FILED
JAN 29 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-630 / 90-145

IN RE THE MARRIAGE OF MARJORIE A. VANDERVELDE AND GERALD M. VANDERVELDE

329

Upon the Petition of

MARJORIE A. VANDERVELDE, by her Temporary Guardian, THOMAS LANGLAS,

Petitioner-Appellant,

And Concerning

GERALD M. VANDERVELDE,

Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Robert F. Peterson, Judge.

Appellant challenges the trial court's finding it does not have subject matter jurisdiction to entertain her action for dissolution of marriage. **AFFIRMED IN PART; MODIFIED IN PART; REMANDED.**

Timothy S. White and Todd W. Anderson of White & Johnson, P.C., Cedar Rapids, for appellant.

Gene Yagla and John A. Stitely of Lindeman & Yagla, Waterloo, for appellee.

Heard by Oxberger, C.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

In 1975 appellant Marjorie A. Vandervelde and appellee Gerald M. Vandervelde, residents of Waterloo, Iowa, obtained a Haitian divorce decree. The question we address is whether the trial court correctly held Marjorie was barred by laches and estoppel from challenging the Haitian divorce decree, and whether the trial court correctly dismissed Marjorie's dissolution petition. We find under this record, the result reached by the trial court was not equitable. We affirm in part; modify in part; and remand. We do not retain jurisdiction.

In April 1975, following a long-term marriage that produced four children, Marjorie and Gerald left Black Hawk County, Iowa where they had lived for a considerable period, and went to Haiti to obtain a divorce. They returned to Black Hawk County and they entered into a financial agreement which included support for Marjorie and the children placed in her custody. They both operated under this agreement, that was several times amended, until February 1989 when Marjorie filed a petition for dissolution of marriage. Gerald, considering himself divorced, had remarried in 1977.

The matter came to trial and was bifurcated to consider first whether there was a marriage to dissolve. The trial court found the Haiti divorce indicated on its face when entered, both parties were domiciled in Waterloo, Black

Hawk County, Iowa, and did not intend to acquire a new domicile in Haiti. The trial court determined the decree was not a valid decree, but laches and estoppel prevented Marjorie from collaterally attacking it. In lieu of this finding, Marjorie's claim for property and alimony was dismissed. Marjorie appeals challenging these findings.

We are concerned with two decent and private people who were unable to cope with a serious mental illness suffered by Marjorie. The illness had a base in her childhood and may have been inherited. Marjorie was a good mother. Gerald was a good provider. Their four children have been well provided for.

Both parties seek to assess fault to the other party. Marjorie suffered an illness that put an incredible strain on the marriage. Gerald argues her condition is in part of her own making. We do not agree. Gerald coped for a considerable period of time in a loving and caring manner. Marjorie argues he did not give enough. Issues of fault no longer belong in the marriage dissolution process, and we do not seek to assess faults in addressing the issues in this case.

Commencing before the marriage, Marjorie, an intelligent woman, suffered depression and personality disorders. These disorders continued throughout the marriage and were compounded in part by drug usage. Marjorie had numerous hospitalizations, treatments and

therapies, and continues to suffer from the disorders today. Whether or not the problems rendered her incompetent is not entirely clear. What is clear is that the condition made it extremely difficult for Marjorie to face and solve problems. She has suffered and continues to suffer from a significant degree of mental impairment. This permanent impairment was deemed to be attributable to the combined effects of her having received twenty-three electroshock treatments as well as her extensive drug usage. In addition, Marjorie was diagnosed as having avoidant and dependent personality problems. These personality problems carried over to Marjorie's relationship with Gerald. She would rely upon him and perform in accordance with his wishes. At present, and apparently for an extended period of time, she has been completely unable to cope with the stresses and pressures involved in working with people. It is also clear that Gerald, during at least the past fifteen or sixteen years, has been the dominate partner in the relationship, the one most able to solve problems and the one having knowledge of the parties' financial condition.

Prior to their going to Haiti in 1975, Gerald filed a dissolution petition in Iowa. Marjorie apparently did not want a dissolution. Both parties had contacted attorneys to represent them. For reasons not perfectly clear, the parties left their lawyers in Waterloo and sought to resolve the issues in their own way in Haiti.

The Haiti Decree of Divorce was rendered on April 7, 1975, at Port-Au-Prince, Haiti. The decree stated Gerald and Marjorie were domiciled in Waterloo, Iowa. The decree dissolved the matrimonial links between the parties based on the ground of incompatibility of character. It provided the minor children of the parties would remain in Marjorie's custody. The decree did not provide for any property settlement or support payments.

Shortly after their return from Haiti, Gerald sought the advice of his attorney and his accountant to prepare an agreement specifying the terms under which he was going to support Marjorie. An agreement, dated April 15, 1975, was presented to Marjorie with instructions from Gerald for her to sign it. Marjorie had little or no input into the agreement. She signed the agreement without consulting her own legal counsel and without being advised by Gerald or his legal counsel to do so. We find at the time of signing she was dependent on Gerald and she had limited ability to make decisions and act in her own best interest. The April 15, 1975 agreement provided the following (Gerald was the first party, and Marjorie was the second party):

> (1) For so long as any of the children of the parties reside with the second party and until her remarriage or death, the first party shall furnish to the second party an appropriate residence in the City of Waterloo, Iowa, and the first party shall pay mortgage payments thereon and all property taxes levied upon said property. The second party shall pay the maintenance costs and utilities in connection with said property. . . . On the remarriage or death of the second party or upon the second party's ceasing to have any of the

children of the parties permanently residing with her, this obligation shall cease.

(2) The first party shall pay to the second party for her support and maintenance the following monthly sums . . . unless terminated by the parties hereto as hereinafter provided, in accordance with the following schedule:

(a) During the lifetime of the second party and until she shall remarry, the following payments shall be made:

I. All children of the parties unemancipated $2,600 per month.

II. Three children of the parties unemancipated $2,100 per month.

III. Two children of the parties unemancipated $1,600 per month.

IV. One child of the parties unemancipated $1,100 per month.

V. All children of the parties emancipated $600 per month.

(6) In the event this agreement is not sooner terminated commencing with the year 1981, the annual amount of the payments provided above to the second party shall in addition to the decrease provided for because of the emancipation of children, also decrease by the sum of $3,000 per year.

(7) This agreement shall continue after the year 1975 from year to year upon the same terms and conditions unless either hereto gives to the other party written notice of election to cancel or terminate this agreement at least thirty days prior to the end of the calendar year hereafter. In the event such notice is given by either party, this agreement shall terminate as of the last day of the calendar year in which such notice is given and this agreement shall then be of no further force and effect.

There were two later agreements, one dated November 25, 1978 and a second dated December 31, 1978. The agreements were similar, with the exception that the last agreement eliminated the provision requiring Gerald to provide housing for Marjorie and the provision reducing the annual payments by $3,000 if they continue past the year 1981. None of the agreements were presented to any court in Iowa or elsewhere for approval. Marjorie did at some time have her attorney review the agreement, and he advised her the Haitian decree was not valid.

For a period of approximately three years after the entry of the Haitian divorce decree, Marjorie and the parties' minor children lived in the family residence. In 1977 Marjorie and the children moved to another home owned by Gerald, where Marjorie currently resides. Marjorie at that time received $14,500, apparently representing one-half of the parties' equity in the home. She also had received a new vehicle and valuable household and personal items.

In September 1980 the parties entered into a rental agreement that provided Marjorie would pay Gerald rent of $395 a month, utilizing the support payments received from Gerald. Gerald then paid a number of expenses concerned with home upkeep.

We are not readily able to ascertain how long support for the children continued. When Marjorie filed her

petition for dissolution on February 28, 1989, she alleged only Vanessa, born October 20, 1969, and Christopher, born April 15, 1967, were full time students and affected by the action.

At the time of hearing, Marjorie was receiving $600 a month. She continued to have impairments because of her mental condition. She held a job as a cleaning lady with a salary of less than $10,000 annually. Gerald had an annual income of approximately one-half million dollars. This information was first made known to the court when a temporary support hearing was held under a limited remand order of the Iowa Supreme Court following appeal.

After the first stage of the bifurcated trial, the trial court determined the Haitian divorce decree was not valid because Haiti lacked jurisdiction. The court also found Marjorie was barred by the doctrine of laches and estoppel from collaterally attacking the decree and the court did not have subject matter jurisdiction. Before so holding, the trial court made several holdings, including the following:

> In this situation the Haitian decree was entered in April of 1975, 13 years 10 months prior to the time that this action was filed. In the meantime the respondent has supported the petitioner in accordance with three agreements, albeit apparently unilateral, and has remarried. The petitioner has accepted the support furnished by the respondent, although not without some objection to its extent. The petitioner was advised by her counselor prior to and subsequent to the entry of the Haitian decree to seek legal counsel but did not accept that advice. Accordingly the Court concluded that the delay on

> the part of the petitioner is unreasonable and that the petitioner has accepted the support from the respondent and that the respondent based his conduct subsequent to the decree on these actions of the petitioner. Therefore the Court concludes that the respondent has established the defense of Laches and Estoppel.
>
> A substantial amount of evidence was introduced during the hearing concerning the petitioner's mental capacity during the relevant periods of time. In order to assert the person's mental incapacity as a defense, it must be shown that the individual lacked sufficient mental capacity to understand the situation. In the Matter of the Guardianship of Collins, 327 N.W.2d 230. The evidence establishes that the petitioner suffered from severe depression at various times during the parties' marriage and relationship. The notes of her counselor indicate that at times she appeared to be doing quite well and at other times she had regressed. The notes of Dr. Hastings at the time before and after the Haitian divorce indicate that at that time she seemed to be doing fairly well. One note indicates that she had retained an attorney to represent her, seemed confused as to how to handle the matter, however, another note indicates that when contacted by that attorney Dr. Hastings felt that she is and is as ready to deal with the matter as she ever will be. The Court concludes that the evidence does not indicate an individual who lacked sufficient mental capacity to understand the nature of the divorce proceedings at or about the time of the proceedings.

The parties do not challenge the finding the Haitian decree was not valid. We too agree the Haitian decree was not valid. The parties, who have been Iowa residents nearly all their lives, at the time of the Haitian divorce and before and after, were domiciled in and residents of Black Hawk County. Regardless of the validity of a dissolution or divorce decree in the nation awarding it, courts in this country generally have not recognized such decrees unless at least one spouse has a good faith

domicile in the foreign nation at the time the decree was entered. See Lugot v. Harris, 499 F. Supp. 1118, 1120 (D. Nev. 1980); Prudential Ins. Co. v. Lewis, 306 F. Supp. 1177, 1181 (N.D. Ala. 1969); Spindel v. Spindel, 283 F. Supp. 797, 802-04 (E.D. N.Y. 1968); Brueau v. Brueau, 3 Conn. App. 453, 456-57, 489 A.2d 1049, 1051 (1985); Weber v. Weber, 200 Neb. 659, 664, 265 N.W.2d 436, 441 (1978).

The sole question then is whether the trial court correctly determined Marjorie was barred by estoppel and laches from attacking the decree. Gerald contends the court did. Marjorie, on appeal, contends the court did not.

A person may be precluded from attacking the validity of a foreign divorce or dissolution decree if under the circumstances it would be inequitable for him or her to do so. Weber, 256 N.W.2d at 441; see also Zenker v. Zenker, 161 Nebr. 200, 72 N.W.2d 809 (1955). Such inequity may exist when action has been taken in reliance on the divorce, or when the attack on the divorce is inconsistent with the earlier conduct of the attacking party. Weber, 256 N.W.2d at 441. The application of the principles of equitable estoppel cannot be subjected to fixed and settled rules of universal application, but rests largely on the facts and circumstances of each particular case. Id.

Iowa has recognized that a party against whom a void decree of divorce is granted may be barred by laches or

estoppel from attacking it. In re Marriage of Winegard, 278 N.W.2d 505, 509 (Iowa 1979); Swift v. Swift, 239 Iowa 62, 68-69, 29 N.W.2d 535, 539 (1948). See also Robson v. Kramer, 215 Iowa 973, 978, 245 N.W. 341 (1932).

Equitable estoppel has been analyzed in five elements: (1) concealment of material facts, (2) lack of knowledge of the true facts by the one asserting the estoppel, (3) intention that the ignorant party rely on the facts as presented, (4) actual and reasonable reliance on the facts as portrayed, and (5) inequity will result if the true facts are now asserted. See Beek v. Aqua-Slide n' Dive Corp., 350 N.W.2d 149, 158 (Iowa 1984).

Gerald points out that for nearly fourteen years before this suit Marjorie treated the Haitian divorce as valid. She accepted a division of property, division of assets, and the separation of her household. She lived the life of a single woman. She executed and negotiated three support agreements. She lived in a separate house and paid rent for the property. She has been responsible for her own finances. She testified that her purpose in visiting the attorney who suggested this action, was for advice for bankruptcy and not in regard to her marriage. Gerald claims these facts support a finding she acknowledged her separate finances and household. He contends her claim she was not aware she was divorced is contradicted by her life for the last fourteen years and her assertion that she

did not believe she was divorced was contradicted by her testimony.

Furthermore, he argues Iowa has adopted Estoppel by Acquiescence. Estoppel by Acquiescence is based on an examination of the behavior of the individual who holds a right in order to determine whether that right has been waived. Anthony v. Anthony, 204 N.W.2d 829, 834 (Iowa 1973); Davidson v. Van Lengen, 266 N.W.2d 436, 439 (Iowa 1978). The doctrine is applicable where a person knows or ought to know that he or she is entitled to enforce his or her right and neglects to do so for such a time as would imply that he or she simply intended to waive or abandon his or her right. Davidson, 266 N.W.2d at 438; Anthony, 204 N.W.2d at 834; In re Marriage of Winegard, 278 N.W.2d 505, 510 (Iowa 1979).

Estoppel is an equitable doctrine and need not be applied with a strict hand if the result produced is inequitable. See Keokuk Electric Railroad and Power Co. v. Weisman, 146 Iowa 686, 687, 126 N.W. 60, 64 (1910) (equity is not hampered by forms or fictions nor bound by technical rules). Equity regards substance over form and disregards technicalities to prevent injustice. Bump v. Stewart, 336 N.W.2d 731, 736 (Iowa 1983). However, one of the elements of the affirmative defense of equitable estoppel is proof that one party suffered prejudice as a result of his or her justifiable reliance upon the acts of another. Beeck, 350

N.W.2d at 158; Bricker v. Maytag Co., 450 N.W.2d 839, 841 (Iowa 1990); Incorporated City of Denison v. Clabaugh, 306 N.W.2d 748, 754 (Iowa 1981). Estoppel is also to be applied only where a weighing of all the equities of a particular case entitles a party to utilize its equitable remedies. Colthurst v. Colthurst, 265 N.W.2d 590, 598 (Iowa 1978).

Estoppel or quasi estoppel, as some cautious courts refer to it, has been shown to be approved by the great majority of courts. Clark, Estoppel Against Jurisdictional Attack on Decrees of Divorce, 70 Yale Law Journal 45, 68 (1960). It rests not upon vague notions of fairness or equity or relative rectitude of the parties, and not upon the dubious distinction between private and matrimonial law suits, but rather upon the contemporary view that when a marriage has ended, and its end has been recognized by divorce, then little is to be gained by treating it as if it were still in force. Id.

There are a number of factors weighing on the side of estoppel. First, Gerald remarried. Remarriage does not prevent a court from setting aside the divorce decree but remarriage is an important factor to consider. See Swift, 239 Iowa at 69, 29 N.W.2d at 539. We need also to consider the rights and needs of the innocent woman he married. See id. There were no children born to Gerald's second marriage, so we need not consider their needs. Id.

Second, a considerable length of time has transpired since the entry of the Haitian decree. During this period, Gerald obviously has made decisions to his prejudice based on a believed divorce. The safety of society demands that one who seeks to overturn a divorce decree should do so promptly upon discovering the facts showing its invalidity. See Swift, 239 Iowa at 69, N.W.2d at 539.

Third, Marjorie went to Haiti with Gerald and participated with him in obtaining the divorce decree. Fourth, under the settlement negotiated after they arrived home she received substantial amounts of money.

There are also a number of factors weighing against estoppel. The agreement by its terms could be terminated at any time. A large part of the money Marjorie received was used for the support of the parties' children under Marjorie's custodial care.

Marjorie suffers serious mental stress. Without addressing her legal competency at the time of the divorce and afterward, we find at all times Gerald was the dominate and controlling party. Gerald is the only party with accurate financial information about the parties' income and assets. There is no evidence Marjorie was ever advised of or understood the nature and extent of the family resources. Gerald has only revealed limited information of his financial holdings. Consequently, there is no way on this record to assess whether the arrangements made for Marjorie in 1975 were equitable.

While a significant period of time has passed since the divorce, during this time Marjorie has devoted herself nearly exclusively to the raising of the parties' children. Marjorie was advised shortly after the divorce that it might not be legal. At the time she was given that advice through the present time, she suffers severe mental distress that according to medical evidence renders her unable to aggressively pursue her claims. Marjorie had some legal counsel. She had no independent legal advice when she signed the agreement which leaves her today with a $600 monthly payment, was terminable on notice, and was not subject to modification.

We cannot, on this record, agree with the trial court's decision to find estoppel. See Clark, 70 Yale Law Journal at 48; see also Meyer v. Meyer, 328 Ill. App. 408, 422-23, 66 N.E.2d 457, 462-63 (1946). We find there is jurisdiction for the Iowa court to entertain this action. We find the marriage has broken down and it is hereby dissolved. We remand to the trial court to supervise discovery, hear the evidence and determine, after considering all factors, what an equitable result should be.

Costs on appeal are taxed to Gerald.

AFFIRMED IN PART; MODIFIED IN PART; REMANDED.