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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF CARROLL L. ETCHEN AND LUELLA ETCHEN

Upon the petition of)
CARROLL L. ETCHEN,

Petitioner-Appellee,)

and concerning)
LUELLA ETCHEN,

Respondent-Appellant.)

Filed February 26, 1985

4-527
84-409

Appeal from the Iowa District Court for Cerro Gordo County - Ray E. Clough, Judge.

Respondent Luella Etchen appeals from the trial court's dismissal of her petition to modify a judgment rendered in her dissolution decree. AFFIRMED.

R. Michael Sweesy, Mason City, for respondent-appellant.

M. Wayne Oltrogge, Clear Lake, for petitioner-appellee.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ.

The marriage of Petitioner Carroll L. Etchen and Respondent Luella Etchen was dissolved by a decree entered April 2, 1982.

On April 3, 1983, Luella filed a petition under R.Civ.P. 252 to modify the judgment claiming at the time of the dissolution that Carroll had failed to disclose and did in fact conceal certain assets from Luella and the court. The petition further asked for a modification of the property division and an award of alimony.

The matter was tried to the court. Luella contended the items her husband failed to disclose included certain vehicles and farm machinery including a corn head and a bean head. Testimony elicited from Carroll at the time of trial indicated some machinery and two older vehicles were not listed on his financial statement as were not a propane and water tank. The evidence also indicated the parties had lived on the family farm since 1953. While the dissolution was pending Carroll provided Luella's attorney with copies of machinery lists and all tax returns. The machinery was all lined up by Carroll during trial and inspected by Luella, her attorney and her appraisor.

One vehicle, an Edsel, not included on the financial statement was awarded to Luella. The second vehicle was an old Cadillac that was inoperable and the third vehicle, a pickup, was what Carroll was driving at the time of trial. Carroll indicated he did not list certain tanks and a bin because he considered them to be attached to the real estate. Carroll testified some of the machinery was omitted because it was attached to other machinery. The trial court determined there were some discrepancies but without deciding whether or not Carroll deliberately concealed his assets determined if there was fraud it was intrinsic fraud and as such does not justify the setting aside of the decree.

Luella appeals contending that the alleged intentional concealment of assets by Carroll at trial is fraud sufficient to constitute grounds to correct, modify or vacate the dissolution decree under R.Civ.P. 252(b) and that the trial court erred

in failing to find the alleged deliberate concealment of assets is not fraud of such a nature as to authorize the court to set aside the judgment.

The financial provision made in a dissolution decree, being a property division is not subject to modification in the absence of fraud, duress, coercion, mistake or other grounds as would justify the setting aside or changing a decree in any other case. In Re Marriage of Knott, 331 N.w.2d 135, 136 (Iowa 1983). We accord the trial court considerable discretion in determining whether to grant relief when vacation of a judgment is sought, and we are more reluctant to find an abuse of discretion when relief has been granted than when it has been denied. Nonetheless, our review of a trial court adjudication under Iowa R.Civ.P. 252 is on assigned errors; it is not de novo. The trial court's findings of fact have the effect of a jury verdict, and those findings are binding on us if there is substantial evidence to support them. Mishler v. Stouwie, 301 N.W.2d 744, 747 (Iowa 1981).

We said in Miller v. AMF Harley-Davidson Motor Co., Inc., 328 N.W.2d 348, 353 (Ia. App. 1982):

> "Under Iowa Rule of Civil Procedure 252(b), a court may modify or vacate a final judgment because of irregularity or fraud practiced upon the court. Where fraud is asserted as the ground for vacating a judgment, it must be extrinsic fraud or collateral to the matter directly involved in the original case. Extrinsic fraud is some act or conduct of the prevailing party which has 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. Such a finding would be justified only by the most egregious misconduct and would have to be supported by clear, unequivocal and convincing evidence. . . ."

The trial court's determination that Luella failed to prove extrinsic fraud is clearly supported by substantial evidence.

AFFIRMED.