

IN THE COURT OF APPEALS OF IOWA

No. 7-159 / 96-920

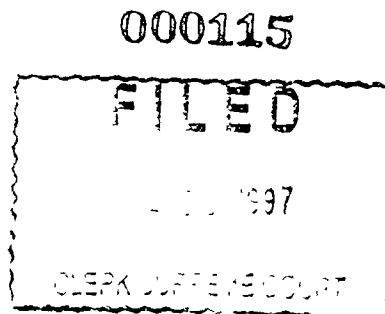
**IN THE MATTER OF THE ESTATE OF
THELMA DUGGER, DECEASED**

PATRICIA WILLIAMS,
Plaintiff-Appellant,

vs.

**DON BATES, Executor, GLEN GILDRA
DUGGER, and MARJORIE GATEWOOD,**

Defendants-Appellees.



Appeal from the Iowa District Court for Keokuk County, James D. Jenkins,
Judge.

Plaintiff appeals a district court ruling dismissing her petition to vacate
summary judgment. **AFFIRMED.**

Roger W. Sunleaf of McNeil & Sunleaf, Montezuma, for appellant.

Garold F. Heslinga of Heslinga, Heslinga & Dixon, Oskaloosa, for appellees.

Considered by Habhab, C.J., and Sackett, and Cady, JJ.

PER CURIAM

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Plaintiff-appellant Patricia Williams (plaintiff) appeals the denial of her motion to vacate summary judgment. We affirm on appeal pursuant to Iowa Supreme Court Rule 9.

On March 7, 1994, plaintiff filed a petition to set aside the probate of a will. Defendants-appellees (defendants) answered, counterclaimed, and then filed interrogatories. Plaintiff's answers to the interrogatories were clearly incomplete.

The court granted defendants' motion to compel plaintiff to provide complete answers to interrogatories. When plaintiff did not comply, defendants moved for summary judgment. That motion was fixed for hearing and notice given. Plaintiff not only failed to appear but also neglected to file a resistance. On March 15, 1995, the trial court granted summary judgment and dismissed plaintiff's petition.

There the matter rested until March 12, 1996, when plaintiff moved to vacate the summary judgment, arguing her attorney was incapacitated due to major surgery. Defendants resisted. At the hearing, the evidence presented consisted of affidavits of plaintiff and her attorney. The trial court denied the motion, finding it was not supported by competent proof.

A trial court may vacate a judgment within one year for "unavoidable casualty or misfortune preventing the party from prosecuting or defending." Iowa R. Civ. P. 252, 253. Proceedings to vacate a judgment are triable at law. The moving party has the burden to prove good cause that would require a finding of unavoidable casualty.

Hastings v. Espinosa, 340 N.W.2d 603, 608 (Iowa App. 1983). "Good cause" means "a sound, effective and truthful reason -- something more than an excuse, plea, apology, extenuation or some justification for the resulting effect." *Id.* (quoting *Hansman v. Gute*, 215 N.W.2d 339, 342 (Iowa 1974)). The amount of evidence to support an application to vacate a final judgment is greater than that necessary to warrant setting aside a default. *Home Federal Sav. & Loan v. Robinson*, 464 N.W.2d 894, 895 (Iowa App. 1990).

Negligence is not unavoidable casualty or misfortune under Rule 252(e). *Id.* Unavoidable casualty or misfortune means some casualty or misfortune growing out of conditions or circumstances that prevented the party or his attorney from doing something that, except therefor would have been done. *Id.* at 895-96. After reviewing plaintiff's motion, we agree with the trial court that plaintiff has provided nothing more than an excuse. There is no evidence to support a finding that the illness of plaintiff's attorney prevented him from filing at least a resistance to the motion for summary judgment. There is evidence he did other legal business during the pertinent time frames. We find no abuse of discretion in the trial court's denying plaintiff's motion to vacate. Accordingly we affirm.

AFFIRMED.

Habhab, C.J., and Cady, J., concur; Sackett, J., specially concurs without opinion.