

IN THE COURT OF APPEALS OF IOWA

No. 6-794 / 96-0485

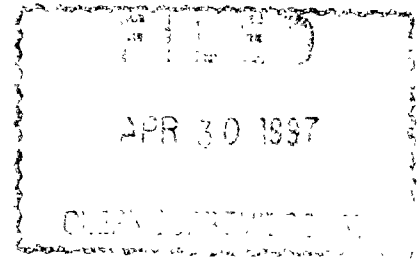
**IN RE THE MARRIAGE OF PATSY JO HOWELL
AND THOMAS CLOUSE HOWELL**

**Upon the Petition of
PATSY JO HOWELL,**

Petitioner-Appellee,

**And Concerning
THOMAS CLOUSE HOWELL,**

Respondent-Appellant.



Appeal from the Iowa District Court for Fremont County, James M.
Richardson, Judge.

Respondent appeals a district court ruling dismissing his motion to set aside
the default judgment dissolving the parties' marriage. **AFFIRMED.**

Stephen C. Ebke of Porter, Tauke & Ebke, Council Bluffs, for appellant.

Jennifer J. Rose, Shenandoah, for appellee.

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

HUITINK, J.

Patsy and Thomas Howell were married in 1973. The parties separated in March 1995, and Thomas moved to Oklahoma.

In May 1995, Patsy filed a petition for dissolution. Thomas signed an acceptance of service on June 30, 1995. He did not file an answer, or make any other appearance in the case. On December 13, 1995, the district court found Thomas was in default and entered a dissolution decree for the parties. Patsy was awarded a majority of the parties' assets. The decree required Thomas to pay Patsy alimony of \$900 per month until she is sixty-two years of age.

On January 29, 1996, Thomas filed a motion to set aside the default decree. In an affidavit, he claimed he had believed the parties would be entering into negotiations with regard to the various issues of the dissolution proceeding. He asserted the entry of the decree was a complete surprise to him. Patsy testified there were no negotiations between the parties. She stated Thomas did not contact her and she did not contact him.

The district court denied the motion to set aside. The court stated that if Thomas had intended to assert defenses, he should have objected to the decree in a more timely fashion. The court also found Thomas did not set forth a sufficient reason to set aside the decree. Thomas now appeals.

Under Iowa Rule of Civil Procedure 236, a default judgment may be set aside on a showing of mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty. *Johnson v. Mitchell*, 489 N.W.2d 411, 413 (Iowa App. 1992). District courts have broad discretion in ruling on a motion to set aside a default judgment. *Central Natl. Ins. Co. v. Insurance Co. of N. Amer.*, 513 N.W.2d 750, 753 (Iowa 1994). We reverse such a ruling only if the district court abused its discretion. *Id.* Generally, we find such an abuse only when there is a lack of substantial evidence to support the district court's ruling. *Id.* The burden is on the movant to plead and prove good cause under the rule. *Id.* at 754.

Thomas contends his motion to set aside the default decree was timely. Under rule 236, a motion to set aside must be filed within sixty days after the default judgment. *Johnson*, 489 N.W.2d at 414. We find Thomas filed his motion in a timely fashion.

Thomas also contends the default was the result of excusable neglect or mistake. Thomas claims he intended to participate in the dissolution process, and points to the fact he returned the acceptance of service as evidence of his intention to participate. He also claims he has a valid claim in the case because the default decree was inequitable to him. He states he did not intend to disregard the rules of civil procedure.

The supreme court has set forth four factors for determining whether excusable neglect under rule 236, constituting good cause, has been shown. *Millington v. Kuba*, 532 N.W.2d 787, 791 (Iowa 1995). These factors are:

1. Did the defaulting party actually intend to defend?
2. Does the defaulting party assert a claim or defense in good faith?
3. Did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake?
4. Whether relief is warranted should not depend on who (the litigant or an attorney or an insurer) made the mistake.

Id. (citing *Central*, 513 N.W.2d at 756). A party must show his failure to defend was not due to his negligence, want of ordinary care or attention, or to his carelessness. *Paige v. City of Chariton*, 252 N.W.2d 433, 437 (Iowa 1977).

We find no abuse of discretion in the district court decision denying Thomas's motion to set aside the default decree. It is clear Thomas knew of the dissolution proceedings, but chose not to file an answer. While Thomas claimed he believed the parties would enter into negotiations, the evidence shows there were no ongoing negotiations, or even contact, between the parties while the case was pending before the district court. We find Thomas did not actually intend to defend, and he willfully ignored the rules of civil procedure.

Patsy seeks attorney fees for this appeal. We determine each party should be responsible for his or her own appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Thomas.

AFFIRMED.