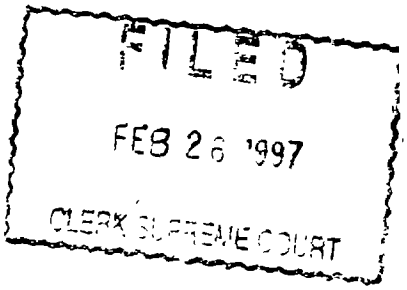
IN THE COURT OF APPEALS OF IOWA 000336

No. 6-770 / 95-2008



IN RE THE MARRIAGE OF PATSY JEAN SCHRAGE AND NEAL LEON SCHRAGE

Upon the Petition of
PATSY JEAN SCHRAGE,

Appellee,

And Concerning
NEAL LEON SCHRAGE,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge.

Neal Schrage appeals the district court's dismissal of his petition to vacate judgment. **AFFIRMED.**

Gary Papenheim, Parkersburg, for appellant.

Craig C. Ament, Waterloo, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

000337

PER CURIAM

This is an appeal by Neal Schrage claiming the district court improperly dismissed his petition to vacate a temporary support order filed March 10, 1993. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Patsy Schrage filed a petition for dissolution of her marriage to Neal in February 1993. On March 10, 1993, the district court entered a temporary order of support whereby Neal was to pay $1000 per month in child support and $250 per month in alimony.

On April 16, 1993, Neal filed a motion to reconsider the temporary allowances, which was granted on April 28, 1993. However, upon Patsy's appeal, this court concluded that Neal's motion to reconsider was an untimely motion under Iowa Rule of Civil Procedure 179(b) and, therefore, the district court was without jurisdiction to consider it.

On December 23, 1993, a final dissolution decree was filed.

On May 4, 1995, Neal filed this petition to vacate the March 10, 1993, temporary support order. Patsy's motion to dismiss was granted following a hearing. Neal appeals.

A motion to dismiss can only be sustained if the petition on its face shows no right of recovery under any state of facts. *Tate v. Derifield*, 510 N.W.2d 885, 887 (Iowa 1994). "On appeal we may affirm the district court ruling on any ground raised in the district court even if the ground is not one relied upon by the court." *Id.*

Neal's petition to vacate alleges that the March 10, 1993, order should be set aside due to fraud by Patsy within the meaning of Iowa Rule of Civil Procedure 252. Rule 252 requires such a petition to be"timely." Rule 253 provides that a rule 252 petition "must be filed in the original action within one year after the rendition of the judgment or order involved." Iowa R. Civ. P. 253(a). The temporary support order was filed March 10, 1993. Neal's petition was filed May 4, 1995. This is clearly beyond the one-year time limit of rule 253(a).

Neal asserts that Patsy's appeal stayed all proceedings regarding temporary support such that there was no final judgment until this court reversed the district court's reconsideration order and procedendo issued on September 1, 1994. We reject this argument.

The March 10, 1993, temporary support order was a final judgment for purposes of appeal. *See Bork v. Richardson*, 289 N.W.2d 622, 624 (Iowa 1980). Failure to take a timely appeal from such temporary orders results in waiver of the right of review. *In re Marriage of Springer*, 538 N.W.2d 897, 900 (Iowa App. 1995); *see also In re Marriage of Prybil*, 230 N.W.2d 487, 488 (Iowa 1975). The time for filing an appeal is not extended by the filing of an untimely rule 179(b) motion. *See Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466, 471 (Iowa 1978). This court has already determined Neal's rule 179(b) motion was untimely.

The temporary support order was final on March 10, 1993. A timely rule 252 petition, therefore, must have been filed within one year of that date. Neal's petition

000339

was not filed until May 4, 1995. We conclude the district court properly dismissed this untimely petition to vacate.

AFFIRMED.