

IN THE COURT OF APPEALS OF IOWA

No. 0-656 / 90-523

IN RE THE MARRIAGE OF ROSEMARY JOHNSON AND
RICHARD DALE JOHNSON

FILED

JUL 26 1991

CLERK SUPREME COURT

Upon the Petition of

ROSEMARY JOHNSON,

Petitioner-Appellant,

And Concerning

RICHARD DALE JOHNSON,

Respondent-Appellee.

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Appeal from the Iowa District Court for Cerro Gordo
County, Gilbert K. Bovard, Judge.

The district court held that the husband's alimony
obligation under a 1979 dissolution decree terminated upon
the husband's death in March 1990. The wife has appealed.
AFFIRMED.

Kristy B. Arzberger of the Zanville Law Offices,
Mason City, for appellant.

R. Michael Sweesy, Mason City, for appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The sole issue in this appeal is whether the trial court was correct in terminating appellee Richard Dale Johnson's alimony obligation to appellant Rosemaree Johnson at Dale's death in March of 1990. We affirm.

The parties twenty-four-year marriage was dissolved in 1979. The decree provides, among other things, that Richard was to pay Rosemaree alimony of \$400 per month "during the lifetime of both parties, or until Rosemaree remarried." In 1982 the decree was modified to reduce the alimony to \$200 per month. The other language of the original decree was not changed.

Richard filed a second request to modify the alimony. This request was pending when Richard died in March 1990. After Richard's death, the district court entered an order declaring Richard's modification action moot, and providing that alimony would terminate with the installment due on March 1, 1990. This appeal follows. Rosemaree contends it is not equitable to interpret the decree to require termination of alimony upon Richard's death.

Our review of this equitable proceeding is de novo. See In re Marriage of Bornstein, 359 N.W.2d 500, 502 (Iowa App. 1984). While the findings of the trial court are not binding upon us, we review them with considerable weight. Id.

The general rule is alimony to be paid to a divorced spouse is presumed to terminate upon the death of the payor in the absence of a provision in the decree requiring the payments to continue after the payor's death. See In the Matter of the Estate of Jones, 434 N.W.2d 130, 131 (Iowa App. 1988); In re Marriage of Hayne, 334 N.W.2d 347, 351 (Iowa App. 1983); In re Estate of Roberts, 257 Iowa 1, 4, 131 N.W.2d 458, 460 (1964).

We agree with the trial court that a reasonable interpretation of the language of the decree is alimony is only payable while both Rosemaree and Richard are alive. See Jones, 434 N.W.2d at 132. Richard now being dead, the trial court properly found his alimony obligation terminated. We affirm.

AFFIRMED.