

**IN THE COURT OF APPEALS OF IOWA**

No. 0-166 / 09-0710

Filed May 12, 2010

**IN RE THE MARRIAGE OF DEBORAH KAY ROBINSON  
AND JOSEPH A. ROBINSON**

**Upon the Petition of  
DEBORAH KAY ROBINSON,**  
Petitioner-Appellee,

**And Concerning  
JOSEPH A. ROBINSON,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Plymouth County, Jeffrey A. Neary,  
Judge.

Joseph Robinson appeals from the district court's ruling denying his  
motion to set aside default judgment. **REVERSED AND REMANDED.**

Kendra M. Olson, Sioux City, for appellant.

Dennis R. Ringgenberg of Crary, Huff, Inkster, Sheehan, Ringgenberg,  
Hartnett & Storm, P.C., Sioux City, for appellee.

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

**POTTERFIELD, J.****I. Background Facts and Proceedings**

Deborah and Joseph Robinson were married on July 30, 1983. Two children were born of the marriage. On June 2, 2008, Deborah filed a petition for dissolution of marriage. She personally gave Joseph a copy of the petition and original notice at the end of July 2008. She also had Joseph served with a copy of the petition and original notice on August 25, 2008.

The parties continued to live together after the service of the original notice. They continued to share in household chores and the care of the children. Joseph cared for Deborah after she had surgery in December of 2008, and he prepared Thanksgiving and Christmas dinners for the family in 2008. The parties continued a sexual relationship. Accordingly, Joseph believed that Deborah had decided not to pursue the divorce action, and he did not file an answer to her petition.

Deborah's attorney served Joseph by mail with interrogatories and a request for production of documents. Joseph did not respond to the discovery requests or produce the requested documents. Deborah's attorney sent Joseph a letter requesting responses to the outstanding discovery, but Joseph did not respond. Joseph did not deny that the mail was delivered, but he stated that he assumed any mail he received concerning the divorce was "just automatically sent because [Deborah] had started the divorce." Joseph further stated in his affidavit, "Sometimes [Deborah] got the mail, sometimes I did, and sometimes the kids did."

A notice of intent to file written application for default was filed on February 20, 2009, and a copy was mailed to Joseph. Joseph did not file any answer or motion in response to the notice and stated in his affidavit that he did not specifically recall seeing the notice. Deborah stated in her unverified resistance to the motion to set aside default that Joseph made physical threats against Deborah "after receipt of said notice."

On March 6, 2009, Deborah obtained a default decree of dissolution. The decree granted Deborah physical care of the parties' two teenage children and granted joint legal custody to Deborah and Joseph. Joseph was granted the right to visit the children upon prior notice and consent of Deborah. The decree also awarded all of the parties' property to Deborah except Joseph's vehicle, accounts and life insurance currently in his name, and some personal property located in a shed. The dissolution decree set child support in the amount of \$559 per month.

On March 19, 2009, Joseph filed a motion to set aside default judgment pursuant to Iowa Rule of Civil Procedure 1.977. Joseph asserted that he failed to respond to Deborah's legal actions because he believed they had reconciled and that she had decided not to pursue the dissolution.

Joseph argued the decree should be set aside to allow the court to consider his claims for joint physical care of the children and a property settlement. Joseph asserted that when the parties initially discussed dissolving their marriage, they agreed that Deborah would buy out Joseph's share in the real estate. Joseph also stated that he would have asked for joint physical care of the children.

The district court found that the reasons given by Joseph were inadequate to justify setting aside the default decree, finding he had not shown excusable neglect. Joseph appeals, arguing the district court should have set aside the default judgment on the grounds of excusable neglect.

## **II. Default Judgment**

Iowa Rule of Civil Procedure 1.977 provides, “[o]n motion and for good cause . . . the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty.” In ruling on a motion to set aside a default judgment, the district court is vested with broad discretion and will only be reversed if that discretion is abused. *Sheeder v. Boyette*, 764 N.W.2d 778, 780 (Iowa 2009). “We are more reluctant to interfere with a court’s grant of a motion to set aside a default and a default judgment than with its denial.” *Brandenburg v. Feterl Mfg. Co.*, 603 N.W.2d 580, 584 (Iowa 1999). We are bound by the district court’s factual findings if they are supported by substantial evidence. *Sheeder*, 764 N.W.2d at 780. “The determination of whether a movant has established good cause is not a factual finding; rather, it is a legal conclusion and is not binding on us.” *Id.*

The burden is on the movant to plead and prove good cause. *Id.* “Good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect.” *Cent. Nat’l Ins. Co. v. Ins. Co. of N. Am.*, 513 N.W.2d 750, 754 (Iowa 1994).

The purpose of rule 1.977 is to “allow a determination of controversies on their merits rather than on the basis of nonprejudicial inadvertence or mistake.”

*Brandenburg*, 603 N.W.2d at 584. However, this cannot be “extended to the point where a default judgment will be vacated when the movant has ignored the rules of procedure with ample opportunity to abide by them.” *Sheeder*, 764 N.W.2d at 780. “[W]e have never upheld such a grant where the movant fails to show any effort to appear in response to a due and timely notice.” *Id.*

There are four factors to be considered when setting aside a default judgment on the ground of excusable neglect. *Id.* First, whether the defaulting party actually intended to defend. *Id.* Second, whether the defaulting party asserted a claim or defense in good faith. Third, did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake. *Id.* ‘Willfully’ and ‘defy’ “signal conduct that goes beyond negligent or careless conduct. Such words indicate conduct on the part of the defaulting party showing a deliberate intention to ignore, and resist any adherence to, the rules of procedure.” *Brandenburg*, 603 N.W.2d at 585. “If there is substantial evidence the default occurred as a result of a mistake, such evidence . . . is inconsistent with conduct that willfully ignores or defies the rules of procedure.” *Id.* The Iowa Supreme Court has defined “mistake” in this context to mean “an error in action, calculation, opinion, or judgment caused by poor reasoning, carelessness, [or] insufficient knowledge.” *Id.* Finally, relief should not depend on who made the mistake. *Id.*

After applying these four factors to the facts of this case, we determine the district court abused its discretion in declining to set aside the default judgment. The record suggests that Joseph intended to defend but failed to do so because of a good faith belief that he and his wife had reconciled. Joseph moved

promptly to set aside the default judgment. See *Paige v. City of Chariton*, 252 N.W.2d 433, 437 (Iowa 1977) (noting the significance of movant's prompt action to set aside default judgment). In his affidavit in support of his motion to set aside the default judgment, Joseph indicated that he intended to assert a claim for joint physical care of the parties' two children as well as his share of the parties' property. Deborah did not refute Joseph's allegations regarding the family relationships after she filed her divorce petition, nor that she and Joseph had discussed his receiving a share of the equity in the property, nor that he intended to request joint physical care of the children.

Also, there is no evidence that Joseph willfully ignored or defied the rules of procedure. Rather, the record shows that the default was a result of Joseph's mistaken belief that Deborah had decided not to proceed with the divorce. This fits within the definition of mistake given by the supreme court. There is nothing in the record to suggest that it rises to the level of willful ignorance or defiance.

We therefore find the district court erred in declining to set aside the default judgment and remand for further proceedings. Costs on appeal are assessed to Joseph.

**REVERSED AND REMANDED.**