IN THE COURT OF APPEALS OF IOWA

No. 1-617 / 00-1067
Filed December 12, 2001

IN RE THE MARRIAGE OF JASMINE T. KIM AND MICHAEL MUTO

Upon the Petition of
JASMINE T. KIM,
Petitioner-Appellant,

And Concerning
MICHAEL MUTO,
Respondent-Appellee.

FILED
DEC 12 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Webster County, David R. Danilson, Judge.

Jasmine Kim appeals from a district court ruling vacating the parties' dissolution decree. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Steven H. Lytle of Nyemaster, Goode, Voigts, West, Hansell & O'Brien, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

HECHT, J.

Jasmine Kim appeals from a district court ruling vacating the parties' dissolution decree. She claims the court erred in concluding she was not a resident of Iowa for the purpose of establishing jurisdiction under Iowa Code section 598.6 (1999). She contends her absences from the state during the four years prior to the filing of her dissolution petition were temporary departures. We affirm.

I. Factual Background and Proceedings.

The petitioner, Jasmine Kim, was born in South Korea on January 7, 1971. She moved to Iowa when she was two weeks old. In 1991, she moved to Minnesota where she attended chiropractic school. While there, she maintained her status as an Iowa resident and dated and lived with the respondent, Michael Muto, a fellow chiropractic student. Michael and Jasmine lived in Minnesota until December 1994, when they participated in externships in Arizona for three months. In April 1995, they returned to Minnesota for graduation and then moved to New York.

Jasmine and Michael married in Niagara Falls, New York, on April 29, 1995. Jasmine obtained a New York driver's license, and the parties registered their vehicles in New York. Jasmine and Michael obtained chiropractic licenses in New York, Arizona, and North Carolina.

The parties moved multiple times during their marriage. They moved from New York to North Carolina in November of 1995, where their daughter, Victoria, was born on January 28, 1996. They moved back to New York in February 1996 and attempted to establish a chiropractic practice.

In November of 1996, they moved to North Carolina for one month and then moved back to New York. In September 1997, the parties considered a move to Nevada, but instead traveled to Minnesota, where they signed a six-month lease for an apartment. In January or February 1998, they moved back to New York and opened a joint chiropractic practice. They enrolled Victoria in a school there and signed a one-year lease for an apartment. In September or October 1999, they moved to North Carolina. The parties next contemplated a move to either New York or Ohio. Michael flew to Ohio on December 4, 1999. That same day, Jasmine left Michael and took Victoria to Iowa, where Jasmine's mother lives. Jasmine claims she moved here to stay and to settle down. She is employed in Iowa, has an Iowa chiropractic license, and considers herself an *Iowa resident.*

During the parties' marriage Jasmine never claimed to be an Iowa resident. She indicated to Michael that she did not want to live in Iowa, and that she preferred to live in a large city. She stated at the trial that they moved to North Carolina in September 1999 to "once again . . . start a new job and settle somewhere and hopefully stay there." To the question of whether she would agree that she was not a resident of Iowa from April 1995 until December 1999, she answered, "I don't think that I was a resident of anywhere."

Jasmine filed a dissolution petition on December 7, 1999. She alleged she "is now a resident of the State of Iowa and both she and Respondent have agreed that the Iowa District Court of Webster County may decide this Dissolution of Marriage." Michael has never been an Iowa resident. Jasmine and Michael filed an application for waiver of the ninety-day waiting period,

claiming that the court had jurisdiction of the parties and the subject matter. The district court entered a stipulated decree of dissolution of marriage on December 16, 1999. It found it had jurisdiction of the parties and the subject matter. It provided for joint legal custody of Victoria and awarded Jasmine primary physical care. Jasmine received the 1993 Toyota Camry, and Michael was to pay the indebtedness thereon. The decree provided that Michael was to pay all indebtedness incurred during the marriage, including the loans at William D. Ford Consolidation Program in the amount of $110,000. Jasmine was to pay her own unconsolidated student loans. Jasmine had an attorney; Michael did not.

Michael filed a petition to vacate the dissolution decree on January 14, 2000. He alleged the stipulated decree was entered without the subject matter to do so and it was obtained through irregularity or fraud and must be vacated. The trial was held on May 31, 2000. The parties did not address the issues of irregularity and fraud.

The district court granted the petition to vacate the decree, adjudicated the stipulated decree null and void for lack of jurisdiction, and denied Michael's request for attorney fees. It determined Jasmine was not a resident of Iowa for a period of one year unless the phrase "after deducting all absences" in Iowa Code section 598.6 required a different result. It concluded that phrase refers to absences that are temporary under *Harris v. Harris,* 205 Iowa 108, 215 N.W. 661 (1927), coupled with an intent to always return to an Iowa residence. Jasmine appeals.

II. **Standard of Review.**

Actions seeking to vacate or set aside for lack of jurisdiction are heard de novo. *In re Marriage of Thrailkill,* 438 N.W.2d 845, 848 (Iowa Ct. App. 1989). This court must ascertain the facts from the records in the case that were before the trial court. *Id.* However, weight is given to the trial court's findings. *Id.*

III. **Discussion.**

Jasmine argues the district court had subject matter jurisdiction of this dissolution action under Iowa Code section 598.6. She contends the phrase "after deducting all absences" in that statute means a more permanent departure from the state with a return to residency, as opposed to a temporary departure from the state without a change of residence. Jasmine maintains the length of her residence in Iowa was twenty-five years after deducting all absences under section 598.6, thereby meeting the residency requirement. She asserts her temporary residences do not defeat the jurisdictional requirement of the statute. She claims the court should determine her residences in New York, North Carolina, and Minnesota were "absences" and allow her to be an Iowa resident for jurisdictional purposes. She also contends the fact that Michael signed the acceptance of service, application for waiver, and stipulated decree should be interpreted as his consent that Jasmine was an Iowa resident and met the jurisdictional requirements.

Iowa Code section 598.6 requires that, when a respondent is not a resident of this state, a dissolution petition "must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting

all absences from the state . . . ." Iowa Code § 598.6. If this one-year residency requirement is not satisfied, the trial court lacks jurisdiction. *In re Marriage of Bouska,* 256 N.W.2d 196, 197 (Iowa 1977). While the district court has general jurisdiction over dissolution actions, the court must have jurisdiction over the specific marriage involved through the residence of one of the parties to the action. *Id.* at 198. Subject matter jurisdiction cannot be conferred by waiver, estoppel, or consent. *Id.*

The term "residence" as used in section 598.6 has the same meaning as domicile. *In re Marriage of Kimura,* 471 N.W.2d 869, 877 (Iowa 1991). To have a residence or domicile within the meaning of section 598.6, one must have a fixed habitation with no intent to leave it. *Id.* Once a domicile is established, it continues until a new one is established. *Id.* A new domicile is established if (1) the former domicile is abandoned, (2) there is actual removal to and physical presence in the new domicile, and (3) there is a bona fide intention to change and remain in the new domicile permanently or indefinitely. *Id.* This intention must be a present and fixed intention and not dependent on some future or contingent event. *Id.*

It is not necessary to consider Jasmine's argument regarding whether her residences elsewhere constitute absences under section 598.6, because she was not an Iowa resident for the year prior to her filing of the dissolution petition. *See* Iowa Code § 598.6 (petition must state petitioner has been a resident for the *last* year) (emphasis added). Jasmine abandoned her Iowa residency when she moved to New York in 1995. She received a chiropractor's license and driver's license there. The parties registered their vehicles there. Jasmine told Michael

she never wanted to live in Iowa. These facts show that in April 1995 she (1) abandoned her residence in Iowa, (2) actually removed herself to New York and had a physical presence there, and (3) had a bona fide intention to change residences and remain in New York permanently or indefinitely. Her subsequent moves do not negate her intention in April 1995 to abandon her residence in Iowa and establish a new residence in New York. She manifested no intention to reestablish a residence in Iowa until December 1999.

Furthermore, that she was a resident of Iowa for the majority of her life does not confer jurisdiction on the courts of this state under section 598.6. She must have been a resident for the year prior to her filing of the dissolution petition, and she was not. Her argument that Michael was able to consent to jurisdiction is also without merit. Subject matter jurisdiction cannot be conferred by waiver, estoppel, or consent. *Bouska,* 256 N.W.2d at 198.

Jasmine failed to meet the residency requirement for filing a dissolution action in Iowa. Accordingly, the district court properly granted Michael's petition to vacate the dissolution decree.

IV. **Disposition.**

We affirm the judgment of the district court.

AFFIRMED.