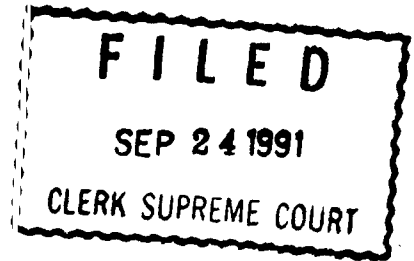


IN THE COURT OF APPEALS OF IOWA

No. 1-365 / 91-483



IN RE THE MARRIAGE OF SHERI RENEE CRAVEN AND
JEFFREY LINN CRAVEN

Upon the Petition of

49

SHERI RENEE CRAVEN,

Appellee,

And Concerning

JEFFREY LINN CRAVEN,

Appellant.

Appeal from the Iowa District Court for Boone County,
M. D. Seiser, Judge.

Respondent husband appeals from the district court order setting aside a default dissolution of marriage decree. He asserts that the district court abused its discretion in setting aside the decree. **AFFIRMED.**

Patrick H. Payton of Patrick H. Payton & Associates,
P.C., Boone, for appellant.

Dorothy L. Dakin of Dakin Law Office, Boone, for
appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

DONIELSON, J.

Petitioner, Sheri Renee Craven, and respondent, Jeffrey Linn Craven, were married in April 1985. They have two children: Jennifer, born in November, 1985, and Joseph, born in August, 1987. In October, 1988, Sheri filed a petition for dissolution of the marriage and sole custody of the children. The district court gave Sheri temporary custody of the children and directed Jeffrey to pay temporary child support. At this time, the parties continued to live together and were attempting to reconcile. They separated in September 1989.

In July 1990, Jeffrey filed interrogatories and an application to have temporary custody of the children transferred to him. The district court ordered Lutheran Services of Iowa to conduct a custody evaluation, with each party to pay half the cost. Sheri did not pay her half, and the evaluation was never conducted. Neither did Sheri answer Jeffrey's interrogatories, and he filed a motion to compel her to do so.

On September 11, 1990, before the district court had ruled on the custody and discovery motions, Sheri's attorney moved to withdraw because Sheri had refused to pay him. On September 25, 1990, the district court allowed Sheri's attorney to withdraw and set up a temporary joint custody arrangement with Jeffrey having physical care of the children.

On October 22, 1990, the district court entered an order which noted that Sheri was proceeding pro se and directed her to answer Jeffrey's interrogatories. She did not do so. During the last weekend of October 1990, Sheri moved from Boone to Gilbert, Iowa. Because Gilbert did not have residential mail delivery, Sheri made arrangements to obtain her mail at an Ames post office box.

Sometime in late October, Sheri gave Jeffrey her Ames mailing address, but she apparently never explained to him that mail would not be delivered to her Gilbert residential address. Before the move, Sheri had given the district court clerk envelopes for her child support checks which bore the Ames mailing address. The district court clerk apparently did not record the address change from the envelopes on the docket.

In November 1990, the district court entered an order scheduling a pretrial conference for December 10, 1990. The order stated that if either party failed to attend the conference, the district court would consider that party in default pursuant to Iowa Rule of Civil Procedure 230. The order was mailed to Sheri at her Gilbert residential address rather than at her Ames mailing address, and she did not receive it.

When Sheri did not appear for the pretrial conference, Jeffrey asked the district court to find her in default. On December 12, 1990, the district court entered an order doing so. The order cited, in addition to Sheri's failure

to appear at the pretrial conference, her failure to pay her share of the custody evaluation cost and her failure to answer Jeffrey's interrogatories. The order also scheduled a hearing for December 17, 1990, to determine the terms of the default dissolution decree. This order was also mailed to Sheri's Gilbert residential address rather than her Ames mailing address, and she did not receive it.

The dissolution hearing was held as scheduled. Sheri did not appear. Afterward, on December 20, 1990, the district court entered a default dissolution decree. The decree made permanent the temporary joint custody arrangement. Accordingly, Jeffrey was granted physical care of the parties two children. The decree also fixed visitation times, awarded Jeffrey child support and attorney fees, and divided the parties' property. The decree was mailed to Sheri's Gilbert residential address rather than her Ames mailing address, and she did not receive it.

Sometime after the decree was entered, Sheri obtained counsel, and on February 14, 1990, she filed an application to set aside the default dissolution decree. She asserted that she did not receive mailings from either the district court clerk or Jeffrey after late October. She also asserted that Jeffrey did not inform her of court proceedings and in fact led her to believe there were none taking place.

Sheri filed answers to Jeffrey's interrogatories, and after a hearing, the district court granted Sheri's application to set aside the decree. Jeffrey has appealed.

I. Scope of Review. Our scope of review is for an abuse of discretion. A proceeding to set aside a default judgment under Iowa Rule of Civil Procedure 236 is a proceeding at law. Gateway Transp. Co. v. Phillips & Phillips Co., 261 N.W.2d 175, 177 (Iowa 1978). A trial court has broad discretion in ruling on a motion to set aside a default judgment, and we will set aside such a ruling only upon a showing of abuse of discretion. Whitehorn v. Lovik, 398 N.W.2d 851, 853 (Iowa 1987) (citing Paige v. Chariton, 252 N.W.2d 433, 437 (Iowa 1977)). We are more reluctant to interfere with a grant of a motion to set aside a default judgment than with a denial of the same. Sher v. Burche, 353 N.W.2d 859, 862 (Iowa App. 1984).

In order to show an abuse of discretion, one generally must show that the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." State v. Blackwell, 238 N.W.2d 131, 138 (Iowa 1976) (quoting State v. Burnor, 132 Vt. 603, 326 A.2d 138, 140 (1974)). Because the trial court's findings of fact have the force of a jury verdict, the movant must demonstrate a lack of substantial evidence supporting the ruling to show an abuse of discretion. Id.; Dealers

Warehouse Co. v. Wahl & Assocs., 216 N.W.2d 391, 394 (Iowa 1974).

We construe the trial court's findings broadly and liberally. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). In case of doubt or ambiguity we construe the findings to uphold, rather than defeat, the trial court's judgment. Id. We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

A finding of fact is supported by substantial evidence if the finding may be reasonably inferred from the evidence. In evaluating sufficiency of the evidence, we view it in its light most favorable to sustaining the court's judgment. We need only consider evidence favorable to the judgment, whether or not it was contradicted.

Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978).

Evidence is substantial or sufficient when a reasonable mind would accept it as adequate to reach the same findings. Waukon Auto v. Farmers & Merchants Sav. Bank, 440 N.W.2d 844, 846 (Iowa 1989). Evidence is not insubstantial merely because it could support contrary inferences. Grinnell Mut. Reinsurance Co., 431 N.W.2d at 785. We will uphold the ruling if any proper ground appears in the record, even if the trial court made no finding of fact or based its ruling on different grounds. Smiley v. Twin City Beef Co., 236 N.W.2d 356, 360 (Iowa 1975). With these principles in mind, we turn to the issues raised on appeal.

II. Order Setting Aside Default Dissolution Decree.

Under Iowa Rule of Civil Procedure 236, a court may set aside a default judgment only for "good cause shown" based on "mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty." Thus, good cause requires "a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the resulting effect." Dealers Warehouse, 216 N.W.2d at 394. Additionally, the movant must present "at least a prima facie showing of a meritorious defense as a condition to setting aside a default." Hallett Constr. Co. v. Iowa State Highway Comm'n, 258 Iowa 520, 530, 139 N.W.2d 421, 428 (1966)(citing Svoboda v. Svoboda, 245 Iowa 111, 118, 60 N.W.2d 859, 363 (1954)). The purpose of Rule 236 is to allow for determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake. Langer v. Mull, 453 N.W.2d 644, 647 (Iowa App. 1990). Because trial on the merits is favored, a liberal approach is to be taken in granting relief from defaults. Id. Upon our review of the record, we find substantial evidence to support both required showings, and we affirm the trial court judgment granting Sheri's motion to set aside the default decree.

A. Good Cause. Sheri argued, and the trial court found, that she did not receive any orders or pleadings mailed by Jeffrey or the clerk of the district court after October. Sheri testified that she had notified both

Jeffrey and the clerk concerning her change of address. Apparently, Jeffrey was unaware that mail was not delivered to Sheri's new address. The clerk failed to record the change in address. Sheri also testified that Jeffrey led her to believe that he no longer desired to proceed with the dissolution action. These facts, coupled with the fact that Sheri was not represented by counsel, constitute substantial evidence to support the trial court's finding of good cause excusing Sheri's failure to comply with discovery and appear at trial.

B. Meritorious Defense. At the very least, Sheri asserted that the property settlement is unfair. She asserted that a motor vehicle she owned prior to the marriage was granted to Jeffrey by the decree. This testimony suffices as substantial evidence of a meritorious defense to the decree and justifies the trial court's judgment to set the decree aside.

The costs of this appeal are taxed equally between the parties

For all the reasons stated the judgment of the district court is affirmed.

AFFIRMED.