

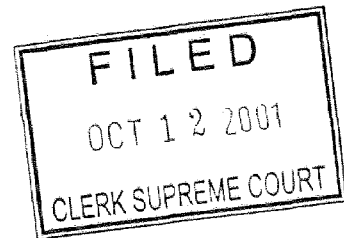
IN THE COURT OF APPEALS OF IOWA

No. 1-568 / 00-1971
Filed October 12, 2001

IN RE THE MARRIAGE OF MARSHA R.
WIEGEL AND LONN E. WIEGEL

Upon the Petition of
MARSHA R. WIEGEL,
Petitioner-Appellant,

And Concerning
LONN E. WIEGEL,
Respondent-Appellee.



Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs,
Judge.

Marsha Wiegel appeals from the district court ruling granting Lon
Wiegel's requested relief in his declaratory judgment action involving a stipulation
incorporated into the parties' dissolution decree. **AFFIRMED.**

Thomas D. Wolle of Moyer & Bergman, P.L.C., Cedar Rapids, for
appellant.

Sherry L. Schulte of White & Johnson, P.C., Cedar Rapids, for appellee.

Considered by Habhab, Peterson, and Harris, S.J.*

*Senior Judges assigned by order pursuant to Iowa Code section
602.9206 (2001).

PETERSON, S.J.

Marsha Wiegel appeals a decision of the district court declaring the rights of the parties in connection with the terms of a stipulation incorporated in a decree of dissolution entered by the court. The action was pursued in accordance with the provisions of Iowa Rules of Civil Procedure 261-269.

The parties' marriage was dissolved on January 27, 1989. The parties had entered into a stipulation that was accepted by the court and incorporated in the decree of dissolution. The parties were awarded joint custody of a minor child with primary care awarded to Marsha. The minor child of the parties has now reached the age of eighteen years and has graduated from high school. The issue to be determined is whether Lonn Wiegel has a continuing obligation to satisfy the debt secured by the mortgage on the residence in which Marsha is residing, after the obligation for the payment of periodic support for the child has been concluded. The issue has been framed by the declaratory judgment action. The objective of the inquiry is to determine the intent of the court at the time of the entry of the decree.

The relevant portions of the stipulation, which was incorporated in the decree, provide as follows:

CHILD SUPPORT

Respondent and Petitioner recognize an equal obligation for the care and support of the child. Respondent agrees to assist Petitioner in her primary care of the child by assuming financial responsibility for the mortgage of the real estate currently occupied by Petitioner. . . .

Respondent agrees to make all equity and interest payments required by the mortgage plus real estate tax payments and insurance payments as required by the mortgage. The Respondent

will continue the above-described payments until such time as the child reaches the age of eighteen (18) or graduates from high school, whichever occurs last, or dies, marries, is adopted, or becomes emancipated, whichever occurs first.

In the event that the payments described above are not made as provided in the current mortgage agreement of the real estate in which the Petitioner now resides, the Petitioner may request, and the Court order without making a determination that there is a substantial change in circumstances, an immediate modification of child support.

REAL ESTATE

The Petitioner and Respondent shall continue to hold the above-described property as joint tenants until the earlier occurrence of either of the following: (1) The Petitioner determines to sell the property. Upon completion of the sale, the parties will negotiate a modification to the child support agreement. (2) The child reaches the age of eighteen (18) or graduates from high school, whichever occurs last, or dies, marries, is adopted, or becomes emancipated, whichever occurs first.

Upon the occurrence of one of the above events, the Respondent agrees to execute a Special Warranty Deed conveying all interest that he may have in said property to the Petitioner.

OBLIGATIONS

The Respondent will be responsible for and hold the Petitioner harmless from any liability thereunder, on the following obligation: debt on the real estate described as [property at issue].

A stipulation and settlement in a dissolution proceeding is a contract between the parties and becomes final only when it is accepted and approved by the court. *In re Marriage of Lawson*, 409 N.W.2d 181, 182 (Iowa 1987) (citing *Prochelo v. Prochelo*, 346 N.W.2d 527, 529 (Iowa 1984)). When the stipulation is merged into the decree, it is then to be interpreted and enforced as a final judgment of the court, not as a separate contract between the parties. *Bowman v. Bennett*, 250 N.W.2d 47, 50 (Iowa 1984). It is the decree and not the stipulation which creates whatever rights the parties have. *In re Marriage of Von*

Glan, 525 N.W.2d 427, 530 (Iowa Ct. App. 1994). When we interpret the decree, the determinative factor is the intent of the trial court as gathered from the decree and other proper evidence. *In re Marriage of Knott*, 331 N.W.2d 135, 137 (Iowa 1983).

There are several compelling reasons to conclude that the payments that were being made by Lonn on the mortgage debt were intended by the trial court to be considered child support payments and concluded upon the termination of the obligation for support. The decree makes no other provision for the payment of child support other than this payment of the mortgage, taxes, and insurance on the real estate. Every parent has an obligation to assist in the support of his or her child, and the trial court would have been fully aware of that requirement and included a provision for satisfying that financial obligation in the decree. The provisions of the mortgage debt payment were incorporated in a heading entitled "CHILD SUPPORT" reflecting an intent of the court to treat the payments as child support. Within that same heading is a provision which anticipates that the payments will be terminated upon the occurrence of the child reaching the age of eighteen, graduating from high school, whichever occurs last, or dies, marries, is adopted, or becomes emancipated, whichever occurs first. This, or similar language, typically terminates the obligation of a parent for payments of periodic child support. The use of this language reflects the intent of the court to treat these payments as child support. The court provided for a modification of decree if the payments on the mortgage debt were not paid as provided by the court. Iowa Code § 598.21(11). The use of this language indicates an intention of the

court to treat the mortgage debt payments as child support. Typically when an interest in real estate is retained by both parties after a dissolution action, the title is transferred by the decree to the parties as tenants in common, thus providing the parties a continuing interest in a share of the property notwithstanding any event which may occur affecting the other party's interest. In this situation the court provided that the parties would hold the property in joint tenancy with a further provision that, in effect, precludes Lonn from acquiring any equity interest in the property unless Marsha should predecease him. He is required by the decree to convey any interest in the property if Marsha chooses to sell, or when the events terminating the periodic support occurs. The events which require transfer of any interest in the real estate regarding events occurring in the life of the child essentially mirror the language of termination under the "SUPPORT" heading. It is reasonable to conclude the trial court is likely to have allowed some equity be accumulated by Lonn with the reduction of the mortgage debt if it were intended to be a part of the property division.

The paragraph Marsha relies upon to support her argument that the payments were to continue after the satisfaction of the obligation for child support is the first paragraph under the heading "OBLIGATIONS." The language is indeed troublesome. It specifically states that Lonn is responsible for the debt on the real estate and is to hold Marsha free and harmless on account thereunder. This paragraph, however, cannot be read in isolation. It must be read in context with the balance of the decree to allow the entire decree to have meaning. The decree is susceptible of interpretation on the same basis as other written

instruments. *Bowman*, 250 N.W.2d at 50. Thus, the language of the following cases relating to the interpretation of contracts may be adopted and are equally applicable when applied to the interpretation of this decree. We seek to give effect to the language of the entire decree in accordance with its commonly accepted and ordinary meaning. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa Ct. App. 1997). The object is to ascertain the meaning and intention of the court as expressed by the language used. See *Pathology Consultants v. Gratton*, 343 N.W.2d 428, 434 (Iowa 1984). The obligations may arise from implication as well as from the express language of the decree. The terms of the decree include not only what is expressly stated but also what is necessary to be implied from the language used; and terms which may be clearly implied from a consideration of the entire decree are as much a part thereof as though plainly written on its face. See *Fashion Fabrics of Iowa v. Retail Investors*, 266 N.W.2d 22, 27 (Iowa 1978). Courts are slow to imply terms, but may do so if it is indispensable to give effect to the intent of the court, and when it is so clearly within the contemplation of the court that it was deemed unnecessary to express it. It can be justified only on the grounds of legal necessity and can arise only when it can be assumed it would have been a part of the decree if attention had been called to it. See *id.*

This court is satisfied that at the time of the entry of the dissolution decree incorporating the stipulation prepared by the parties the trial court intended that it be implied that hold harmless provisions of the first paragraph under "OBLIGATIONS" apply during the period of the periodic child support obligation,

or until Marsha chose to sell the property. This allows all parts of the decree to have meaning. The trial court examining this issue in this declaratory judgment proceedings correctly declared that it was intended that the payments of the Respondent on the mortgage debt terminate when the child reached the age of eighteen years and graduated from high school.

While it is often necessary to develop innovative arrangements to resolve the specific needs of the parties and appropriate division of the properties and debts of the dissolution, this court does not endorse or encourage unique processes for payment of child support by a responsible parent. The legislature has established agencies and adopted extensive procedures to enforce the payment of appropriate child support. Iowa Code ch. 252B-E. In accordance with the requirements of law, the supreme court has adopted guidelines for determining the correct amount of child support based on "net monthly income." Iowa Code § 598.21(4). In fact, section 598.22 and section 598.22A severely restrict the effect of payments that are not made through the clerk of court or the collection services center. The objectives are to insure child support that is appropriate is paid and that there are effective procedures available in the event the payments required are not paid.

Lonn requests that the court assess Marsha with his obligation for appellate attorney fees. An award of appellate attorney fees is discretionary. *In re Marriage of Ask*, 551 N.W.2d 643, 645 (Iowa 1996). There was a serious, significant, and real dispute between the parties in this case concerning the effect

of the language of the decree upon their relative property rights and obligations.
No attorney fees for Lonn's appellate attorney should be assessed to Marsha.

The trial court is affirmed. Costs of this appeal are assessed one-half to the petitioner and one-half to the respondent.

AFFIRMED.