

**IN THE COURT OF APPEALS OF IOWA**

No. 3-376 / 12-1578

Filed June 12, 2013

**JOHNNIE LEE WASLICK,**  
Plaintiff-Appellee,

**vs.**

**GALE MARIE SIMPSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Rustin T. Davenport, Judge.

Johnnie Waslick sought damages under alternative fraud theories for entry of a divorce decree, and has appealed from a district court's grant of a motion for directed verdict. **AFFIRMED.**

Timothy L. Lapointe of The Law Offices of Timothy L. Lapointe, P.C., Mason City, for appellant.

F. David Eastman of Eastman Law Office, Clear Lake, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

**MULLINS, J.**

Johnnie Waslick appeals from a district court's grant of a motion for directed verdict at the conclusion of his evidence seeking damages for entry of a divorce decree. He was alleging alternative theories of fraudulent misrepresentation, fraudulent nondisclosure, and willful wanton conduct justifying punitive damages. We affirm.

**I. Background and Facts**

In 2006, Gale Simpson filed for divorce from Johnnie Waslick, and a default decree was entered in 2007 after Waslick failed to answer or appear at the default hearing. Waslick was served the original notice and petition but claims to have received no notice of the default hearing.

In 2010, Waslick filed a small claims action seeking to obtain some personal property. The court found the divorce decree was res judicata in the small claims action and Waslick had no ownership interest in the property requested.

In 2011, Waslick filed a petition at law in district court claiming Simpson was liable to him in monetary damages arising out of fraudulent misrepresentation, fraudulent nondisclosure, and willful wanton conduct justifying punitive damages. He claimed she misled him with regard to the entry of the default divorce decree. He also claims that she made certain misrepresentations about her intent to stay married to him. Simpson filed a motion to dismiss or alternatively a motion for summary judgment. The district court denied the motion, and the case proceeded to trial. The evidence Waslick presented at trial,

including his own testimony, however, established that within a few weeks of the entry of the dissolution decree he was aware the decree had been filed and the divorce had been finalized. At the close of the plaintiff's evidence, the court granted Simpson's motion for a directed verdict. The court found Waslick did not carry the burden to prove there was justifiable reliance on any representations made by Simpson. On appeal, Waslick maintains it was error for the court to grant the directed verdict motion, claiming that Iowa Rules of Civil Procedure 1.1012 and 1.1013 do not apply and that common law fraud and its five-year statute of limitations should allow him to proceed to trial.

## **II. Standard of Review**

We review an appeal of an order under rule 1.1012 at law. *In re Adoption of B.J.H.*, 564 N.W.2d 387, 391 (Iowa 1997) (applying rule 252, the prior version of rule 1.1012). "We review a district court's ruling on a motion for directed verdict for correction of errors at law." *Pavone v. Kirke*, 801 N.W.2d 477, 486-87 (Iowa 2011). We must view the evidence in the light most favorable to the nonmoving party and determine if there is substantial evidence to support each element of the nonmoving party's claim. If there is no substantial evidence, a directed verdict is required. *Id.*

## **III. Analysis**

Iowa Rule of Civil Procedure 1.1012(2) provides that a court may correct, vacate, or modify a final judgment or grant a new trial if there is irregularity or fraud, if a timely petition and notice are provided under rule 1.1013. Rule 1.1013 requires that such an action "must be filed and served in the original action within

one year after the entry of the judgment or order involved.” Iowa has long recognized, however, that when the grounds for such an action arise out of extrinsic fraud, which could not have been discovered within one year, a remedy still exists.

It has been the uniform holding of this court that where the petitioner has not in the exercise of proper diligence discovered the fraud or other grounds upon which he relies within the year after the entry of final judgment or decree, he may institute suit in equity invoking the equitable powers of the court to vacate the judgment or grant him a new trial, after the time fixed in the statute for so doing has passed. But while the proceeding is in equity we have also uniformly held that the grounds alleged for the relief must be found among those specified in the statutory provisions noted herein authorizing the relief.

*Shaw v. Addison*, 18 N.W.2d 796, 801 (Iowa 1945).<sup>1</sup>

Both at the trial court and on appeal, Waslick has argued that his action should be permitted as having been filed within the five-year statute of limitations. In order to avoid the one-year filing requirement of rule 1.1013, the suit seeking to vacate must invoke the equitable powers of the court. See *id.* at 801. Waslick’s petition in this matter was a petition at law, not in equity. The suit must seek to vacate the original judgment or grant him a new trial. Waslick never requested that the judgment in the divorce action be set aside, but instead sought monetary damages in each of his three counts.

Waslick may not collaterally attack the decree and seek damages for its entry without first having successfully set aside the decree. See *City of Chariton v. J.C. Blunk Constr. Co.*, 112 N.W.2d 829, 838 (Iowa 1962). To the extent that

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<sup>1</sup> The “statutory provisions” referenced in the *Shaw* case are now found in rules 1.1012 and 1.1013.

Waslick claims that Simpson committed fraud that prevented him from seeking to set aside the decree within the one year, we agree with his assertion that *Beeck v. Kapalis*, 302 N.W.2d 90, 94 (Iowa 1982), provides authority in support of his right to proceed after the passage of the one-year limit. In ruling on the motion for directed verdict, however, the district specifically found that Waslick had failed to present sufficient evidence to establish factually that he justifiably relied on any alleged fraudulent representations made by Simpson after March 2007 that prevented him from seeking to set aside the decree within the one year. Viewing the evidence in the light most favorable to Waslick, we agree with the district court that there was no substantial evidence to support the elements of his claims. See *Pavone*, 801 N.W.2d at 486-87. The district was correct to direct the verdict against him.

Simpson requests attorney fees, citing only to a divorce case in support of her claim. This is not a divorce case. There being no authority cited in support of this claim, the same is denied.

**AFFIRMED.**