IN THE COURT OF APPEALS OF IOWA

FILED 69
JAN 30 1981
CLERK SUPREME COURT

IN RE THE MARRIAGE OF HELEN G. MEADE AND THOMAS T. MEADE, SR.

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| Upon the Petition of | ) | |
| **HELEN G. MEADE,** | ) | Filed January 30, 1981 |
| Petitioner-Appellee, | ) | |
| And Concerning | ) | |
| **THOMAS T. MEADE, SR.,** | ) | 0-353<br>2-64254 |
| Respondent-Appellant. | ) | |

Appeal from Johnson District Court - Thomas M. Horan, Judge.

Respondent-husband appeals from an order construing the parties' modified dissolution decree asserting 1) that the court erred in its determination of the date upon which interest began to accrue on the unpaid balance of petitioner-wife's judgment and 2) that he was entitled to a credit for the fair rental value of his house during a period of time in which it was occupied by petitioner. AFFIRMED.

Daniel W. Boyle of Phelan, Tucker, Boyle & Mullen, Iowa City, Iowa, for respondent-appellant.

R. Bruce Haupert of Leff, Leff, Leff, Haupert & Traw, Iowa City, Iowa, for petitioner-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent-husband, Thomas T. Meade, Sr., appeals from trial court's order construing the parties' modified dissolution decree. Respondent asserts 1) that the court erred in its determination of the date upon which interest began to accrue on the unpaid balance of petitioner's judgment against him and 2) that he was entitled to a credit on the judgment for the fair rental value of his house during a period of time in which it was occupied by petitioner. We affirm trial court's order.

On August 7, 1979, petitioner filed an application for construction of the parties' modified dissolution decree asking the court to determine the amount of the judgment owed to her by respondent. The parties' November 21, 1974, dissolution decree awarded petitioner $115,000 payable as follows:

1) $50,000, due by March 1, 1975;

2) balance due in annual installments of not less than $7,500 beginning March 1, 1976, and each March 1st thereafter;

3) interest due on unpaid amounts commencing March 1, 1975;

4) credit of $49,666 maximum for any payments respondent would be required to make on a suit against him by Lincoln Commodity, with interest accruing until proof of payment was filed;

5) petitioner may occupy the residence until March 1, 1975.

On January 9, 1975, trial court approved the following provisions of the parties' agreed-upon modification of their decree:

1) petitioner may occupy the residence until December 31, 1975;

2) payment on the $115,000 judgment is postponed until January 1, 1976, payable as follows:

a) $50,000 due January 1, 1976;

b) $7,500 installment payments beginning January 1, 1976;

c) interest begins accruing January 1, 1976.

3) "this Agreement, and the dates provided herein, including interest commencement dates, shall automatically be extended for an additional calendar year unless one of the parties shall notify the other party, in writing, no later than October 31st of a calendar year in which this Agreement is in effect, that the Agreement shall terminate on the following December 31st. In the event that this Agreement is extended for any calendar year after 1975, Respondent shall receive a credit against the $115,000 judgment of Petitioner, equal to the fair rental value of the residence occupied by Petitioner on Respondent's farm, for each month after December, 1975, in which said residence is occupied by Petitioner. If the parties are unable to agree as

> to the fair rental value of such residence, it shall be determined by three real estate agents, one to be selected by each party and the third by the two first selected, and their decision shall be binding on the parties hereto."

In construing the modified decree, trial court determined that respondent owed petitioner $13,520.50. Respondent then filed an application for reconsideration which was denied. This appeal followed.

**I. Scope of Review.** Our review of trial court's order construing the parties' modified decree is at law on assigned error only. Iowa R. App. P. 4. Interpretation of the words of a contract by trial court as trier of fact is binding on this court if supported by substantial evidence. Allen v. Highway Equipment Co., 239 N.W.2d 135, 139 (Iowa 1976).

**II. Date for Computing Interest.** Respondent contends that trial court erred in determining the date upon which interest began to accrue on the unpaid balance of the judgment entered against him in favor of petitioner. He alleges that the evidence shows that neither of the parties terminated the agreement in writing by October 31, 1975, as required by paragraph six [3) above] of the agreement. He therefore argues that the agreement was automatically extended through the year 1976 and that the interest commencement date extended to January 1, 1977. He further argues that even though he wrote a $50,000 check to petitioner in 1976, the petitioner had no intention of cashing the check.

Petitioner, on the other hand, contends that the interest began to accrue on January 1, 1976, because respondent's act of writing a check for $50,000 to petitioner on March 15, 1976, constituted written notice to petitioner that the agreement automatically to extend the interest due date for another year was terminated. Petitioner testified that she demanded the $50,000 on March 15, 1976, and that, therefore, respondent's payment on his obligation during 1976 constituted part performance, thereby terminating the agreement. She argues that respondent's act of writing the check alone constituted part performance of his obligation during 1976 and the fact that respondent did not have sufficient funds to permit negotiation of the check did not negate this demonstration of respondent's intent.

We agree with petitioner. We note that funds to cover the $50,000 check were not actually made available until 1977. From the record, however, we discern no evidence that petitioner knew or could have known of respondent's credit line at the bank which would have enabled petitioner to cash the $50,000 check during 1976 instead of 1977.

Once respondent issued a check for the first and largest amount due, the balance of annual payments of no less than $7,500 also became due January 1, 1976.[1]

**III. Credit for Fair Rental Value.** Respondent finally contends that he is entitled to a credit for the fair rental value of his house during the period in which it was occupied by petitioner. Petitioner argues that respondent has failed to carry his burden of proof on this issue. Again we agree with petitioner.

No evidence of the parties' agreed upon rental value is found in the record. The issue was not raised in the September 13, 1979, hearing to construe the decree. Nor did trial court make findings on this issue. Thus, the question of rental credit is not properly before this court for review.

Judgment of trial court is affirmed.

AFFIRMED.

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[1] In reviewing the amount of interest due, we note that trial court determined the time for calculating interest from August 22, 1979, through September 13, 1979, to be 25 days. We believe this should be 23 days, but since neither party raised this as an issue, we do not modify trial court's judgment.