

IN THE COURT OF APPEALS OF IOWA

No. 9-312 / 88-736

**FILED**

AUG 23 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF KATHLEEN J. KASOW AND RALPH KASOW

Upon the Petition of

**KATHLEEN J. KASOW,**

Appellee,

And Concerning

**RALPH KASOW,**

Appellant.

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Appeal from the Iowa District Court for Linn County  
(DM 15063), Paul J. Kilburg, Judge.

The husband appeals from a dissolution decree.

**AFFIRMED.**

Charles C. Brown, Jr., Cedar Rapids, for the  
respondent-appellant.

Jerry Zimmerman, Cedar Rapids, for the  
petitioner-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,  
JJ.

**OXBERGER, C.J.**

Ralph Kasow appeals from a dissolution decree, challenging subject matter jurisdiction and economic provisions. Our scope of review is de novo. We affirm.

Kathleen and Ralph Kasow were married in 1968. The couple moved to Iowa in 1985 when Ralph became marketing manager at Rockwell Collins in Cedar Rapids. Ralph lost this job in 1987, moved to Texas, and took other employment. While the record shows he made approximately \$80,000 at Rockwell Collins, there is no evidence about his current income.

Kathleen was a homemaker during the marriage and did not work outside the home while the couple lived in Iowa. She has no degree or specialized training or employment skills.

The dissolution decree directed Kathleen, as noncustodial parent, to pay nominal child support of \$25 per month. The decree placed one child, a boy born in November 1970, in joint legal custody with Ralph as the primary physical caretaker. Ralph was ordered to pay Kathleen alimony of \$1,250 per month and to contribute \$2,000 toward Kathleen's trial attorney fees. The property was divided--four thousand dollars proceeds from the sale of the furnishings to Kathleen, while Ralph retained his \$4,000 tax refund.

Ralph contends the district court lacked subject matter jurisdiction over this dissolution because Kathleen, the petitioner, had not been a resident of Iowa for the statutory one-year period prior to the filing of the petition. The district court noted Ralph was not an Iowa resident but found Kathleen was a resident for the requisite one-year period. Ralph asserts the separation occurred while Kathleen was visiting her mother in California, where she has since remained except for brief trips to Iowa to sell the house and furnishings. Kathleen maintains she intended to return to Iowa and would have done so but for Ralph's abandonment of the house and marriage. The sale of the home left her no recourse but to stay with her mother in California.

Iowa Code section 598.6 states in relevant part:

[t]he petition for dissolution of marriage . . . must state that the petitioner has been for the last year, a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein, after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only.

Kathleen left Iowa in December 1986 to be with her recently widowed mother. She did not return in January 1987 as originally planned when Ralph suggested to her that there was no need for her to rush. She returned in April 1987 to find the home in Cedar Rapids abandoned. The payments had not been kept up, so she was forced to sell the home to save their equity. She sold most everything but put personal items in storage in Cedar Rapids.

The trial court ruled Kathleen was an Iowa resident for the requisite year before the filing of her petition for dissolution. The Iowa Supreme Court set forth a three-part test for determination of residency. Once acquired, domicile continues:

until a new one is perfected by the concurrence of three essential elements: (1) definite abandonment of the former domicile; (2) actual removal to, and physical presence in the new domicile; (3) a bona fide intention to change and to remain in the new domicile permanently or indefinitely.

Julson v. Julson, 255 Iowa 301, 305, 122 N.W.2d 329, 331 (1963) (citations omitted). Kathleen Kasow was a resident of Cedar Rapids, Iowa, when she flew to California to be with her mother. Her home and belongings were in Cedar Rapids, as were her children and husband. The record confirms she flew to California for a limited purpose. She took only a suitcase with her. She maintained telephonic contact with her home in Iowa as long as it was possible.

Kathleen filed the suit, asserting jurisdiction in Iowa, and she sustained her burden to establish facts that substantiate this claim. The facts and circumstances of the case as recorded show she intended to retain her Iowa residency at least to the date upon which she filed her petition. See Id. at 330. She took no steps to establish a home in another state.

Kathleen's Iowa residency is presumed to continue until facts are presented establishing a domicile elsewhere. The burden is upon Ralph to go forward with evidence proving a

change in Kathleen's domicile. Id. at 330. Ralph attacks Kathleen's assertion of Iowa residency by claiming Kathleen and her mother went on a gambling junket to Nevada when they were supposed to be mourning the loss of the mother's husband. These contentions do not constitute facts establishing Kathleen intended to reside in California.

Ralph next contends the court erred in awarding alimony to Kathleen, his wife for over twenty years, and in the alternative that \$1,250 per month alimony is excessive. Ralph did not comply with discovery rules, filed no financial statement, and although he was present at the trial, he did not testify. He rested his case without presenting any evidence.

The record shows Kathleen had made many sacrifices in her life as Ralph's wife. Kathleen did not have the opportunity to develop high-paying skills during the marriage and is now limited by a heart condition. Having only evidence of Ralph's past earning capacity, the court made a reasonable determination based on the information available of Kathleen's need for support and Ralph's recent past ability to provide support. See In re Marriage of Jones, 309 N.W.2d 457, 460 (Iowa 1981). The duration of Ralph's liability for alimony is justified under the circumstances.

Ralph objects to the property division, asserting the court failed to consider his itemization showing the value of the household affects was over \$13,000. The court

accepted Kathleen's evidence that the value of those possessions she was compelled to liquidate was \$4,000. The trial court stated in its findings: ". . . it is the determination of this court that as a matter of credibility of witnesses, the petitioner's testimony is more credible and is accepted by this Court on the issues for which the testimony was presented." We see no reason to reject the trial court's assessment of credibility.

Finally, Ralph contends the award of attorney fees of \$2,000 to Kathleen constituted error. Much of the expense of this litigation resulted from Ralph's dilatory actions in this matter. We affirm the trial court's decision to award attorney fees. We order that Ralph contribute \$500 toward the attorney fees incurred by Kathleen in response to this appeal. Appellate court costs are taxed to Ralph.

**AFFIRMED.**