FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

274

IN RE THE MARRIAGE OF SANDRA DEE PAUL, n/k/a SANDRA DEE MILLER, AND GEORGE MARK PAUL

UPON THE PETTTION OF SANDRA DEE PAUL, n/k/a SANDRA DEE MILLER,

Petitioner-Appellant,

AND CONCERNING GEORGE MARK PAUL,

Respondent-Appellee.

Filed September 24, 1985

5-262
84-678

Appeal from the Iowa District Court for Clarke County, Robert O. Frederick, Judge.

The petitioner appeals from dismissal of her attempt to reopen the decree dissolving the parties' marriage. **AFFIRMED.**

Bruce Graham of Shelton, P. C., Chariton, for the petitioner-appellant.

Claire B. Patin of Elgin, Hoyman, Clogg & Patin, Indianola, for the respondent-appellee.

Considered by Oxberger, C.J., Snell, and Hayden, JJ.

OXBERGER, C.J.

The trial court below dismissed the petitioner's application to reopen the parties' dissolution decree, and we affirm.

In November 1980 the parties' marriage was dissolved and property rights settled. Three years later, in January 1984, petitioner Sandra Dee Paul filed this action to reopen the proceedings. She says that the respondent kept hidden from her his interest in his grandfather's farm. The respondent, George Paul, has a remainder interest in this farm, subject to the life estate of another. The trial court granted respondent's motion to dismiss on the grounds the action was not timely filed and the petition does not contain any statutory basis for granting relief.

In reviewing a motion to dismiss, we are to accept the facts pleaded as true. Board of Supervisors of Winneshiek County v. Standard Appliance Co., 249 Iowa 438, 440, 87 N.W.2d 459, 460-61 (1958). We are to determine whether it appears plaintiff is not entitled to relief under any state of facts which could be proved in support of the claims asserted. Symmonds v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co., 242 N.W.2d 262, 263 (Iowa 1976).

The petitioner insists this is not a modification request, but instead is a petition to reopen. We have noted that a motion to modify or vacate a final judgment is distinct from an action to modify a decree of dissolution because of a change in circumstances. In re Marriage of Bauder, 316 N.W.2d 697, 699 (Iowa Ct. App. 1981). Our rule of civil procedure 252 provides the manner in which a judgment may be modified or vacated. Pursuant to rule 253, such an action must be brought within one year of the judgment. However, petitioner points out that the supreme court has indicated that the court has inherent power to correct an impropriety such as the one outlined by petitioner after one year, but only if the grounds for such an application would have warranted

a new trial pursuant to rule 252. Sudbury v. Sudbury, 179 Iowa 1039, 1047, 162 N.W. 209, 211 (1917); Graves v. Graves, 132 Iowa 199, 202, 109 N.W. 707, 708 (1906). Therefore we must determine if the petitioner has shown grounds found at rule 252 exist in this case to warrant a new trial on the property issue.

The petitioner refers to the ground of fraud in her petition as a basis to reopen the decree, and in her resistance to the motion to dismiss also refers to the ground of mistake.

The type of fraud warranting the approval of a motion under rule 252 is extrinsic fraud, as opposed to intrinsic fraud. Bauder, at 699. The fraud must have obtained a result which would not have occurred but for the fraudulent conduct. Id; 27B C.J.S. Divorce § 300(4)(1959).

In her pleading, the petitioner asserts that "Since the time of the Decree of Dissolution" the respondent has endeavored to hide his interest in the property and has asserted he is unable to pay additional child support. Petitioner does not allege that respondent attempted to hide the existence of his interest during the proceedings. In fact, she was represented by counsel during the proceedings, but respondent was not. She has not presented any statement of facts in her petition indicating the decree was procured by fraud which occurred during the proceedings.

The petitioner also claims there was a mistake on her behalf regarding the existence of the property. In regard to the pertinent rule, it has been stated:

> "[T]here is no inclusion in Rule 252 of any right to vacate a judgment for mistake, inadvertence or exclusable neglect. There is a wide difference between these terms and 'unavoidable casualty or misfortune'. Mistakes may be made; inadvertance may be present; and excusable neglect covers a wide latitude of negligence. But none of these, which will justify setting aside a default, amounts to unavoidable casualty or misfortune" under Rule 252(e).

Copic v. Copic, 325 N.W.2d 766, 769 (Iowa Ct. App. 1982)(citing Windus v. Great Plains Gas, 225 Iowa 587, 595, 122 N.W.2d 901, 906 (1963)).

We find the petitioner has not alleged facts which would entitle her to reopen the decree and we affirm the trial court.

AFFIRMED.