeal from the Iowa District Court for Des Moines
County, R. David Fahey, Judge.

Respondent seeks to set aside a default judgment
entered against her. **AFFIRMED.**

David A. Hirsch of Beckman & Hirsch, Burlington, for
appellant.

Michael G. Dieterich of Cahill, Dieterich & Schilling,
Burlington, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab,
JJ.

HAYDEN, J.

On November 3, 1986, the district court dissolved the marriage of Jerry and Anita Jochims. On August 7, 1989, Jerry filed an application for citation of contempt and an application for disbursement of real estate proceeds. The real estate proceeds were awarded to Jerry in the 1986 dissolution decree. Anita was personally served with an original notice of these applications, but neither attorneys Meardon nor Ford who had represented Anita in the dissolution proceeding were served.

After receiving the original notice of the applications, Anita attempted to call attorney Meardon on three occasions but was unable to reach him. Anita took no further action.

On February 28, 1990, 205 days after the service of process upon Anita of the original notice, Jerry obtained an ex parte default judgment and was awarded \$12,500 which was being held in an escrow account. Jerry did not serve the application for default judgment or the order for judgment by default upon Anita.

On May 14, 1990, Jerry presented the judgment to the escrow agent and received the funds. Anita first learned the escrow funds had been disbursed when she received the escrow statement on May 31, 1990.

On July 23, 1990, Anita moved to set aside the default judgment. The district court held the motion was untimely under Iowa Rule of Civil Procedure 236 because her motion

was filed more than sixty days after entry of the default judgment. Thus, Anita's motion to set aside the default judgment was denied.

Anita appeals claiming because the applications were filed under the same docket number as the 1986 dissolution action, an action in which she was represented, Jerry was required to serve her counsel then of record in addition to the personal service she received.

The trial court is vested with broad discretion in ruling on a motion to set aside a default judgment. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987). Abuse of this discretion will be found only where there is a lack of substantial evidence to support the trial court's ruling, for the trial court's findings of fact in deciding the motion have the force of a jury verdict. Id. If there is no factual issue, as in this case, the question is one of law and we are not bound by the determination of the trial court. Id.

Applications for citation of contempt and for disbursement, similar to modification actions, are supplementary to the original dissolution suit. Opperman v. Sullivan, 330 N.W.2d 796, 797 (Iowa 1983); In re Marriage of Meyer, 285 N.W.2d 10, 11 (Iowa 1979). In a supplementary action, the parties are entitled to notice and an opportunity to resist. Meyer 285 N.W.2d at 11. Under Iowa Rule of Civil Procedure 56.1(a), the original notice may be served by delivering a copy to the individual

personally. This is exactly what Jerry did. Furthermore, although a court's jurisdiction continues after a divorce decree as to supplementary causes of action, an attorney's representation does not. Id. at 11-12. Therefore, we conclude Jerry was not required to serve Anita's counsel of record in the 1986 dissolution action. Personally serving Anita with the original notice of the applications was sufficient.

Anita next contends Jerry was required to serve her with a copy of the application for default judgment and the order for judgment by default. We disagree. Because Anita did not formally file an appearance during the 205 days between service of process and entry of the order for judgment by default, Anita was not entitled to notice and opportunity to respond to the application for default judgment. Iowa R. Civ. P. 87; Kreft v. Fisher Aviation, Inc., 264 N.W.2d 297, 302 (Iowa 1978). Likewise, Jerry was not required to serve Anita a copy of the order for judgment by default. Iowa R. Civ. P. 82(a) & 82(f); Kreft, 264 N.W.2d at 302.

Therefore, we must address whether the trial court abused its discretion in its failure to grant relief to Anita from the default judgment under rule 236. Rule 236 provides:

On 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.

Anita filed her motion to set aside the default judgment 145 days after the judgment entry. The trial court was correct in not affording Anita relief because her motion to set the default aside was not filed within the sixty-day limitation period explicitly provided for in rule 236. Kreft, 264 N.W.2d at 303. Accordingly, we need not determine whether good cause was shown to set aside the default judgment.

Anita also asks to be awarded attorney fees on appeal. Iowa trial courts are permitted considerable discretion in allowing attorney fees and costs in dissolution actions. In re Marriage of Morehead, 224 N.W.2d 242, 245 (Iowa 1974). The present action, however, is not an original dissolution action, an appeal therefrom, or a modification. A motion to set aside a default judgment is a separate action from the parties' dissolution action and is triable at law. Bank of Craig v. Hughes, 398 N.W.2d 216, 217 (Iowa App. 1989). Anita's request for appellate attorney fees is denied. Costs of appeal are assessed to Anita.

AFFIRMED.