

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 29 1988

CLERK SUPREME COURT

IN RE MARRIAGE OF HAROLD J. IRWIN AND CYNTHIA R. IRWIN MUELLER

Upon the Petition of)

HAROLD J. IRWIN,)

Filed June 29, 1988

Petitioner-Appellee,)

137

And Concerning)

CYNTHIA R. IRWIN MUELLER,)

8-27
87-984

Respondent-Appellant.)

Appeal from the Iowa District Court for Clinton County (CD7735), Margaret
S Bries, Judge.

Respondent wife appeals an adverse decision in a modification of the
parties' decree of dissolution. **AFFIRMED AS MODIFIED.**

Edward J. Kross of Shaff & Farwell, Clinton, for respondent-appellant.

Edward N. Wehr of Wehr, Berger, Lane & Stevens, Davenport, for
petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

SCHLEGEL, J.

Respondent wife appeals an adverse decision in a modification of the parties' decree of dissolution which denied her a \$450 per month housing allowance. She asserts that 1) the nature of the housing allowance was previously determined in her favor by the bankruptcy court and, therefore, the district court's decision is barred under the doctrine of issue preclusion, and in the alternative, that 2) the district court erred in determining that the monthly housing allowance was optional in nature. Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). We affirm as modified.

The respondent, Cynthia R. Irwin Mueller, and the petitioner, Harold J. Irwin, were married in 1968. They had three children. Their marriage was dissolved in 1983. The divorce decree allowed Cynthia to reside for six years, along with the three children, in the parties' house located upon the real estate awarded to Harold. The decree also stated:

Should [Cynthia] discontinue occupancy of the dwelling prior to expiration of the six year term, [Harold] shall have the option to rent the dwelling for the remainder of the term but must pay rental to [Cynthia] in the sum of \$450 per month.

Upon expiration of the six year term, [Cynthia's] right of occupancy shall discontinue, but at that time [Harold] shall be obligated to pay [Cynthia] the sum of \$62,000 with said amount payable in four equal non-interest bearing annual installments, the first installment due six years from this date and each subsequent installment due the same date of each year thereafter.

On February 7, 1985, the parties entered into a consent order modifying the provisional sum of \$62,000 to \$61,000.

In 1984, Cynthia remarried and in February 1986 she moved out of the house. She notified Harold and demanded the \$450 monthly payments. In March of 1986, Harold filed a voluntary Chapter 7 Petition in Bankruptcy. In June

of 1986, Cynthia filed an adversary proceeding in the bankruptcy court asserting that the obligation created by the dissolution decree relating to the \$450 monthly payments was nondischargeable.

The bankruptcy court determined that the \$450 monthly payments were in the nature of alimony, maintenance, or support and were therefore a nondischargeable debt. Harold filed the present application for construction or modification of the decree and asserted the optional nature of the \$450 monthly payments. The district court determined that the bankruptcy court's decision was not controlling as to the nature of the monthly payments. The court then ruled that if Harold did not take possession of the home or rent it out to a third party, he had no obligation to pay the \$450 monthly fee to Cynthia.

Cynthia contends that the district court was barred from deciding whether the payments were optional because of the bankruptcy court's decision on the same issue. "Issue preclusion prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action." Hunter v. City of Des Moines, 300 N.W.2d 121, 1223 (Iowa 1981). In determining whether the doctrine of issue preclusion is applicable, four prerequisites must be met:

- (1) the issue concluded must be identical;
- (2) the issue must have been raised and litigated in the prior action;
- (3) the issue must have been material and relevant to the disposition of the prior action; and
- (4) the determination of the issue in the prior action must have been necessary and essential to the resulting judgment.

Id.

Under the first prerequisite, the issue raised in the bankruptcy action must be identical to the issue raised in the present action. The issue before the bankruptcy court was whether the debts in question, including the \$450

monthly housing payments were part of a property settlement which is dischargeable in bankruptcy, or constitute alimony, maintenance or support, which is nondischargeable. The determination of whether a financial obligation is to be classified as a property settlement rather than a support award is a matter of federal bankruptcy law, not state law. See 11 U.S.C. § 523(a)(5)(B) (1982). A bankruptcy court is not bound by state laws that characterize an item as maintenance or property settlement. In re Williams, 703 F.2d 1055, 1057 (8th Cir. 1983).

In holding that Harold's obligation to pay Cynthia a \$450 monthly housing allowance was in the nature of alimony, maintenance, or support, and therefore nondischargeable in bankruptcy, the bankruptcy court found it necessary to examine the language of the dissolution decree. The bankruptcy court determined that the decree created an obligation upon Harold to pay Cynthia \$450 per month if she discontinued occupancy of the house prior to the expiration of the six year term.

Similarly, the issue before the district court involved a construction of the dissolution decree and the nature of the \$450 monthly payments. We are convinced, however, that the nature of the issue in the present action is not necessarily identical to what the bankruptcy court had to decide. *In so holding, we agree with the district court's analysis that stated:*

In analyzing the decision of the bankruptcy judge, the Court comes to the conclusion that the only thing it was necessary for that judge to do was to determine whether or not the allowance, for whatever period of time, was in the nature of alimony, maintenance, or support. It was not necessary for her to decide the extent of the obligation in time. The Court concludes that the parties have litigated only the question of whether the amount is in the nature of property settlement or in the nature of alimony, maintenance or support. That issue is now precluded, having been determined in the bankruptcy action to be in the nature of alimony, maintenance or support. When this obligation was to terminate was not necessary in the bankruptcy

action, and the Court believes that that issue still remains and is a matter to be independently determined in this proceeding by the Court.

Moreover, as a policy consideration, we note that Iowa courts are the best authority to interpret their own dissolution decrees as a matter of state law.

The first prerequisite for issue preclusion has not been met. Therefore, issue preclusion does not operate on the record before us and the district court correctly concluded that Harold is allowed to relitigate the issue as to the optional nature of the \$450 monthly housing payments.

Having determined that the district court properly considered the foregoing issue, we next examine respondent's contention that the provision of the divorce decree regarding the \$450 monthly payments was mandatory. The district court construed paragraph 16 of the dissolution decree to mean that if the petitioner did not take possession of or rent the marital home, he had no obligation to pay rental to the respondent in any amount. We disagree.

In our construction of the divorce decree, we are guided by certain principles. A divorce decree is to be construed like any other written instrument. "The determinative factor is the intention of the court as gathered from all parts of the judgment." Cooper v. Cooper, 158 N.W.2d 712, 713 (Iowa 1968) (citation omitted). "[I]n determining this intent, we take the decree by its four corners and try to ascertain from it the intent as disclosed by the various provisions of the decree." In re Roberts' Estate, 131 N.W.2d 458, 461 (Iowa 1964).

The express terms of the relevant portion of the decree provide Cynthia with the right to occupy the marital home for the six year period from June 10, 1983, to June 10, 1989. In the event Cynthia decided to move out of the house prior to the expiration of the six year term, the decree provided that "[Harold] shall have the option to rent the dwelling for the remainder of the term but must pay rental to [Cynthia] in the sum of \$450 per month" (emphasis added).

We think it is clear from the plain language of the decree that once Cynthia moved out of the house, Harold was required to pay her a \$450 per month rental fee until June 10, 1989, regardless of whether he decided to rent the house to a third party or live in the house himself. Other provisions of the decree support this conclusion. The property division payment, a debt which was subsequently discharged in bankruptcy, was to commence six years after the entry of the decree, coincident with the termination of either the right to occupy the house or the \$450 monthly payments. Moreover, Cynthia was awarded physical custody of the three children and child support of \$125 per week. We agree with respondent's argument that the \$450 monthly payments were intended for the economic security of Harold's dependents. Without these payments, the child support award would have been insufficient to provide Cynthia and the three children a place to live.

We find that the \$450 monthly payments were intended to be mandatory upon Harold, once Cynthia discontinued living in the marital home prior to June 10, 1989. We also find that there has not been a substantial and material change of circumstances since the filing of the dissolution decree which would warrant a modification of the mandatory nature of the decree.

AFFIRMED AS MODIFIED.

Oxberger, C.J., concurs; Donielson, J., dissents.

DONIELSON, J. (dissenting)

I respectfully dissent.

I agree with the majority that issue preclusion does not foreclose Harold's right to litigate whether the \$450 monthly housing payments are optional or mandatory.

To determine the intent of the controversial provision regarding the \$450 monthly payment and the occupation of the home, Harold testified:

The reasoning that the \$450 was put in there, it was basically—that was—I put that provision in there, that paragraph in there, it was an option, to rent that house, if Cindy, my ex-wife, moved out of the house. The only reason I put that in there is I—you know, over the years, I'd seen different divorces, they had problems with—with—they'd have problems. I figured I would be the last person that she would rent that house to, so I put that provision in there, that I could rent that house from her for \$450.

* * *

I had my lawyer set down to write that up. The only reason I wanted that in there is so that I would have the option to rent that if she decided to move out of the house, that I would—you know, otherwise she could have rented it out to anybody. I was involved in farming that farm, and if I remarried, I wanted to have the first option to live in that place, and I was going to pay her the \$450. How I reached that \$450 was—there's no way—through this decree, that \$450—through the decree, it has that she'll pay the rent—I mean she'll pay the insurance, the upkeep on the house, she'll pay the taxes on the house, and—that to me had figured up to around \$200 a month, so I had figured that if I rented it for, you know, the \$450, taking the \$200 off of it, it—that would make it \$250 for me, and if I was renting a house in town or whatever, you know, it wouldn't be that much extra to pay the two fifty—

Cynthia testified as follows concerning her understanding of the provision:

I could stay on the farm, or if I moved out, I'd get \$450 to go towards the rent of wherever I went.

I agree with the district court's interpretation of the decree, set out as follows, and find it to more accurately reflect the true intention of the parties:

Considering the circumstances of the parties at the time the provision was entered and the circumstances that now exist, the Court has come to the conclusion that the obligation to pay \$450 monthly payments was not intended to operate unless the petitioner had

possession of and occupied, either by himself or through tenants, the real estate involved. Her right of occupancy did not cease when she left the premises, and if the petitioner elected not to rent out the premises, either by residing there himself or by providing a tenant therefor, he had no obligation to pay the rent, and the right of leasing out the property remained that of the respondent.

I would affirm the district court.