IN THE COURT OF APPEALS OF IOWA

No. 7-340 / 96-722

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IN RE THE MARRIAGE OF SANDRA KAY SEVERS AND PATRICK LEROY SEVERS

Upon the Petition of
SANDRA KAY SEVERS,

Appellant,

And Concerning
PATRICK LEROY SEVERS,,

Appellee.

FILED
AUG 22 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Sandra Severs appeals from an order setting aside a default judgment and decree she had obtained in this case. **AFFIRMED.**

Cynthia Z. Taylor of Zamora, Taylor & Walters, Davenport, for appellant.

J.E. Tobey III, Davenport, for appellee

Considered by Sackett, P.J., Huitink, J., and Perkins, S.J.*

*Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

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PERKINS, S.J.

Sandra Severs filed a petition for dissolution of her marriage to Patrick Severs on September 25, 1995. On February 23, 1996, Sandra was granted a default judgment and decree under Iowa Rule of Civil Procedure 230 as Patrick had failed to enter an answer.

On March 13, 1996, attorney J.E. Tobey III filed a motion to set aside the default judgment. The district court found attorney Mike Liebbe had represented Patrick, but that between the filing of the petition and the entry of default, Patrick and Liebbe had fallen out and Liebbe told Patrick he was withdrawing. Patrick then consulted another attorney who took a retainer check and the file but never did anything in the case. The case was set for July 1996. The district court found Patrick's failure to file an answer was excusable neglect. The district court further noted that the decree awarded considerably more in value to Sandra. Thus, the district court granted Patrick's motion to set aside the default judgment.

Sandra appeals, claiming Patrick was aware of the proceedings and that he needed to obtain an attorney but did nothing to show he intended to defend until after the default was taken five months after service of original notice.

I. Scope of Review

In this equity action our review is de novo. Iowa R. App. P.4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek,* 305 N.W.2d 448, 452 (Iowa 1981).

II. Issue

Appellant contends the district court erred in setting aside a judgment pursuant to rule 236 of the Iowa Rules of Civil Procedure.

The motion to set aside the default judgment and decree was argued by counsel for both parties. In its written findings, the district court concluded, after considering the record, that respondent intended to defend the action; that respondent had an attorney file an appearance for him; and that the appearance remained on file and the case had been set for trial. The district court further found that respondent was aware his original attorney appearing for him intended to withdraw that appearance. The respondent then consulted another attorney who took a retainer check and the file but apparently did nothing in the case.

The district court determined that on the basis of these facts and we quote from the ruling "It is understandable and would be excusable neglect and surprise on the part of the Respondent who is not an attorney to have the case go by default when it, as far as he would understand, had been set for trial."

The appellee in his brief quoted from *Hastings v. Espinosa,* 340 N.W.2d 603 (Iowa App. 1983):

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> In granting or denying a motion to set aside a default, the trial court is vested with wide discretion and its findings on disputed facts are entitled to the same weight as a jury verdict. [Cite] The trial court, likewise, has considerable discretion in deciding whether to afford relief when a vacation of a judgment is sought, and we are more inclined to find abuse of discretion when relief from the judgment has not been granted than when it has been.

Id. at 608.

In this matter we view the case de novo and consider the entire record. We look to *Hastings* only for guidance and not as controlling. We find the district court considered all of the facts, and we agree that good cause exists for setting the default aside. We affirm the district court.

Each party shall pay their own attorney. Each party shall pay one-half of the costs.

AFFIRMED.