FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF STEVEN C. WISE AND MELODY ANN WISE

Upon the Petition of)
STEVEN C. WISE,)
Petitioner-Appellee,)
And Concerning)
MELODY ANN WISE,)
Respondent-Apellant.)

Filed June 30, 1981

1-133
2-58701

Appeal from Polk District Court - A. B. Crouch, Judge.

The respondent wife appeals from the trial court's denial of her motion to vacate the parties' dissolution decree pursuant to Iowa R. Civ. P. 252 and 253. REVERSED AND REMANDED.

Allan H. Rauch, Des Moines, Ia., for respondent-appellant.

H. Richard Smith, of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, Ia., for petitioner-appellee.

Heard by Donielson, A.C.J., and Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, Melody Ann Wise, appeals from trial court's denial of her motion to set aside a dissolution decree pursuant to Iowa Rules of Civil Procedure 252 and 253. She alleges that the evidence established fraud requiring vacation of the decree. We reverse and remand for entry of an order vacating the decree of dissolution.

I. Scope of Review. Our review is not de novo. Cook v. Cook, 259 Iowa 825, 146 N.W.2d 273 (1966). We are bound by the trial court's findings if they are supported by sufficient evidence. Iowa R. App. P. 14(f)(1). We, however, are not bound by trial court's conclusions of law. Knauss v. Kemin Industries, Inc., 267 N.W.2d 56, 57 (Iowa 1978).

II. Findings of Fact. The record supports the following facts: In July 1973, Steven and Melody Wise were separated and contemplated dissolving their marriage. They agreed to utilize the same attorney. Steven consulted Edwin Skinner, his family's attorney, and initiated filing a petition for dissolution. Melody was pregnant and Steven was aware of that fact. Melody went to Skinner's office to receive service of the petition and to sign a waiver of conciliation. Steven agreed to give Melody notice of the hearing on the petition, although Skinner did not know of this agreement. Skinner had knowledge of Melody's pregnancy prior to hearing. Skinner received telephone messages from Melody between July and October but did not return the calls. Final hearing on the matter was held on October 22, 1973. Melody did not have other counsel by this time, nor did she know of or attend the hearing. Steven testified there were no minor children to the marriage. A default decree was filed after hearing, stating no children were born to the marriage. Melody learned of the decree on October 23, 1973. A child was born in early December 1973. Melody filed a motion to set aside the decree in March 1974. Trial court denied the motion after hearing. Melody timely appealed that ruling. After five years and ten appellant extensions, the matter finally reaches this court.

III. Extrinsic Fraud. A party who attempts to set aside a decree on the basis of fraud under rule 252 must establish extrinsic fraud. In re Marriage of Short, 263 N.W.2d 720, 723 (Iowa 1978). "Extrinsic fraud is some act or conduct of the prevailing party which prevented a fair submission of the controversy. It includes lulling a party into a false sense of security or preventing him from making a defense." Id., quoting Stearns v. Stearns, 187 N.W.2d 733, 735 (Iowa 1971). We believe the record here establishes such conduct.

Petitioner, however, asserts that respondent's sole allegation of fraud in her petition to vacate was the provision in the decree that stated no children had been born of the marriage. Further, in its conclusions of law, trial court said:

> The court does not [sic] recognize that there may be extrinsic fraud established by the evidence, but this fraud is not alleged to be the basis for setting aside the judgment. This fraud may be the agreement between petitioner and respondent to use one lawyer and then not advise the lawyer and the court of the agreement. It also may be fraud by petitioner in agreeing to notify respondent of the hearing date and then failing to do so.

We believe, under our liberal rules of notice pleading, that respondent's petition to vacate sufficiently sets forth petitioner's conduct to permit consideration of that conduct as part of the fraud practiced on respondent and the court. See In re Estate of Lorimor, 216 N.W.2d 349, 353 (Iowa 1974). Respondent alleged "[t]hat the Dissolution of Marriage was proved up and said Decree entered without Respondent's knowledge or consent." Trial court's findings also included the following: "[p]etitioner understood and agreed that respondent would have notice of the date the hearing was to be held on the Petition for Dissolution. Respondent was not notified of the hearing date." We find the only permissible conclusion to be drawn from petitioner's conduct is that he so acted to prevent respondent from appearing and thereby putting the court on notice as to her pregnant condition.

In light of the above, we conclude that trial court erred in refusing to grant respondent's motion to vacate the decree of dissolution.

REVERSED AND REMANDED.