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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2202

In re the Marriage of:
Martha S. Bragg, petitioner,
Respondent,

vs.

Antonio F. Bragg,
Appellant.

Filed August 25, 2009
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-FA-000253244

Martha S. Bragg, 7206 Aldrich Court, Brooklyn Center, MN 55430 (pro se respondent)

Antonio F. Bragg, P.O. Box 581411, Minneapolis, MN 55458-1411 (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Peterson, Judge; and Johnson, Judge.

U N P U B L I S H E D   O P I N I O N

PETERSON, Judge

Appellant husband challenges the denial of his motion to vacate a default dissolution judgment, arguing that the judgment was obtained by fraud. We affirm.

FACTS

In December 1999, respondent-wife Martha Bragg filed a petition for the dissolution of her marriage to appellant-husband Antonio Bragg. At a pretrial conference in July 2000, the parties negotiated a settlement, which husband apparently agreed to orally. Several days later, husband advised the court that he had changed his mind and had decided not to execute the agreement. As a result, the parties were directed to attend a continued pretrial hearing to be held at 1:30 p.m. on August 28, 2000.

Husband was at the courthouse at the scheduled date and time, but he did not appear at the hearing. Wife and her attorney told the district court that they saw husband waiting outside the courtroom but that he left when he saw them. Assuming that husband would arrive shortly, the district court waited for him to arrive and sent a law clerk to look for him. After waiting for nearly one hour, the district court decided to treat husband's nonappearance as a default. In light of the default, the district court determined that it would craft a dissolution decree that was consistent with the agreement that the parties had reached in July.

Husband appeared in the courtroom at 2:55 p.m. on August 28. When asked why he had not appeared despite having been seen near the courtroom at the scheduled time, husband responded that he had been sitting in another courtroom and was not aware of the hearing's actual location. The district court told husband that his nonappearance amounted to a default and that the proceedings were already complete. The district court also told husband about his right to appeal. The next day, husband telephoned the district

court, apologized, and "assured the [district court] that . . . he was satisfied with the outcome." A final dissolution judgment was filed on September 21, 2000.

Eight years later, in October 2008, husband moved to vacate the judgment. The district court denied the motion, and this appeal followed.

D E C I S I O N

The district court's decision regarding whether to reopen a judgment will be upheld unless the district court abused its discretion, and the district court's findings as to whether the judgment was prompted by mistake or fraud will not be set aside unless they are clearly erroneous. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998). A dissolution decree is final when entered, subject to the right to appeal. Minn. Stat. § 518.145, subd. 1 (2008). A court may relieve a party from a marital-dissolution judgment for "fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party." *Id.*, subd. 2(3) (2008). The moving party bears the burden of establishing a basis to reopen the judgment and decree. *Haefele v. Haefele*, 621 N.W.2d 758, 765 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

Husband argues that the default judgment was obtained through fraud because the district court, despite knowing that husband was at the courthouse for the pretrial hearing, entered a default judgment based on the terms of the previously negotiated settlement agreement, which husband had rejected. Husband does not indicate whether he is claiming that this constitutes ordinary fraud or fraud on the court. This affects our analysis because a motion to vacate based on ordinary fraud must be made "within a reasonable time, . . . not more than one year after the judgment and decree, order, or

proceeding was entered or taken." Minn. Stat. § 518.145, subd. 2; *see also Doering v. Doering*, 629 N.W.2d 124, 128-29 (Minn. App. 2001) (construing Minn. Stat. § 518.145, subd. 2(3) (2000)), *review denied* (Minn. Sept. 11, 2001). Husband's motion was made more than eight years after the dissolution judgment was filed. Thus, if husband is claiming ordinary fraud, his motion is not timely, and the district court did not abuse its discretion in denying his motion.

But if there is proof that the nonmoving party committed fraud on the court, a party may move to set aside a judgment and decree after this one-year limitation. *Thompson v. Thompson*, 739 N.W.2d 424, 428 (Minn. App. 2007). "'Fraud on the court' involves 'an intentional course of material misrepresentation or non-disclosure, having the result of misleading the court and opposing counsel and making the property settlement grossly unfair.'" *Id.* (quoting *Maranda v. Maranda*, 449 N.W.2d 158, 165 (Minn. 1989)).

If husband is claiming fraud on the court, we still conclude that the district court did not abuse its discretion in denying his motion. Husband acknowledges in his brief that he received notice of the hearing. The notice states that failure to appear could result in the matter being handled as a default. That is what happened. Although husband correctly states that the case had not been set for trial, a default judgment may be entered when a party fails to appear at a pretrial hearing. Minn. R. Civ. P. 16.06, 37.02(b)(3) (authorizing district court to order entry of default judgment when a party fails to obey a scheduling or pretrial order or to appear at a scheduling or pretrial conference). The transcript demonstrates that husband appeared in the correct courtroom after the matter

had been concluded, which may indicate that a genuine mistake prevented husband from participating in the pretrial hearing. But a mistake does not prove fraud. Also, the record does not support husband's assertions that wife and her attorney intentionally misled the district court into believing that husband had assented to the settlement agreement. And the district court did not merely ratify the terms of a stipulated decree drafted by the parties; it rendered a default judgment. Finally, husband has failed to demonstrate that the terms of the judgment, which was based on the parties' earlier settlement negotiations, were grossly unfair.

Affirmed.