FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JODY LEE MAY AND PAULA ANN MAY

UPON THE PETITION OF **JODY LEE MAY,**	)	
Petitioner-Appellee,	)	Filed November 30, 1983
AND CONCERNING **PAULA ANN MAY**	)	3-354 83-236
Respondent-Appellant.	)	

Appeal from Scott District Court, James R. Havercamp, Judge.

A May 1982 dissolution decree placed the parties two-year-old daughter in the husband's custody. The wife has appealed, challenging the court's refusal to vacate or modify the dissolution decree's custody award. AFFIRMED.

Dennis D. Jasper of Stafne, Lewis, Jasper, & Payson, Bettendorf, for respondent-appellant.

James M. Hood, Davenport, for petitioner-appellee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

OXBERGER, C.J.

A May 1982 dissolution decree placed the parties two-year-old daughter in the husband's custody. The wife later filed a petition to vacate or modify the decree pursuant to Iowa R. Civ. P. 252(b) on the ground that the husband had obtained a favorable custody award by practicing irregularity and fraud. The trial court found that the husband had given incorrect testimony at the dissolution hearing about his employment history and prospects, his income, and his high school grades; however, the court declined to vacate or modify the decree because it concluded that knowledge of the truth would not have resulted in a different custody award.

The wife has appealed, challenging the court's refusal to vacate or modify the dissolution decree's custody award. We affirm.

Our review of proceedings to vacate a judgment is not de novo, In re Marriage of Bauder, 316 N.W.2d 697, 700 (Iowa 1981), but on assigned errors. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981). The trial court's findings of fact have the effect of a jury verdict, and those findings are binding on us if there is substantial evidence to support them. Mishler at 747.

The general rule is when fraud is asserted as the ground for vacating a judgment, it has to be extrinsic fraud or collateral to the matter directly involved in the original case. Bauder at 699. Extrinsic fraud is some act or conduct of the prevailing party which has prevented a fair submission of the controversy. In re Marriage of Short, 263 N.W.2d 720, 723 (Iowa 1978). The trial court found that none of the evidence now submitted refutes the findings of fact and conclusions reached by the court initially about Jody's ability to be the custodial parent. It further found that although Jody's conduct at the dissolution hearing was irregular

and possibly fraudulent, had the evidence been discovered and produced at trial, it would not have changed the custody order. Although we will never condone perjury, we find that there is substantial evidence in the record to support the trial court's findings. As such, we are bound by those findings. See Mishler at 747.

AFFIRMED.