IN THE COURT OF APPEALS OF IOWA

FILED
MAY 31 1988
CLERK SUPREME COURT

IN RE THE MARRIAGE OF DORIS MILOT AND RAYMOND L. MILOT

Upon the Petition of DORIS MILOT,	)	
Petitioner-Appellee,	)	Filed May 31, 1988
And Concerning RAYMOND L. MILOT,	)	8-136 / 87-737
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 34480) - James C. Bauch, Judge.

Respondent appeals from the decree dissolving his marriage. **AFFIRMED AS MODIFIED.**

L. Don Snow, of Mershon, Snow & Knock, Cedar Falls, for the respondent-appellant.

George Lindeman, of Lindeman & Yagla, Waterloo, for the petitioner-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J. 182

Respondent-Appellant Raymond L. Milot appeals from the decree dissolving his marriage. He contends (1) he did not have effective conciliation, (2) there was not a breakdown of the marriage relationship to the extent the legitimate objects of matrimony had been destroyed, and (3) the alimony and property awards were inequitable.

The parties were married in 1953 and raised five children to maturity. Doris was not employed outside the home during the marriage. Raymond had long-term employment with the United States Government. He is retired and has a $1,700 monthly civil service pension. Doris works at Catholic Charities for room and board. The parties had a $22,000 home and about $35,000 in assets. There were no debts.

The trial court dissolved the marriage and divided the home and personal property equally. Raymond was ordered to pay Doris alimony of $700 per month for her life, said payments to continue on Raymond's death to the extent his government survivor's annuity benefit does not total $700 per month. Raymond appeals.

I.

Raymond contends he was not granted effective conciliation.

Raymond requested conciliation in his answer. Raymond also on August 21, 1986, requested the appointment of a specific conciliator. On September 3, 1986, the court ordered the appointment of the conciliator requested by Raymond, provided the parties should make arrangements with the conciliator, and the conciliator should report to the court by November 2, 1986. The conciliator met with the parties separately one time. On September 19, 1986, the conciliator reported to the court the marriage was broken beyond repair.

Raymond then filed an application for a second conciliator asking the new conciliator be ordered to work with the parties over a period of time. The trial court denied his request. Iowa Code section 598.16 (1985) provides in part:

> . . . the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth conciliation procedure and the conciliator.

Raymond contends he should have a new counselor because the first one he requested did not counsel the parties "for a period of sixty days" and he did not have effective counseling.

In enacting section 598.16 the legislature's intent was to "foster viable marriage relationships" and "minimize the problem of hasty divorces." See In re Marriage of Schroeder, 393 N.W.2d 808, 810 (Iowa 1986). Section 598.16 is mandatory in nature and excludes the exercise of discretion in appointing a conciliator if request is made within the time frames set forth in the statute. See Schroeder, 393 N.W.2d at 809. The request for conciliation was made within the time frame of the statute. Conciliation was ordered. The order directed a report to be filed in sixty days. The parties met with counselors who determined, after one session, they could not save the marriage. Raymond claims this was not sufficient because the statute states the court shall require the parties to participate in conciliation efforts for a period of sixty days.

The issue becomes what is participation in conciliation. The statute is a conciliation statute, not a reconciliation statute. We reject Raymond's contention the counseling must be effective. The statute gives no set guidelines as to what constitutes participation or how many times, or for how long, the parties must meet in the sixty-day period. What is participation is a discretionary decision. We find that while the conciliation period should not be cut short, the trial court did not abuse its discretion in not ordering additional counseling.

II.

191

Raymond next contends there was not a breakdown of the marriage relationship to the extent the legitimate objects of matrimony have been destroyed. The thrust of Raymond's argument is the problems Doris had with him existed for the entire period of the marriage.

It is necessary to examine the entire record de novo to determine whether there has been a breakdown of the marriage relationship to the extent the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood the marriage can be preserved. In re Marriage of Morgan, 218 N.W.2d 552, 558 (Iowa 1974). Doris testified there had been a breakdown of their marriage relationship to the extent she could not live with her husband. Her testimony indicates she has no interest in returning to the marriage. Consideration of the marriage as a whole and the purpose and intent of the dissolution procedure enacted by the legislature leads to the conclusion there is no reasonable likelihood this marriage can be preserved. See id.

We affirm the trial court on this issue.

III.

Raymond contends the award was not equitable. The trial court made an equal division of house, personal property and Raymond's pension. Raymond worked for the government for thirty-three years. Thirteen years of his employment preceded the marriage. Part of the pension he now receives accrued during those premarital years. He also claims to have brought approximately $1,200 worth of property to the marriage. We consider the property division to be equitable. See In re Marriage of Byall, 353 N.W.2d 103, 107 (Iowa App. 1984). We do, however, consider the alimony to be inequitable. Raymond is retired. He is not able to return to the work force. Doris has employment

that supplies room and board. She has the opportunity to expand her coverage and qualify for social security benefits. Should Raymond predecease her, she will qualify for the survivor's share of his civil service pension. A portion of the civil service pension represents premarital assets. We modify the decree to provide she should receive alimony of $500 a month and the alimony shall terminate upon either party's death. Costs on appeal are taxed one-half to each party. Neither party is awarded attorney fees.

AFFIRMED AS MODIFIED.