

IN THE COURT OF APPEALS OF IOWA

No. 7-240 / 06-1330

Filed May 23, 2007

**IN RE THE MARRIAGE OF STEPHEN CRAIG LEONARD
AND NORMA JEAN LEONARD**

**Upon the Petition of
STEPHEN CRAIG LEONARD,**
Petitioner-Appellant,

**And Concerning
NORMA JEAN LEONARD,**
Respondent-Appellee.

Appeal from the Iowa District Court for Lee (North) County, Mary Ann
Brown, Judge.

Stephen Craig Leonard appeals from the district court's refusal to set
aside an order that dismissed his petition for dissolution of marriage.

AFFIRMED.

Stephen Leonard, Fort Madison, pro se.

Norma J. Wolfinger, Highlandville, Missouri, pro se.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

PER CURIAM

Stephen Craig Leonard appeals from the district court's refusal to reinstate his petition for dissolution of marriage. We affirm.

I. Background Facts and Proceedings

On May 3, 2004, Leonard filed a pro se petition seeking a dissolution of marriage from "Norma Jean Leonard AKA Norma Jean Ammons" in the Iowa District Court for Lee County. The petition alleged Stephen and Norma formed a common law marriage on May 11, 1975. Norma Jean Wolfinger filed a pro se answer to the petition. She denied the existence of a common law marriage, and her answer alleged Leonard had been convicted of assaulting her with a deadly weapon in 1977. Leonard was incarcerated at the Iowa State Penitentiary in Fort Madison, Iowa, when his petition was filed.

On March 18, 2005, a district court judge dismissed Leonard's petition with prejudice without scheduling or holding a hearing. Leonard appealed, and a panel of this court reversed the dismissal and remanded the matter to the district court for further proceedings. Following remand, the district court entered an order on March 3, 2006, which set Leonard's petition for trial on April 27, 2006. The order setting trial was sent to and received by Leonard and Wolfinger.

Leonard did not appear for trial on April 27, and no one responded after a public call was made for him in the courthouse at Fort Madison. Wolfinger appeared personally and with her attorney at the time scheduled for trial. The trial court reviewed the court file and confirmed Leonard was an inmate at the Iowa State Penitentiary. The court stated there was nothing in the court file that indicated Leonard requested to be personally present for trial. The court also

noted Leonard made no request to be transported to court, and he made no effort to present his case through depositions, affidavits, or exhibits. The court then received evidence from Wolfinger. She testified she has been married to Joseph Wolfinger for sixteen years. Wolfinger also testified she had a brief relationship with Leonard approximately thirty years ago, but she denied Leonard's claim of a common law marriage. She confirmed that Leonard had assaulted her with a knife. At the conclusion of Wolfinger's testimony, the trial court stated that a written order would be filed dismissing Leonard's petition and assessing costs to Leonard.

On May 16, 2006, the district court entered a written order dismissing Leonard's petition for dissolution of marriage. After the court entered its order, Leonard filed a motion to enlarge, amend, or modify judgment under Iowa Rule of Civil Procedure 1.904(2) and a motion to reopen the case. He argued he was not properly informed where the trial would be held and claimed he believed his action for dissolution of marriage would be tried in a courtroom inside the Iowa State Penitentiary rather than the courthouse. Leonard filed a subsequent motion for order setting aside default judgment pursuant to Iowa Rule of Civil Procedure 1.977¹ on July 13, 2006, contending his default was the result of "excusable neglect."² The district court denied the motions in an order filed July 18, 2006. This appeal followed.

¹ Iowa Rule of Civil Procedure 1.977 states: "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."

² Leonard's motion claimed he "kited" a prison employee on April 18, 2006, inquiring where trial was to be held, but did not receive a response until the day of trial.

II. Scope of Review

We review the district court's rulings on Leonard's post-hearing motions for abuse of discretion. *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995).

III. Discussion

Leonard contends the district court should have set aside the dismissal of his petition for dissolution and reinstated his case because the court failed to properly designate the courtroom where his civil proceeding would take place. He claims he assumed the dissolution trial would be held in the courtroom located at the Iowa State Penitentiary.

In denying Leonard's post-trial motions, the district court found Leonard bore the responsibility for ensuring he effectively prosecuted the civil proceeding he instituted. The court was not persuaded that Leonard reasonably believed his dissolution proceeding would be held at the prison rather than at the North Lee County courthouse. The court stated it was

unaware of any trial proceeding being held at the Iowa State Penitentiary courtroom that is not related to the inmate's incarceration. Post conviction relief proceedings arising out of disciplinary appeals in the prison are held in the courtroom at the prison. Other civil proceedings where inmates are either plaintiffs or defendants are not held at the prison.

The court also noted Leonard did not subpoena witnesses, he did not request to be transported to court, and he made no effort to present his case through depositions, affidavits, or exhibits.³

³ On appeal, Leonard claims his sister voluntarily traveled to Fort Madison to testify on the date of trial. His appendix on appeal includes an affidavit from his sister dated August 24, 2006. The affiant claims she went to the courthouse on April 27, 2006, but

Leonard acknowledges he received notice on March 6, 2006, that his petition for dissolution would be tried on April 27, 2006. A pro se litigant undertakes the responsibility for litigating his or her case, and the trial court assumes no part of that responsibility. *Conkey v. Hoak Motors, Inc.*, 637 N.W.2d 170, 173 (Iowa 2001). Generally, non-lawyers are held to the same standards as lawyers in presenting an appeal. *In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997). We conclude the district court did not abuse its discretion in denying Leonard's post-hearing motions. Accordingly, we affirm the district court's refusal to set aside the order dismissing his civil action.

AFFIRMED.

the clerk of court "refused to tell me anything about the trial or where it was taking place until after the court had made its ruling." The affidavit was signed after the district court ruled and after Leonard filed his notice of appeal.