

FILED
AUG 29 1985
CLERK SUPREME COURT

$$\frac{5-284}{84-1169}$$

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

OXBERGER, C.J.

Appeal is made from the trial court's denial of defendant's motion to set aside default in his divorce decree, although no default was ever entered by the court. We affirm.

On the day scheduled for trial of this dissolution proceeding, the parties entered into a tentative settlement and presented their settlement to Judge Briles in chambers. Judge Briles accepted the terms of the settlement and directed the petitioner-wife's counsel to draft a proposed decree incorporating the terms of the settlement.

A few hours after the settlement conference, the appellant-husband telephoned his attorney and stated that he was dissatisfied with the settlement terms. He complained especially about the fact that the wife's property award included the sum of \$27,500, computed to be half the value of an appliance business operated by the husband.

After receiving this telephone call, the husband's attorney filed a "motion to set aside default." By this time a dissolution decree had been prepared in accordance with Judge Briles' instructions in chambers. Judge Briles signed this decree but ordered that it not be filed or docketed until a ruling had been entered on the husband's "motion to set aside default."

The court later overruled the husband's "motion to set aside default." The husband has appealed from this ruling. He contends the proposed decree should be set aside because his attorney pressured him into the purported settlement and because the settlement did not reflect either justice or his wishes. He argues that the wife should not be awarded any share in the appliance business, and he also complains that the proposed decree erroneously computes the share contemplated during the settlement negotiations.

In the second part of his argument, respondent also says that it was improper for the court to deny his motion to set aside the default because a default had not occurred and neither party was prejudiced.

We find respondent's second argument to be circular, and to provide the answer to his question on appeal. We agree no "default" ever occurred. Instead, a decree was entered and respondent is not satisfied. A motion to set aside an action by the court which never happened is not a proper method of attacking the decree.

Even if we were to consider respondent's contentions, we do not believe he has shown sufficient "mistake" to set aside the decree. The type of mistake which warrants setting aside a default pursuant to Iowa Rule of Civil Procedure 236 is like that described at Gordon v. Gordon, 200 N.W.2d 527 (Iowa 1972). There, the defendant in good faith wanted to defend against an application to modify a divorce decree, but he misplaced the notice and incorrectly advised his attorney the hearing was scheduled for 10:00 a.m. December 10, 1971. Id. at 528. The correct date for the hearing was 10:00 a.m. December 8, 1971. Id. That is unlike the situation here, where defendant intended to accept the settlement, and now is unhappy with it.

We affirm the trial court's denial of respondent's motion.

AFFIRMED.