



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF SHARON SUE LEEGE AND VERL DEAN LEEGE

UPON THE PETITION OF
SHARON SUE LEEGE,

)

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Filed June 4, 1986

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Petitioner/Appellee/Cross-Appellant,

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6-20

AND CONCERNING
VERL DEAN LEEGE,

)

85-602

Respondent/Appellant/Cross-Appellee.

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Appeal from the Iowa District Court for Linn County, August F. Honsell,
Judge

Both parties appeal the trial court's ruling concerning a modification of
a prior dissolution decree. **AFFIRMED.**

Lloyd Humphreys, Cedar Rapids, for petitioner/appellee/cross-appellant.

Amy Christensen Couch and Margaret LeMarche, Des Moines, for
respondent/appellant/cross-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Petitioner-appellee (Sharon) and respondent-appellant (Verl) appeal from a decision of the trial court in a hearing to modify provisions of a property settlement in their decree of dissolution. Sharon asks that we delete a forfeiture clause in a transfer of property. Verl asks us to invoke the forfeiture clause. We affirm.

The Iowa Supreme Court in In re Marriage of Knott, 331 N.W.2d 135 (Iowa 1983) held that a property settlement may not be modified in absence of fraud, duress, coercion, or mistake. The trial court found that Sharon had not established any of these grounds; therefore, her application for modification to modify was dismissed.

The trial court dismissed Verl's application for contempt because the decree lacked specificity regarding "the various terms and conditions of the decree concerning any mandates surrounding petitioner's (Sharon) return to the State of Iowa and the sanctions, if any, provided for within the confines of the parties' stipulation rather than imposition of contempt proceedings." The court also concluded that neither party established the other party's willful failure to honor the terms of the decree. The trial court apparently dismissed for lack of specificity in the original decree the alternative relief Verl prayed for in his application for rule to show cause, i.e., "That the court forfeit all of her right, title and interest in and to the realty above mentioned and provide that ownership of same be given to the Respondent, Verl Dean Leege. . . "

In his appeal Verl claims the following language in the decree is specific regarding forfeiture:

In the event the petitioner, Sharon Sue Leege, would subsequently leave the State of Iowa, any and all her interest in real estate shall be forfeited and title shall revert to Respondent, Verl Dean Leege, and she agrees to execute any and all instruments necessary to effectuate this transaction.

Verl contends that since the trial court found that Sharon had not and did not intend to return to Iowa, the decree specifically requires her to forfeit all her interest in the property.

Sharon contends that the forfeiture clause only applies in the event she moves to Iowa and then left Iowa. We reject this interpretation. We conclude that the clear intent of the stipulation was that she live in Iowa or the property reverted to Verl.

Sharon also claims that Verl's failure to "perform his duties specified in the decree constitute grounds for waiver and estoppel for him to invoke the penalty foreclosure clause of the stipulation."

The duties Verl was required to perform were:

"At the time of transfer of the interest from Respondent (Verl) to Petitioner (Sharon)... Respondent shall ensure that there are no liens, encumbrances, mortgages whatsoever upon said premises... This does not include the lien currently held by Petitioner as to any back support that is owed her under the temporary support order previously entered by the Court. In that same vein, that Respondent agrees to bring all child support payments up to date by no later than April 1, 1984, ... Respondent hereby agrees to pay any and all property taxes upon the premises... due and payable in September 1983 and March 1984 and all prior taxes upon said premises... On or before June 1, 1984, Respondent shall remove from the premises any and all of his possessions and shall clean up any and all junk that may be on the exterior of the premises, inside the garage or inside the building..."

Respondent shall assist financially or otherwise the petitioner's move from the State of Illinois to the State of Iowa in June as previously agreed upon. Any financial assistance shall be agreed upon by the parties."

Verl says that he made a good faith attempt to fulfill his obligations under the decree. He says that offer to help Sharon move by using his horse trailer and pickup truck met the "otherwise" term. He says he moved most of his property by June 1.

Verl however did not dispute he had failed to pay \$500 property taxes due or \$2500 due for child support payments.

We interpret the following language in the decree: "At the time of transfer of the interest from Respondent to Petitioner Respondent shall ensure there are no liens. . . In that same vein, that Respondent agrees to bring all child support payments up to date. . .to impose a condition precedent to Sharon's duty to move to Iowa. The clear intent of the stipulation and decree is to impose on Verl the financial obligation to pay all taxes and child support in order to make it financially possible for Sharon to return to Iowa.

We affirm the trial court's decree. We decline to invoke the *forfeiture* clause against Sharon. We leave the title to the real estate as provided in the original decree.

Costs are taxed to Verl.

AFFIRMED..