IN THE COURT OF APPEALS OF IOWA

No. 3-585 / 92-1648

FILED
FEB 25 1994
CLERK SUPREME COURT

MARY LOUISE QUIJAS,
Plaintiff-Appellee,

vs.

MARILYN QUIJAS,
Defendant-Appellant.

MARILYN QUIJAS,
Third-Party Plaintiff-Appellant,

vs.

DAVID M. MACIAS,
Third-Party Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Judge.

The defendant appeals a judgment of the district court holding she owed the plaintiff the sum of $20,000 plus interest on two notes that were owed on a food business awarded to defendant pursuant to a divorce decree. **AFFIRMED.**

Walter Newport of Newport, Bell & Oxley, Davenport, for appellant.

Becky Fitz Flores, Davenport, for appellee Mary Louise Quijas.

David Macias, Davenport, pro se.

Considered by Hayden, P.J., Sackett, J., and Peterson, S.J.*

*Senior judge from the 1st judicial district serving on this court by order of the Iowa Supreme Court.

PER CURIAM

Rudy Quijas and David Macias operated a food business known as The Tortilla Factory. Each owned a one-half interest in the business. In order to obtain more capital to operate the business, Rudy signed promissory notes on January 20 and May 1, 1983. Each note was in the amount of $10,000 payable to Mary Quijas, Rudy's mother. Each note accrued interest at twelve percent per annum and was due one year from the note's date of entry. Officer's notes issued by The Tortilla Factory to Rudy and Macias stated the corporation owed Rudy $65,619.74 and owed Macias $64,619.74. The two $10,000 notes were included in the amount owed to Rudy by The Tortilla Factory.

Rudy and Marilyn Quijas were divorced on July 9, 1985. The district court awarded Rudy's one-half interest in The Tortilla Factory subject to any liens or indebtedness of record to Marilyn.

On June 11, 1986, Marilyn filed a petition requesting an accounting with respect to the corporate books. Marilyn argued Macias had effectively taken over complete control of the company had was misappropriated money. Following a lengthy discovery period, Marilyn and Macias entered into an agreement in August 1987. As part of the settlement Marilyn agreed to sell her one-half interest in The Tortilla Factory to Macias and abandon any and all indebtedness owed by The Tortilla Factory to Marilyn. In return, Marilyn was to be held harmless from any and all

claims, actions, or other liabilities, from whatever sources, associated with the operation of The Tortilla Factory from the inception of the business until the time of the agreement.

On May 12, 1987, Rudy filed a contempt action against Marilyn, alleging Marilyn had failed to make payments to Mary Quijas for the two notes. Rudy argued Marilyn assumed the obligation pursuant to the dissolution decree. The district court held Marilyn was not in contempt because no provisions of the decree mentioned the two notes or required Marilyn to pay them. The district court stated Rudy was the sole obligor on the two notes.

In 1988 Rudy filed a declaratory judgment action, requesting the district court determine the parties' duties and liabilities pursuant to the dissolution decree. Specifically Rudy requested the court to determine if he or Marilyn was obligated for the two $10,000 notes under the decree. The district court found the $20,000 debt went to The Tortilla Factory. The court determined because Marilyn was awarded the business she was obligated to pay the two $10,000 notes. The court did not make any determination on Marilyn's third-party claim Macias had assumed her liability, if any. On appeal from the declaratory judgment action Marilyn requested this court modify the district court ruling so the obligation of the payment on the $20,000 fell upon Macias and The Tortilla Factory. In an unpublished opinion filed on November 27, 1989, this court

stated the dissolution decree was not clear whether Rudolph was personally responsible for the payment of the two notes or if they were the obligation of The Tortilla Factory. We found there was no justicable or contested issues between Marilyn and Rudy to decide. The court affirmed the district court's declaratory judgment.

On July 17, 1991, Mary Quijas filed an amended petition involved in this appeal seeking damages from Marilyn's failure to pay on the two $10,000 promissory notes. Marilyn then filed a third-party petition against Macias, seeking a judgment against him for any costs, expenses, judgments, attorney fees, or other out-of-pocket liabilities Marilyn might have to pay as a result of Mary's suit. The district court, taking judicial notice of the numerous lawsuits revolving around the notes, ruled Marilyn knew she was obligated to pay the notes pursuant to the dissolution decree. The district court entered judgment against Marilyn in the amount of $20,000 plus interest of $19,628.83. The court dismissed the third-party petition against Macias. Marilyn appeals.

Our review is on assigned error only. Iowa R. App. P. 4. The trial court's findings of fact are binding on the reviewing court if supported by substantial evidence.

I. Marilyn contends the trial court erred in finding the two notes are her obligation under the dissolution decree and in awarding a judgment plus interest against her.

The previous declaratory judgment action resolved the issue of which party, Rudy or Marilyn, was liable pursuant to the dissolution decree for the two notes. We affirmed the district court's determination Marilyn was the obligor of the notes pursuant to the terms of the 1985 dissolution decree. This district court did not err in finding Marilyn was the obligor of the two notes to Mary Quijas pursuant to the dissolution decree. On this issue we affirm the decision and award of the district court.

II. Marilyn argues the trial court erred in dismissing her third-party claim against Macias. She maintains when she sold her one-half interest in The Tortilla Factory to Macias, he agreed to hold her harmless as to all liabilities associated with The Tortilla Factory during her half-ownership of the business. We affirm the trial court on this issue.

Marilyn's liability for the two $10,000 notes arose from the transfer in the dissolution decree of Rudy's interest and his obligations associated with the business to her. Rudy's officer note was included in this transfer. It has been determined it was the parties' intention the $20,000 went with the transfer of the business. In an express agreement with Macias for the sale of her one-half interest in The Tortilla Factory, Marilyn abandoned any and all indebtedness The Tortilla Factory owed to her. See generally Iowa Glass Depot, Inc. v. Jindrich, 338 N.W.2d 376, 380 (Iowa 1983) (citation

omitted). As the trial court in this case determined, her abandonment of such an interest included any monies due under the officer's note. In effect, Marilyn abandoned any right to contribution from The Tortilla Factory for the two notes owing to Mary Quijas.

The hold harmless provision of the agreement between Marilyn and Macias does not apply in this situation. The two notes were a personal obligation Marilyn assumed under the dissolution decree, the notes were not an obligation of The Tortilla Factory. The trial court properly dismissed Marilyn's third-party petition against Macias.

We affirm the decision of the trial court. Costs of this appeal are assessed to Marilyn.

AFFIRMED.

All judges concur except Sackett, J., who concurs specially without opinion.