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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

KATHERINE McMAHON SAILER,)
Petitioner-Appellant,) Filed April 27, 1982
vs.) 135
JOHN SAILER,) 1-383
2-66315
Respondent-Appellee.)

Appeal from Greene District Court - Paul E. Hellwege, Judge.

Petitioner-wife appeals from the decree dissolving her marriage to respondent-husband asserting 1) that the parties' antenuptial agreement was intended to apply only in the event of death, not in the event of dissolution of marriage; 2) that the antenuptial agreement was intended to apply only to property owned at the time of the marriage; 3) that the alimony award was inadequate when limited in duration to one year; 4) that the record should have been corrected to show that petitioner filed a petition for separate maintenance, later dismissed, and was respondent in the husband's counterclaim for dissolution of marriage; and 5) that she should be awarded attorney fees on appeal. AFFIRMED AS MODIFIED.

Ione G. Shadduck, West Des Moines, Iowa, for petitioner-appellant.

Gregory J. Siemann, Carroll, Iowa, and James M. Richardson, Audubon, Iowa, for respondent-appellee.

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

PER CURIAM

Petitioner-wife, Katherine McMahon Sailer, appeals from the decree dissolving her marriage to respondent-husband, John Sailer. She asserts: 1) that the parties' antenuptial agreement was intended to apply only in the event of death, not in the event of dissolution of marriage; 2) that the antenuptial agreement was intended to apply only to property owned at the time of the marriage; 3) that the alimony award was inadequate when limited in duration to one year; 4) that the record should have been corrected to show that petitioner filed a petition for separate maintenance, later dismissed, and was respondent in the husband's counterclaim for dissolution of marriage; and 5) that she should be awarded attorney fees on appeal. We affirm as modified.

The parties were married November 15, 1975. This was the second marriage for each. No children were born of the marriage, although both had children by their previous marriages. Four of petitioner's six children resided with the parties during their marriage, the youngest of which was still a minor, age 16, at the time of trial and was residing with petitioner. Both parties were 44 years old at the time of trial.

On November 11, 1975, the parties executed an antenuptial agreement. Petitioner had little property, while respondent had a net worth of approximately $115,000 due to ownership of real estate, farm machinery, grain, and livestock. The agreement provided, inter alia, that neither would have any right in the property of the other except as to property jointly accumulated and owned in both their names. (emphasis added).

In a ruling filed July 15, 1980, trial court held that the antenuptial agreement was valid as applied to property accumulated during the marriage but was invalid as to limitations of liability for support. The decree, entered on January 2, 1981, awarded petitioner various personal items and a snowmobile, the only asset acquired in both parties' names during the marriage. Plaintiff also received

rehabilitative alimony of $400 per month for one year and $1500 for her attorney fees.

I. Scope of Review. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. Our responsibility is to review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. In re Marriage of Full, 255 N.W.2d 153, 158 (Iowa 1977). While we give weight to the findings of trial court, especially where credibility of witnesses is involved, we are not bound by them. Iowa R. App. P. 14(f)(7).

II. Antenuptial Agreement. Petitioner argues that trial court erred in finding that the antenuptial agreement was valid except as it applied to the issue of alimony. We do not agree.

The pertinent provisions of the antenuptial agreement are as follows:

> . . . Except as may be hereinafter provided, Katherine McMahon shall not by reason of marriage have any claim or right, title or interest as wife, widow or heir of the property of John Sailer either real, personal or mixed which he has seized of or possessed of, or has any title or interest in except as to property that may be jointly acquired, accumulated or owned in both their names. (emphasis in original).
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> 4. That Katherine McMahon does hereby specifically waive, renounce, release or relinquish for herself, her heirs, executors, administrators and assigns all and each of their respective rights, title and interest including, but not limited to homestead or dower now or at any time hereafter in force in or to all the property of John Sailer whether the same be real, personal or mixed and wherever the same may be situated or found which he may have during his lifetime, or at his death and also waives any right to distributive share except as to property hereafter jointly accumulated and owned in both their names. (emphasis in original).
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> 7. In the event of termination of this marriage other than by death of either party, Katherine McMahon shall be entitled to $5,000.00 payable from the present assets of John Sailer which such

> amount until paid shall be charged upon his estate, and binding upon his heirs, successors and assigns.

Petitioner first argues that the antenuptial agreement should be ruled void in its entirety for purposes of the dissolution of marriage. Respondent argues that petitioner has raised this issue of validity for the first time on appeal. We agree that petitioner did not challenge the agreement's validity in trial court. Further, in her initial brief, petitioner's argument focuses only upon invalidity due to reasons of public policy. In her reply brief, petitioner, for the first time, raises the issues of inadequacy of consideration, mutual mistake, fraud, or overreaching.

In light of this record, we believe petitioner is limited in her argument before this court to contending not that the agreement is void, but simply, by interpretation of its provisions, absent paragraph seven, that the agreement applies only to the disposition of property upon death, not upon dissolution.

Following the dictates of the antenuptial agreement, trial court concluded that the only property subject to division was a snowmobile because it was the only asset jointly accumulated and owned in both parties' names. Petitioner claims that the antenuptial agreement is ambiguous, thus requiring extensive proof of the parties' intention. She argues that the testimony as to the parties' intent showed that the phrase, "hereafter jointly accumulated and owned in both their names," means that all property acquired by either party after November 15, 1975, and before judgment of dissolution, including appreciation to the property respondent owned at the time of the marriage, should be equitably divided. Thus, she argues, based on respondent's alleged $202,000 increase in net worth and other property acquisitions, she should be awarded approximately $173,000.

We disagree with petitioner's argument and conclude that the language of the agreement is clear and that petitioner relinquished all claims, both during the marriage and at death, to all property not held in both names, except as provided in paragraph seven. We next focus on trial court's conclusion that this provision was invalid.

Trial court correctly stated that the provisions of an antenuptial agreement which limit support obligations are void. In re Marriage of Winegard, 278 N.W.2d 505, 507 (Iowa 1979). However, we believe paragraph seven is properly interpreted as a property award from respondent's property held at the time of the marriage, to which petitioner is entitled irrespective of her current support needs. Interpreting paragraph seven in this manner, we can give effect to the parties' stated intentions, as well as uphold the public policy of this state. We thus modify trial court's decree finding paragraph seven of the antenuptial agreement to be void and of no force and effect. Respondent shall pay petitioner $5,000 within 120 days of the issuance of procedendo in this case, together with interest thereon at 10% per annum from January 2, 1981.

We further believe that, even if we were persuaded by petitioner's argument that she is entitled to a distribution of any accumulations of property after November 15, 1975, the record is wholly inadequate to separate the items of property falling into premarital and postmarital categories.

III. Adequacy of Support. Petitioner next asserts that trial court's award of alimony in the amount of $400 per month for one year was inadequate. Taking into account the relevant factors enumerated in section 598.21(3), The Code 1981, we disagree.

Although the record supports petitioner's assertions that she quit her $12,000 per year job as a nurse upon respondent's request, and that she cannot hold employment which requires prolonged standing or heavy lifting, we do not believe she is entitled to alimony for a longer duration. Petitioner did not forego significant career advances during this short marriage, nor does she require additional education or job training to obtain suitable employment. The record reflects real employment opportunities for petitioner which she has declined. Although her reasons for declining such employment may be legitimate, as

opposed to contrived, this does not mean that respondent should be required to support a woman who is otherwise capable of supporting herself after a reasonable period of time in which she can secure employment to be self-supporting. We believe trial court found that reasonable time to be one year and, therefore, affirm trial court's award of alimony in the amount of $400 for one year only.

IV. Correction of the Record. Petitioner also asserts that trial court erred in failing to rule on her request for correction of the record and subsequently denying that request. We find no error.

The relevant facts are that petitioner filed a petition for separate maintenance on January 7, 1980. Respondent answered and counterclaimed for a dissolution of marriage. Petitioner's petition was subsequently dismissed. Thereafter, on the basis of section 598.28, she asked trial court to correct the record to reflect the parties' proper status as petitioner and respondent. Trial court did not rule on the initial request, but denied a second request. Petitioner claims prejudice in that she will forever be erroneously identified as the petitioner n this action for dissolution and that her attorney thereby was disadvantaged by aving to prepare for trial both as petitioner and respondent. We find no merit in etitioner's assertion.

Initially, we believe that trial court properly found petitioner's request, which was not made until trial of this matter, was too late. To change the parties' esignation at that point would have resulted in a confused record and court file. urther, under our no fault dissolution law, petitioner could suffer no prejudice by eing labelled as petitioner throughout.

Petitioner further requests that we clarify the apparent conflict between ction 598.3 (which provides that no cause of action save for alimony can be ined with an action for dissolution of marriage), section 598.28 (which makes the ovision of dissolution actions applicable to separate maintenance actions), and In Marriage of Morgan, 218 N.W.2d 552 (Iowa 1974). The court concluded in

Morgan that if one spouse files for separate maintenance and the other counterclaims for dissolution, the court, upon a finding of a breakdown in the marital relationship, must grant the dissolution. We conclude there is no conflict because, for purposes of section 598.3, the causes of action for separate maintenance and dissolution are identical.

V. Attorney Fees. Petitioner requests attorney fees and costs incurred in connection with this appeal. The primary consideration in making this determination is the parties' resources. In re Marriage of Williams, 303 N.W.2d 160, 167 (Iowa 1981). Based on this consideration, we deny petitioner's request and divide costs of this appeal equally between the parties.

AFFIRMED AS MODIFIED.