IN THE COURT OF APPEALS OF IOWA

No. 2-772 / 12-0121
Filed September 19, 2012

LAURA JEAN LINCOLN,
Plaintiff-Appellant,

vs.

ROSS DANIEL LINCOLN,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

A woman challenges the district court ruling granting her former husband's motion for summary judgment on the ground that her current petition was merely an untimely motion to vacate the parties' dissolution decree. **AFFIRMED.**

Andrea M. Flanagan and Theodore F. Sporer of Sporer and Flanagan, P.L.L.C., Des Moines, for appellant.

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

VAITHESWARAN, P.J.

Laura and Ross Lincoln married in 1998 and divorced in July 2009. In November 2010, Laura filed a "petition and jury demand" against Ross raising several fraud-based causes of action premised on Ross's financial disclosures in the divorce proceeding. In a subsequently-filed amended and substituted petition, she alleged that "[d]uring the period of time between the entry of the Decree of Dissolution of Marriage and the present, Defendant made certain representations regarding his income and net worth for purposes of entering into a property settlement," and "[s]ometime after the entry of the decree of dissolution of marriage on or about July 1, 2009, [she] became aware that the representations . . . were false."

Ross moved for summary judgment on the ground that the petition was "nothing more than an untimely motion to vacate a judgment under Iowa Rule of Civil Procedure 1.1012." He asserted that "[b]ecause Plaintiff failed to file the . . . matter within one (1) year after the entry of the parties' Decree of Dissolution of Marriage, the above captioned motion should be dismissed in its entirety." The district court granted the motion and this appeal followed.

Summary judgment is warranted if there exist no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). The sole summary judgment issue raised here is whether Laura's petition was timely.

The first pertinent rule is Iowa Rule of Civil Procedure 1.1012, which states:

> Upon timely petition and notice under rule 1.1013 the court may correct, vacate or modify a final judgment or order, or grant a new trial on any of the following grounds:
>
> . . .
>
> (2) Irregularity or fraud practiced in obtaining it.

The second pertinent rule, rule 1.1013(1), states:

> A petition for relief under rule 1.1012 . . . must be filed and served in the original action within one year after the entry of the judgment or order involved.

Laura argues her "claim is a permissible collateral attack on an existing judgment based on extrinsic fraud." This assertion skirts the question of whether her petition was timely. It was not.

Laura also argues that "[c]ollateral attack may be effected in a separate action rather than a subsequent direct attack under the rules for vacating judgments." Again, this assertion skirts the question of whether such a separate action may be filed more than a year after the entry of judgment. On this question, our precedent recognizes that the one-year deadline may not apply where the party claims the judgment is void. *See Dimmitt v. Campbell*, 151 N.W.2d 562 (Iowa 1962) (stating "a void judgment need not necessarily be challenged within one year after its rendition as provided in rules 252–253, R.C.P"); *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992) ("While an application to set aside a voidable judgment must be filed within one year under rule 253, a judgment may be vacated at any time if it is void."); 49 C.J.S. *Judgments* § 431 (2009) ("A judgment that is void, as opposed to voidable, may generally be attacked at any time . . . ."). Laura does not claim the dissolution decree is void, a claim that would nullify her divorce. *See Williamson v. Williamson*, 161 N.W. 482, 485 (Iowa 1917) ("A void judgment is no judgment at

all, and no rights are acquired by virtue of its entry of record."). All her counts assume the existence of the decree and seek damages for Ross's alleged failure to accurately disclose his income and net worth. *See City of Chariton v*. *J.C*. *Blunk Constr*. *Co*., 112 N.W.2d 829, 835–36 (Iowa 1962) (stating plaintiff's petition did "not ask that the previous judgment be set aside" but simply "ignore[d]" the prior judgment and sought "damages upon a contention which was clearly answered adversely to it" in the prior adjudication). This is not the type of request for relief that would allow her to circumvent the one-year deadline set forth in rule 1.1013. *See id.* at 838. ("[W]hen a judgment has been entered with full jurisdiction of the subject matter and of the parties it may not be collaterally attacked in an action that has an independent purpose other than the overturning of the judgment; which merely seeks to relitigate the same issues determined by the judgment. This is so even though the first judgment was obtained by fraud, unless the fraud goes to the jurisdiction of the court.").

As Laura's challenge, by her own admission, is a collateral attack on the decree, and as she did not mount her challenge within the one-year time frame prescribed by rule 1.1013, we affirm the district court's grant of summary judgment in favor of Ross.

AFFIRMED.