FILED
DEC 27 1983
CLERK SUPREME COURT

574

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF JOYCE M. STUART AND NORMAN N. STUART

Upon the Petition of	)	
JOYCE M. STUART,	)	Filed December 27, 1983
Petitioner-Appellee,	)	
And Concerning	)	
NORMAN N. STUART,	)	3-341 / 2-69552
Respondent-Appellant.	)	

Appeal from Polk District Court - Luther T. Glanton, Judge.

Respondent appeals from the trial court's order granting petitioner's motion to reconsider and motion for new trial. AFFIRMED.

Richard D. Hermann, Ankeny, Iowa, and Kolleen K. Samek, Des Moines, Iowa, for respondent-appellant.

Thomas P. Hyland and Thomas P. Schlapkohl of Hyland, Laden & Pearson, Des Moines, Iowa, for petitioner-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Respondent, Norman N. Stuart, appeals from the trial court's order granting petitioner's motion to "reconsider" and motion for new trial. Norman asserts that petitioner's "motion to reconsider" was a motion for new trial pursuant to Iowa Rule of Civil Procedure 252(b), and the trial court abused its discretion in granting it. Norman also asserts that the trial court abused its discretion in granting petitioner's motion for new trial pursuant to Iowa Rule of Civil Procedure 244. Petitioner, Joyce M. Stuart, asserts that the motion to "reconsider" was a motion to amend findings and conclusions pursuant to Iowa Rule of Civil Procedure 179(b), and that Norman has not prepared the transcript which is necessary to support his contentions on this appeal. We affirm.

Joyce and Norman were married in 1962. They have three children: Cindy, born in 1963; Michael, born in 1964; and Nicholas, born in 1970. Joyce teaches painting and sells her art work. Norman is in the construction business.

A week after the trial court entered its dissolution decree, Joyce filed a "motion to reconsider and motion for new trial." Joyce challenged various provisions of the decree as inequitable and asked the court to reconsider its decree to make a ruling in conformity with the evidence. The motion to "reconsider" and motion for new trial were in separate divisions. The motion for new trial, however, incorporated all the paragraphs of the motion to "reconsider" without alleging additional grounds. The trial court granted Joyce's motion.

The petitioner's motion entitled "Motion to Reconsider And Motion for New Trial" was properly considered by the trial court to be a motion for a new trial pursuant to Iowa Rules of Civil Procedure 244. "A new trial is a retrial or reexamination, in the same court, of an issue, or issues, of fact after a trial." Dragstra v. Northwestern State Bank of Orange City, 192 N.W.2d 786, 792 (Iowa 1971) (quoting 66 C.J.S. New Trial § 1(a) at 61) (emphasis added). It is clear that this motion was not viewed by the trial court as an Iowa Rule of Civil Procedure

252 petition because the motion was not treated as a petition and set for trial as envisioned under Iowa Rule of Civil Procedure 253. It is clear from its ruling the trial court treated the "Motion to Reconsider And Motion for New Trial" as one motion. It may be true that petitioner intended for the motion to be a rule 179(b) motion to amend findings and conclusions joined with the rule 244 motion. See Iowa R. Civ. P. 179(b). Petitioner, however, did not specifically refer to which rule she was seeking relief under nor did she object to the basis for the trial court's ruling. Moreover, the parties address only the propriety of the grant of new trial on this appeal. The issue which we review, therefore, is whether the trial court abused its discretion in granting the motion for new trial pursuant to Iowa Rule of Civil Procedure 244(f).

In ruling on a motion for a new trial, the trial court has broad discretion to determine whether the verdict effectuates substantial justice between the parties. Iowa R. App. P. 14(f)(3). This court is slower to interfere with the grant of a new trial than its denial. Iowa R. App. P. 14(f)(4). Only when the evidence clearly shows that the trial court abused its discretion will we interfere. In re Marriage of Johnson, 311 N.W.2d 697, 699 (Iowa Ct. App. 1981). "[T]he discretion vested in the trial court to grant a new trial is a legal discretion, and must be predicated on the record; and where a verdict contrary to the one set aside could not, on the record, be permitted to stand, there is nothing to justify the exercise of discretion." Copeland v. Junkin, 198 Iowa 530, 534, 199 N.W. 363, 364 (1924). The discretion exercised must be based upon the record. Jacobsen v. Gamber, 249 Iowa 99, 102, 86 N.W.2d 147, 149 (1957). Where the motion for new trial contains numerous grounds, the granting of a new trial will be sustained if any one of the grounds is good. Greiner v. Hicks, 231 Iowa 141, 144, 300 N.W. 727, 730 (1941).

Iowa Rule of Civil Procedure 244(f) allows for a new trial if the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law. In its order dated November 22, 1982, trial court sustained the motion for a new

trial for the reasons set forth in the petitioner's motion. But c.f. Iowa R. Civ. P. 118. Petitioner, in her motion, alleged numerous factual discrepancies in the court's decision in valuation of assets and calculation of liabilities. Petitioner also alleged fraud by the respondent in transfer of certain trust property to himself. Most of petitioner's allegations, however, were over factual disputes and the alleged inequity of the final property division.

Where, as here, the disputes are principally factual, and there is substantial evidence to support the decision, the trial court should not grant a new trial merely because reasonable persons might disagree with its conclusions. See Northrup v. Miles Homes, Inc. of Iowa, 204 N.W.2d 850, 861 (Iowa 1973) (application of rule where jury makes decision). The entire record before us consists of the allegations made by the parties and the trial court's findings. The respondent chose not to order a transcript of the proceedings in this case. See Iowa R. App. P. 10(b). Respondent stated that "it is not necessary to include in the record on appeal in the above matter any part of the proceedings before this Court which are not already on file." The supreme court (per McCormick, J.), in denying the petitioner's motion to dismiss, ruled that if respondent had not prepared the record necessary to support his contention on appeal, the contention will be weakened to that extent. We may only speculate as to whether or not the entire record would show the trial court's original decision was sustained by sufficient evidence. In light of the record as developed for appeal, we conclude that trial court did not abuse its discretion in granting petitioner's motion for new trial.

AFFIRMED.