IN THE COURT OF APPEALS OF IOWA

No. 0-233 / 99-840
Filed August 16, 2000

IN RE MARRIAGE OF DANIEL JOHN STANBROUGH AND CHRISTINE ANN STANBROUGH

Upon the Petition of
DANIEL JOHN STANBROUGH,
Petitioner-Appellant,

And Concerning
CHRISTINE ANN STANBROUGH,
Respondent-Appellee.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Dallas County, Larry J. Eisenhauer, Judge.

The appellant seeks a reversal of the district court's order vacating the economic, custody, and support provisions of the parties' dissolution decree. **AFFIRMED.**

Thomas J. Levis of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis, P.C., Des Moines, for appellant.

Stacey N. Warren of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, and Tim Pearson of Laden and Pearson, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Daniel Stanbrough seeks a reversal of the district court's order vacating the economic, custody, and support provisions of the parties' dissolution decree. He claims Christine Stanbrough's motion to vacate was untimely and the evidence did not support a finding of irregularity or fraud sufficient to set aside the decree. We affirm the judgment of the district court.

I. Background Facts. Daniel and Christine Stanbrough married in 1975. They had three children; Jeffrey, born in October of 1976; Bradley, born in April 1979; and Diane, born in May 1982. Only Diane was a minor when the decree was entered. At the time their marriage was dissolved, Daniel and Christine were both forty years of age and had been married for twenty-two years.

Daniel was employed throughout the marriage in the real estate business. Prior to 1991, Daniel sold residential real estate. From 1991 to the present, he has been a commercial real estate broker and developer with Iowa Realty Commercial. From the time of the marriage until approximately 1993, Christine was primarily a homemaker. From 1988 until 1992, she worked part time in retail selling clothing. In 1993, Christine began working for Iowa Realty selling townhomes. Daniel controlled the couple's money and all financial matters throughout the marriage.

Daniel and Christine had persistent marital difficulties and saw counselors in 1985, 1995, and 1996-97. Christine filed for dissolution in August of 1995. No discovery as to financial matters was undertaken after the petition was filed. The parties reconciled, and on October 1, 1995, the petition was dismissed.

The marital problems continued over the course of the next several years.

Christine moved out of the family home in 1996 and returned in March of 1997 for a reconciliation attempt. Christine began an extramarital affair, which continued off and on to the time of the present dissolution. On December 18, 1997, Daniel walked in on Christine at her office while she was on the phone with her paramour. When he confronted her, Christine admitted it. Daniel then ran out of her office.

Daniel immediately began pressuring Christine to agree to a quick dissolution. The district court gave the following description of his activities:

> . . . On December 18, 1997, Daniel prepared a "dissolution agreement." He told Christine that the division of property and the terms contained in the document were fair. He warned her that if she did not sign this, she would incur substantial debt and would not get custody of Diane because of her affair. Dan had Christine sign the document. There was no discussion about the values of the properties, alimony or exchange of dollars. He told her the property set off for her would generate $35,000 in annual income.
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> Daniel told Christine on December 18, 1997, that she could not afford an attorney. He represented that they could save by using one attorney, and that as a result Christine would receive more.

II. Background Proceedings. On December 19, 1997, Daniel filed his petition for dissolution. Christine accepted service the same day. Daniel had most of the terms of the "dissolution agreement" reduced to a decree of dissolution by his attorney. The only changes were that the provision, "child support shall be one dollar per year" was omitted from the proposed decree as well as the term "1997 tax returns filed jointly."

On December 23, 1997, Daniel brought the decree home. He did not prepare a financial statement and did not discuss the preparation of one with his attorney. The trial court found Christine signed the dissolution decree without really looking at it. The decree contained a statement that the parties waived the

filing of financial affidavits. Christine never filled out a financial statement and did not see one prepared by Daniel. After she signed the decree, Daniel took it and did not give her a copy.

Daniel made sure Christine attended the Children In The Middle class. He drove her to the class, and escorted her in, and sat next to her until it was concluded.

Daniel told Christine they could be divorced by the end of the year if they could represent to the court that there would be a tax savings. On December 30, he informed Christine that his accountant said there would be $3,500 in tax savings if they were divorced by year's end. The intricacies and values of Daniel's business holdings were not discussed.

On December 31, Daniel called Christine at 9:00 a.m. and woke her up. He told her to get up because they "got a date with the judge." He picked Christine up at home and escorted her to the Dallas County Courthouse where they were met by Daniel's attorney. She was handed a joint motion to waive the ninety-day waiting period and signed it.

The parties appeared before the court with Daniel's attorney and a record was made. The court asked Christine several questions to determine if she was satisfied with the proposed decree—she assured the court that she was. The court offered to grant the dissolution of marriage that day but reserve decision on the other issues until Christine had an opportunity to consult an attorney of her choice—she refused. The court then signed the decree.

The decree awarded property worth approximately five million dollars to Daniel and $850,000 to Christine. It awarded joint legal and physical custody of

Diane to the parties. The decree established no child support and made no mention of the child support guidelines. The decree indicated that the parties waived the ninety-day waiting period and the filing of financial statements. Christine was not awarded alimony despite the fact Daniel had an income of $348,000 for 1997 and Christine an income of $36,024.

Daniel met with the accountant on January 13, 1998, to begin work on their tax returns. Christine was to have received a townhome in the dissolution to use as a personal residence. Around this time, she learned there was a problem with Daniel's trade on the townhome which left her unable to utilize it as her personal residence. Christine received no additional information or documentation of the properties awarded to her in the decree until February 20, 1998. On that date, Daniel told her one of the buildings she received had property taxes and an insurance payment due. He gave her files on three income properties she had received in the dissolution. After calling various property managers to discuss the buildings, she became aware of a number of significant problems and contacted counsel.

Christine filed a petition to vacate the decree on May 14, 1998. On June 15, 1998, Daniel filed a motion to dismiss. On July 1, 1998, he filed an answer as well as an application for a rule 253(b) determination. He also withdrew his motion to dismiss. Following hearing, the district court determined Christine had proved irregularities and extrinsic fraud in conjunction with the issuance of the decree and vacated the economic, custody, and support provisions.

On appeal, Daniel argues Christine's motion to vacate was untimely. Christine contends Daniel has not preserved error on this issue. Daniel also

contends the evidence did not support a finding of irregularity or fraud sufficient to vacate the decree.

III. Scope of Review. A proceeding to vacate a judgment under Iowa Rule of Civil Procedure 252 is an action at law. *In re B.J.H,* 564 N.W.2d 387, 390 (Iowa 1997) (citations omitted). The district court enjoys wide discretion in deciding to vacate an order under rule 252. *Id.* (citations omitted). We will not reverse a trial court's decision on this question unless an abuse of discretion has been shown. *Id.* In examining the record, we give the trial court's findings the force of a jury verdict. *Id.* If a trial court's factual findings are supported by substantial evidence, they are binding on appeal. *Id.* (citations omitted).

IV. Timeliness of Motion to Vacate. Iowa Rule of Civil Procedure 252(b) provides that "[u]pon timely motion and notice under R.C.P. 253 the court may correct, vacate, or modify a final judgment or order, or grant a new trial on any of the following grounds: . . . (b) irregularity or fraud practiced in obtaining it; . . . ." Rule 253 provides that a petition to vacate which seeks a new trial must show that the grounds for relief could not have been discovered in time to move for a new trial under rule 244. Rule 247 provides that the maximum time period for filing a motion for a new trial under rule 244 is ten days after judgment, which time period may be extended for good cause for an additional thirty days. Thus, Christine had the burden of establishing her grounds for relief were not and could not have been discovered within ten days of the filing of the decree or, for good cause shown, within an additional thirty days, if the argument was properly preserved by Daniel. *See* Iowa R. Civ. P. 247.

Christine filed her petition to vacate on May 14, 1998. At trial, the only

argument regarding timeliness asserted by Daniel was that Christine failed to file her petition to vacate within *ten* days of the decree's entry and that she could have discovered the economic inequities of the decree prior to expiration of those ten days. The trial court found Christine could not have discovered the grounds for relief in time to proceed with a motion for new trial within ten days. The court concluded Christine did not become aware of the economic discrepancy of the decree until January 13, 1998. The court further found she did not become aware of the requirements of Iowa Code Chapter 598 regarding alimony and child support until she met with counsel in February. Christine contends Daniel failed to preserve error on the issue of the timeliness of her petition to vacate as it related to the thirty-day, good cause provision of rule 247. She contends Daniel should have filed an application to enlarge findings, alleging the trial court failed to consider the good cause provision and its potential limitations.

We conclude error was preserved on the issue of whether Christine could have discovered the economic inequity of the decree and moved for new trial within ten days. This issue was raised at trial. However, the good cause extension time of thirty days was not raised below and we will not consider it as a factor here. Her petition to vacate was filed over four months after entry of the original decree, so Christine was required to show the information was not discoverable within ten days of entry of the dissolution decree.

The evidence at the hearing below supports the district court's conclusion that Christine's grounds for relief could not have been discovered within ten days after entry of the original decree. Although that time would have permitted her to consult an attorney regarding the alimony and child support issues, it would not

have permitted discovery of the misrepresented property values and the fact they would not yield income as Daniel promised. She also did not find out that she would not receive the townhome as a personal residence until mid-January of 1998. Furthermore, there was evidence that Christine's mental state suffered during that time and affected her capacity to assess the situation. We find sufficient evidence in the record to support the conclusion that Christine could not have discovered the alleged inequities of the decree and filed her petition to vacate within the ten-day standard of rule 247 or the thirty-day good cause standard of such rule.

V. Fraud under Rule 252(b). Rule 252(b) permits the court to vacate a judgment if "fraud was practiced in obtaining it." Fraud is of two types: extrinsic and intrinsic. Extrinsic fraud is conduct of the prevailing party which prevented a fair submission of the controversy. *B.J.H.*, 564 N.W.2d at 391. It includes lulling a party into a false sense of security or preventing a party from making a defense. *Id.* (citations omitted). Intrinsic fraud inheres in the judgment itself; it includes false testimony and fraudulent exhibits. *Id.* (citations omitted). Fraud sufficient to vacate a judgment under rule 252(b) must be extrinsic. *Id.* (citation omitted). The district court has wide discretion in determining whether to vacate an order under rule 252. *Id.*

The trial court found there was sufficient evidence of extrinsic fraud to warrant vacation of the economic and child custody provisions of the parties' decree. We conclude this finding is supported by substantial evidence. Christine testified Daniel took unfair advantage of her depressed mental state throughout a stressful and unduly abbreviated dissolution process. Daniel clearly failed to

disclose the family financial condition in order to minimize his financial exposure. Daniel repeatedly told Christine the settlement was fair despite his awareness that the proposed decree awarded him property worth approximately six times as much as that awarded to Christine. Daniel threatened that she would not see the children if she did not agree to the terms of the proposed settlement. The record reveals Daniel's claim that the decree needed to be finalized in 1997 for tax reasons was dubious at best. After the decree was entered, Daniel had his accountant prepare his tax return. The 1997 tax return showed approximately $348,000 in income, including capital gains. Daniel took the entire mortgage deduction for the homestead. Christine ended up owing state and federal taxes of between $15,000 and $18,000. Daniel was unable to recall how much he saved in taxes by finalizing the dissolution prior to the end of the year. He had no idea whether the claimed tax savings of $3,500 materialized. If there was any tax benefit to filing the decree of dissolution in 1997, it was a benefit that inured solely to Daniel. Christine's testimony, which the trial court found convincing, reveals she did not agree to the terms of the decree freely and voluntarily or with full knowledge of its implications. This evidence supports the trial court's finding of fraud. Fraud perpetrated by Daniel constitutes extrinsic fraud sufficient to justify vacation of the economic, custody, and support provisions of the decree of dissolution entered December 31, 1997.

The trial court also found that there was evidence of irregularity sufficient to justify setting aside the decree of dissolution pursuant to rule 252(b). In view of our findings that the evidence supports the trial court's finding of extrinsic fraud

sufficient to justify vacation of a portion of the decree, we need not address the issue of irregularity.

VI. Summary. There was substantial evidence to support the trial court's finding of fraud sufficient to vacate the decree under rule 252(b). The trial court did not abuse its discretion in vacating the economic, child custody and support provisions of the decree entered December 31, 1997.

AFFIRMED.