FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF HOMER DALE DAY AND ANNA G. DAY

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Upon the Petition of)

HOMER DALE DAY,)

Petitioner-Appellee/ Cross-Appellant,) Filed March 31, 1986

And Concerning)

ANNA G. DAY,) 5-658 / 85-544

Respondent-Appellant/ Cross-Appellee.)

Appeal from the Iowa District Court for Marshall County (No. D36-54) - David R. Hansen and Carl E. Peterson, Judges.

Respondent appeals from the provisions of the decree dissolving the parties' marriage. **APPEAL AFFIRMED; CROSS-APPEAL DENIED.**

James L. Tappa of Spector, Tappa, Kopp & Nathan, Rock Island, Illinois, for respondent-appellant.

Patrick W. Brooks of Brooks, Ward & Trout, Marshalltown, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Schlegel, JJ.

Respondent appeals from the provisions of the decree dissolving the parties' marriage, contending that the trial court erred: in overruling respondent's special appearance to contest the trial court's personal jurisdiction over her, and in disposing of her property in Illinois; and in awarding petitioner the contract balances on both the Rock Island, Illinois and Des Moines, Iowa houses. Petitioner cross-appeals that the court inequitably divided the marital assets.

The parties were married in 1955, they separated in 1980, and the husband, Homer, filed the petition for dissolution in 1983. The children of the marriage have reached their majority. The wife, Anna, has been a resident of Rock Island for twenty years; whereas the husband has established his home in Marshalltown since 1980. When the husband commenced this action in Marshall County, Anna filed a special appearance objecting to the jurisdiction of the court. This special appearance was upheld. Thereafter, the husband had another original notice served on the wife while she was visiting her mother in a Cedar Rapids, Iowa hospital. The original notice shows a return of service by the Linn County Sheriff.

Anna filed another special appearance alleging lack of "minimum contacts" in Iowa. The husband resisted on the ground personal service in Iowa was sufficient to confer jurisdiction. The court overruled the special appearance.

The trial court found Homer's monthly salary to be $3,700 at time of trial, while Anna's yearly income was $140,241. Neither party was awarded alimony from the other and the court divided the marital assets. The court awarded two real estate contracts to the husband: one for $37,603.55 in Rock Island, and one for $35,606.49 in Des Moines. The wife contends the Rock Island contract should have been awarded to her.

In his cross-appeal, husband alleges the court awarded the wife assets

in excess of $200,000 more than it awarded to him. He contends equity demands he be awarded $100,000 more in marital assets.

I.

The wife, an Illinois resident, contends her second special appearance should have been granted because she did not have the requisite minimum contacts with the State of Iowa. We find that her position misses the mark.

The wife was personally served process for this action while she was in Cedar Rapids. This event not only satisfied proper service requirements but also conferred personal jurisdiction on Iowa courts. The rule is that the forum state obtains personal jurisdiction over a nonresident party if such party is personally served process within the territory of the forum state. See Lingo v. Reichenbach Land Co., 225 Iowa 112, 118-19, 279 N.W. 121, 125 (1938), Darrah v. Watson, 36 Iowa 116, 120-21 (1872); Swan v. Smith, 26 Iowa 87, 88 (1872); 62 Am. Jur. 2d, Process §§ 45, 50, at 825, 832 (1972). A forum state obtains personal jurisdiction over a nonresident party if such party is properly served process outside the territory of the forum state provided such party has the requisite minimum contacts with the forum state to confer personal jurisdiction. Kagin's Numismatic Auctions v. Criswell, 284 N.W.2d 224, 228 (Iowa 1979)(citing International Shoe v. Washington, 326 U.S. 310, 316-17, 66 S.Ct. 154, 158-59, 90 L.Ed.2d 95, 102-03 (1945) ("Due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the territory of the forum, we have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "). (emphasis added). Stated otherwise, service in the forum state also confers personal jurisdiction, whereas service outside the forum state, by itself, does not confer personal jurisdiction. The trial court did not err in its ruling on this special appearance.

II.

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The wife also maintains Iowa courts did not have jurisdiction for purposes of the property division to award property located in Illinois. We disagree.

Because the Iowa courts had personal jurisdiction over the wife and the husband's marital domicile was in Iowa for three years during the separation, we conclude Iowa courts had jurisdiction to award property not located within Iowa to either of the parties. See Matson v. Matson, 186 Iowa 607, 626, 173 N.W. 127, 134 (1919); Sullivan v. Kenney, 148 Iowa 361, 387-88, 126 N.W. 349, 358-59 (1910); see also 24 Am. Jur. 2d Divorce and Separation § 950, 954 at 938-39, 942 (1983); but cf. In re Marriage of Vogel, 293 N.W.2d 215, 216 (Iowa 1980) (where Iowa court lacked personal jurisdiction it could not find realty in Canada was jointly owned by the parties); In re Marriage of Bremer, 334 N.W.2d 356, 358-59 (Iowa Ct. App. 1983) (Iowa did not have personal jurisdiction over non-resident who was not served in Iowa, owned no Iowa property, and had never been in Iowa).

Thus, we find no merit in the wife's contention that an Iowa court could not award the remaining contract payments on the Rock Island property to the husband.

III.

The husband cross-appeals, contending the property division was inequitable because he only received $175,388 worth of property while the wife received $375,417. He seeks an additional $100,000 in property.

Iowa Code section 598.21(1) (1983) does not statutorily sanction a percentage division of property. In re Marriage of Bornstein, 359 N.W.2d 500, 503 (Iowa Ct. App. 1984). Rather, the ultimate issue is whether the distribution is equitable under the circumstances. In re Marriage of Callenius, 309 N.W.2d 510, 514 (Iowa 1981).

The wife brought property into the marriage and received gifts after the marriage valued at $45,200. The husband brought property valued at $3,700 into the marriage. Moreover, the major difference in the property division was attributable to the wife receiving $163,266 from her profit-sharing plan. While the husband was the primary wage-earner from 1955-1975, the wife began working in 1975 and has seen her income steadily rise to over $140,000 annually. In 1978, the husband found employment in California, but the wife was unwilling to leave her job.

Even though the husband sacrificed an employment opportunity in the later stage of the parties' marriage to preserve the family unit, we cannot find the property award is inequitable.

APPEAL AFFIRMED; CROSS-APPEAL DENIED.