IN THE COURT OF APPEALS OF IOWA

No. 9-171 / 98-0495
Filed July 23, 1999

IN RE THE MARRIAGE OF MATTHEW J. SEITZ AND JULEEN A. SEITZ

Upon the Petition of MATTHEW J. SEITZ,

Petitioner-Appellee,

And Concerning JULEEN A. SEITZ,

Respondent-Appellant.

FILED
JUL 23 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Clinton County, J. Hobart Darbyshire, Judge.

Respondent appeals the district court decree dissolving the parties' marriage.

AFFIRMED.

J. Drew Chambers of Holleran, Shaw, Murphy & Stoutner, Clinton, for appellant.

Robert McGee, Clinton, until withdrawal, then Matthew Seitz, Clinton, pro se.

Considered by Huitink, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Juleen Seitz appeals the district court decree dissolving the parties' marriage. She contends the district court erred in finding Matthew Seitz had participated in conciliation in good faith. We affirm.

Matthew and Juleen were married on March 19, 1988. No children were born of this marriage. Matthew filed his petition for dissolution of marriage on July 17, 1997. Juleen filed her answer on July 21, 1997, in which she requested that conciliation take place "until it would serve no useful purpose or for a period of 60 days, whichever occurs first." The district court entered an order on August 13, 1997, directing the parties to undergo conciliation for a period "of at least 60 days." W. David McEchron, Ph.D., was appointed as conciliator and given the authority to set up the initial meeting as well as "all subsequent appearances" as he considered necessary.[1]

Matthew met with Dr. McEchron on November 25, 1997. McEchron's report, dated December 2, 1997, reads in part:

> Based on my interview with [Matthew], it is very apparent that there is no hope in further attempts at reconciliation. [Matthew's] mind is made up to pursue the divorce from his wife. He recognizes that he may not have pursued the matter as vigorously as he could have because of concerns about the impact of these moves during the holiday season, but he is adamant in his decision to pursue a divorce. He clearly stated that any attempts at reconciliation would be fruitless.

---

[1] Juleen apparently requested Dr. McEchron since the record discloses she saw him on two occasions prior to the entry of the conciliation order.

> I recognize that Juleen does not want a divorce and is motivated to preserve her marriage; however, in good conscience, I cannot recommend further attempts in marital reconciliation.

Trial of this matter took place on February 10, 1998. Matthew testified he participated in marital counseling with McEchron and made an honest, good faith disclosure to him as to the marital situation as he saw it. He further testified he had not had any feelings of love for Juleen for "awhile" and stated further attempts at marital counseling would not preserve the marriage. Juleen testified she did not want the marriage to end, the marriage counseling had not been done in good faith, and the marriage could be preserved by marital counseling.

The decree of dissolution of marriage was entered on February 18, 1998. The district court concluded the marriage had broken down to the extent the legitimate objects of matrimony had been destroyed and there was no reasonable likelihood the marriage could be preserved. The court specifically referred to the report of McEchron in concluding further conciliation efforts would not be useful.

I. STANDARD OF REVIEW. Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give deference to them because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995).

II. GOOD FAITH CONCILIATION. After review of the record, we conclude the evidence supports a finding of a good faith reasonable effort by Matthew

to participate in conciliation. *See In re Marriage of Smith*, 207 N.W.2d 548, 550-51 (Iowa 1973) (Iowa Code section 598.16 requires a good faith reasonable effort to conciliate; whether that effort has been made is a fact-specific determination). Matthew did attend a session with McEchron and disclosed his feelings about the marriage. He stated clearly to McEchron in counseling and to the court at trial that the marriage could not be preserved and he was not interested in further attempts at marriage counseling. Matthew did not refuse to attend or continue conciliation. He simply stated his belief that further efforts would be unsuccessful. After the session with Matthew, McEchron came to a similar conclusion this marriage could not be preserved by further marital counseling.

We further find, as did the district court, the evidence presented did show there has been a breakdown of this marriage relationship to the extent the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood the marriage can be preserved. Consequently, the district court did not err in granting this dissolution of marriage.

For these reasons, we affirm the dissolution decree.

AFFIRMED.