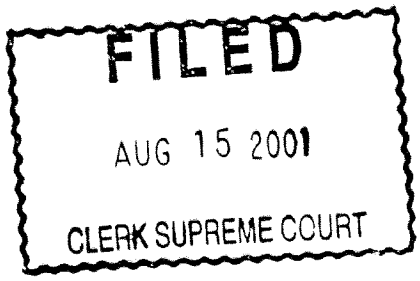
IN THE COURT OF APPEALS OF IOWA

No. 1-292 / 00-1265
Filed August 15, 2001



IN RE THE MARRIAGE OF JOYCE L. UMPHRESS AND PAUL R. UMPHRESS

Upon the Petition of
JOYCE L. UMPHRESS, n/k/a
JOYCE L. HOLDREN,
Petitioner-Appellant,

And Concerning
PAUL R. UMPHRESS,
Respondent-Appellee.

Appeal from the Iowa District Court for Wapello County, Annette J. Scieszinski (declaratory ruling) and Dan F. Morrison (contempt), Judges.

The petitioner appeals from the district court's declaratory ruling in her declaratory judgment action in a contempt proceeding arising from a dispute over the interpretation of the parties' dissolution decree. **REVERSED AND REMANDED WITH DIRECTIONS.**

Michael J. Moreland of McKay, Moreland & Webber, P.C., Ottumwa, for appellant.

Steven Gardner of Kiple, Denefe, Gardner & Zingg, L.L.P., Ottumwa, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HECHT, J.

Joyce Umphress appeals the district court's declaratory ruling arising from a dispute over interpretation of a dissolution decree. The district court held Paul Umphress was relieved of a $20,000 property settlement obligation. Joyce argues the district court erred in concluding respondent's property division obligation was extinguished. We reverse and remand with directions.

I. Factual Background and Proceedings. The marriage of Joyce and Paul was dissolved on November 20, 1997, pursuant to a decree incorporating a stipulation signed by the parties. The decree awarded Paul the marital homestead and provided for the following disposition of a business owned by the parties:

> It is further ordered, adjudged and decreed that the Petitioner is awarded the net proceeds, after payment of debts, from the sale of the property known as Animal House. Said property shall be placed on the market for a period of six months and in the event the net proceeds are less[1] than $20,000.00, Petitioner shall pay to the Respondent the difference between $20,000.00 and the net proceeds from the sale. In the event said property does not sell during the six months period, the Respondent shall pay to the Petitioner $20,000.00 in exchange for complete ownership to the rights of the property known as Animal House. It is expressly agreed and understood between the parties and ordered by the Court that all debts of the business known as "Animal House" are to be paid from the proceeds of the sale of the same and in the event the property does not sell, all said debts shall be the responsibility of the Respondent upon which he shall hold the Petitioner harmless.

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[1] We conclude the parties intended Joyce would receive a minimum of $20,000 for her interest in the business whether from its sale during the first six months or thereafter from Paul. Accordingly, it is apparent the parties intended the stipulation to provide if the net proceeds from the sale of the business during the six months following the dissolution were less than $20,000, *Respondent* would pay to Petitioner the difference between the proceeds and $20,000.

Paul received physical custody of Christian, the couple's seventeen-year-old son, and Joyce was ordered to pay child support during his minority. A satisfaction of $15,000 of the child support was credited to Joyce to offset Paul's receipt of the homestead.

The business was not sold within six months after the marriage was dissolved. In fact, the business closed within ninety days after the dissolution decree was filed. The contract seller of the business premises sought and received from the parties a deed in lieu of foreclosure. Paul failed to pay Joyce $20,000 for the defunct business. Joyce filed an application for rule to show cause asking Paul be found in contempt of court for noncompliance with the dissolution decree. Paul resisted the application, asserting the claim was barred by the statute of limitations and by a procedural rule requiring attempts at debt collection be made prior to the filing of the motion for rule to show cause. He also raised the affirmative defenses of inability to pay, lack of willfulness, and impossibility of performance.

At the hearing on the application, both parties acknowledged they had signed a quitclaim deed in lieu of forfeiture of the real estate contract for the building housing their pet store. Interpreting the effect of the quitclaim deeds upon the property settlement, the district court ruled Animal House had been eliminated as an asset and Paul was relieved of the $20,000 payment requirement. However, the court ordered Paul to prepare a written account reflecting the sale or other disposition of the Animal House personal property and to pay Joyce the fair value of that property. The hearing on contempt was

continued to a later date. The accounting subsequently prepared and filed by Paul suggested the liabilities of Animal House exceeded the value of its personal property. Thereafter, the district court found the application for contempt order was moot. Joyce appeals.

II. Standard of Review. Our review of this action is de novo. Iowa R. App. P. 4. Although we give weight to the trial court's findings of facts, we are not bound by them. Iowa R. App. P. 14(f)(1).

III. Enforceability of the Decretal Property Division. The district court, noting the business premises had been relinquished by a deed in lieu of foreclosure within six months after the decree was filed, ruled Paul's obligation to pay $20,000 was unenforceable. On appeal, Joyce contends the court's declaratory ruling erroneously modified the property division provisions of the couple's dissolution decree by relieving Paul of his obligation to pay her $20,000 in exchange for complete ownership of Animal House. Paul contends the district court correctly concluded the sale or exchange of the business was rendered impossible and the purpose of his decretal obligation to pay $20,000 was frustrated.

Generally, the property division provisions of a dissolution decree can only be challenged on direct appeal; a challenge in a modification action comes too late. *In re Marriage of Schradle*, 462 N.W.2d 705, 708 (Iowa Ct. App. 1990) (refusing to modify dissolution decree to relieve husband of payments to Federal Land Bank on property awarded to wife). It is well-established both the district court and this court are without authority to modify property distributions ordered

by dissolution decrees absent extraordinary exceptions such as fraud, duress, or mistake. *Knipfer v. Knipfer*, 259 Iowa 347, 355-56, 144 N.W.2d 140, 144-45 (1966). Paul makes no claim of fraud, duress or mistake in this case. He argues instead the district court's ruling should be affirmed because (1) the parties abandoned the terms of the stipulation by executing the deed in lieu of foreclosure, and (2) post-decree developments rendered performance of the property division stipulation impossible.

a.) Abandonment theory.

Although contracts can be rescinded if the parties mutually intend to do so and act consistent with their intent, this rule is not dispositive in this case. *See In re Marriage of Christensen*, 543 N.W.2d 915, 918 (Iowa Ct. App. 1995). The terms of the parties' stipulation, which included an unconditional requirement Paul pay Joyce $20,000 for the business if it was not sold within six months after the dissolution decree, were incorporated in the dissolution decree and thereby reduced to judgment. It is the decree, not the stipulation, which creates whatever rights the parties have. *Knipfer,* 259 Iowa at 350, 144 N.W.2d at 142. The business was not sold during the six months after the decree was entered. Paul cites no authority for the proposition that the legal obligations imposed by a *judgment* may be vitiated or abandoned under the circumstances of this case. Accordingly, we find his abandonment theory unpersuasive.

b.) Impossibility of performance.

Paul asserts Animal House ceased operations before the expiration of six months after entry of the decree, and the business had no positive net value that

could be exchanged for the $20,000 payment he was obligated to make to Joyce. He contends because the business became defunct within six months of the entry of the decree, nothing of value remained for Joyce to exchange in consideration for the payment. In other words, he claims performance of the stipulation was rendered impossible by circumstances that arose after entry of the decree.[2] We are unable to discern from the record what motivated Paul in November of 1997 to agree to pay $20,000 for the business if it was not sold within six months. We are likewise unable to discern what, according to Paul, caused the value of the business to completely disappear[3] within less than ninety days after the entry of the decree. If, as Paul claims, the business had no value six months after the decree was entered, he made a bad bargain in the stipulation. Although mistake as to asset valuation can in some circumstances justify a modification of a property division, *In re Marriage of Full*, 255 N.W.2d 153, 157 (Iowa 1977), Paul made no claim of such error in the district court, and makes no claim of mistake in this appeal. In the absence of an allegation of fraud or irregularity that might justify vacation or modification of the judgment, Paul offers no justification for its avoidance. Accordingly, we conclude the district court erred in its declaratory ruling, filed on May 26, 2000, holding Paul is relieved of his obligation to pay Joyce $20,000.

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[2] Paul made no attempt within one year of the entry of the judgment to vacate or modify it by asserting irregularity, fraud, or newly discovered evidence. *See* Iowa R. Civ. P. 252, 253.

[3] We acknowledge Joyce does not concede Paul's claim the Animal House personalty is without net value.

IV. Disposition. The declaratory ruling filed on May 26, 2000, is reversed. Our disposition of the appeal from the declaratory ruling dictates we also reverse the ruling entered July 26, 2000, in which the district court determined the contempt issues raised by Joyce were moot. We remand this case for further proceedings consistent with this opinion on Joyce's application for rule to show cause. By our decision, we express no opinion as to the merits of Joyce's contempt claim or Paul's defenses thereto.

REVERSED AND REMANDED WITH DIRECTIONS.