IN THE COURT OF APPEALS OF IOWA

No. 8-433 / 07-1228
Filed June 25, 2008

IN RE THE MARRIAGE OF JOAN DIANE SADLER AND GEORGE SADLER

Upon the Petition of
JOAN DIANE SADLER,
Petitioner-Appellee,

And Concerning
GEORGE P. SADLER,
Respondent-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Respondent appeals the court's denial of his motion to set aside a default order and vacate the judgment finding him in contempt of court contending there was good cause to set aside the default given he did not receive notice of the contempt hearing. **AFFIRMED.**

Christy R. Liss of Clark, Butler, Walsh & Hamann Law Firm, Waterloo, for appellant.

Linda A. Hall of Gallagher, Langlas & Gallagher, P.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

George P. Sadler and Joan Diane Sadler each sought to have the other found in contempt of court for violating provisions of their May 2004 dissolution decree. When George did not appear at the hearing, the district court found him in default and in contempt in Joan's action and dismissed his action against Joan. George contends here that the district court erred in refusing to set aside the default and vacate the judgment. We affirm.

BACKGROUND. George filed an application and affidavit seeking to have Joan found in contempt on September 30, 2005. A rule to show cause hearing was set for October 19, 2005. Several continuances were granted before the matter was set for June 28, 2006. On March 17, 2006, Joan filed an application seeking to have George found in contempt and a rule to show cause hearing was set for June 28, 2006. There followed a number of additional continuances. Finally a trial scheduling conference was set for February 1, 2007. George participated in the conference and testified at the hearing on the motion to set aside the default that he believed during the scheduling conference the matter was set for April 13, 2007. A notice dated February 2, 2007 stated trial was scheduled for April 3, 2007. George testified at the hearing he did not receive the notice though the clerk's records noted it was mailed to him.

The hearing was held on April 3, 2007. The district court found George failed to appear either in person or by counsel and his action was dismissed for failure to litigate. The court found three of the five allegations of contempt made by Joan had been settled and she failed to prove a fourth. The court found George in contempt for failing to pay $1750 for the post-secondary education

expense ordered in the decree and determined he had the ability to pay that amount. The court also entered judgment in favor of Joan in the amount of $3796.19 for her attorney fees.

George filed a motion to set aside the default and vacate the judgment on May 23, 2007. The district court, in ruling on the motion, found there was no good cause to warrant setting aside the default. The court said it was reluctant to accept George's testimony he failed to receive the February 2, 2007, scheduling order in that he had received all other orders and that his action in not participating in the hearing on April 3, 2007, was intentional and not an error of the Court Administrator's Office. George filed an Iowa Rule of Civil Procedure 1.904(2) motion which was denied by the district court on a finding that George's failure to appear was intentional.

SCOPE OF REVIEW. We look to Iowa Rule of Civil Procedure 1.977 which provides:

> On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than 60 days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation.

The district court is vested with "'broad discretion in ruling on a motion to set aside a default.'" *Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 584 (Iowa 1999) (quoting *Central Nat'l Ins. Co. of Omaha v. Insurance Co. of N. Am.*, 513 N.W.2d 750, 753 (Iowa 1994)).

> We reverse such a ruling only if this discretion is abused. Generally, we find such an abuse only when there is a lack of substantial evidence to support the district court's ruling. We are bound by the district court's findings of fact if supported by

> substantial evidence, and we view the evidence in the light most favorable to the district court's ruling.

Id.

Given our scope of review we affirm the district court.

AFFIRMED.