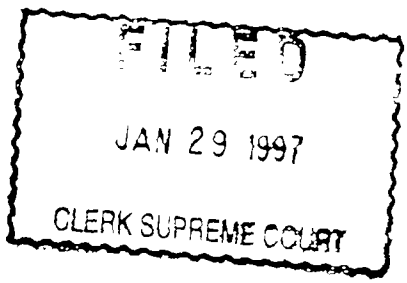
IN THE COURT OF APPEALS OF IOWA

No. 6-703 / 95-1978

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IN RE THE MARRIAGE OF RITA M. MORRIS AND WILLIAM R. MORRIS



Upon the Petition of
RITA M. MORRIS,

Appellee,

And Concerning
WILLIAM R. MORRIS,

Appellant.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge.

William R. Morris appeals from an order enforcing the economic provisions of parties' dissolution of marriage decree. **AFFIRMED.**

Kolleen K. Samek, Des Moines, for appellant.

David Pargulski, Des Moines, for appellant.

Harvey L. Harrison and Catherine C. Dietz-Kilen of Harrison & Dietz-Kilen, Des Moines, for appellee.

Heard by Habhab, C.J., Cady, and Huitink, JJ., Streit, J., takes no part.

CADY, J.

William Morris appeals from an order enforcing a decree entered by the district court dissolving his marriage to Rita Morris. He contests two economic provisions of the decree. We affirm.

Rita and William had been married for thirty-six years at the time of the dissolution of their marriage. Both had been gainfully employed during the marriage an had an interest in a retirement fund. They had accumulated substantial real and personal property. There were no minor children affected by the dissolution of their marriage. The only issue before the court was the distribution of marital property.

On the date set for trial, the parties advised the court they had entered into a stipulation and agreement which resolved all issues present in the dissolution. The stipulation was read into the record. It provided, in pertinent part, the parties' home would be immediately listed for sale through a real estate broker, and William's retirement account with the Federal Service System would be "divided equally" between the parties. The parties agreed to enter a separate qualified domestic relations order following the entry of the decree to divide the account. The court confirmed the parties' understanding of the stipulation, and adopted the stipulation as the court's own decree. The district court asked Rita to prepare a decree memorializing the stipulation.

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Rita prepared the proposed decree. William, however, refused to sign it. William contended the decree contained provisions which were contrary to the stipulation presented to the court, most notably that it gave Rita the right to purchase the parties' homestead, rather than placing it for sale. Nevertheless, Rita submitted the proposed decree to the court without the signatures of either party. William then filed a resistance to the entry of the proposed decree, indicating the changes between the stipulation as read to the court on the date of trial and the written decree prepared by Rita. There was, however, no mention of a dispute over the retirement account.

On December 17, 1994 the district court entered the decree submitted by Rita without holding a hearing on William's resistance. William then filed a motion for new trial. Again, William failed to point out any ambiguity in the agreement regarding the retirement account. The court denied the motion for new trial.

On March 31, 1995, Rita filed an application for entry of a QDRO dividing William's pension with the Federal Civil Service System between the parties as provided for in the decree. William objected to the application. At the hearing, William argued Rita should only be entitled to a survivor's annuity, allowing her to be paid one-half of the monthly annuity paid to William after his death. The district court rejected William's interpretation of the final decree.

Rita filed an application for fees because William continued to resist the court's ruling concerning the QDRO. Rita's application came for hearing on October 18, 1995. At the hearing, William renewed his motion for new trial. He argued Rita

should receive no more than one-half of the contributions which had been paid into the pension fund, instead of one-half on the annuity payments upon William's retirement. The same district court judge again rejected William's arguments and ordered entry of the divisional order. In doing so the court stated:

> At the time of the original stipulation the intention of the court was to enter a QDRO dividing the pension benefits as they accumulated during the marriage between these people. The court would be incredulous to think that a division of the marital assets arising out of a marriage that started in 1958 and ending in 1994 would not include a division of the pension benefits that have been accumulated during the marriage. That was not the intention of the Court by the use of the word "account," even though the VA may refer to his account as his account and not his pension benefits. Their definition of the use of a different word is not what this court contemplated. This court intended that the QDRO be entered dividing the pension benefits that accumulated during the marriage. It was as simple as that.

William appeals. He argues the district court erred in entering the decree when the parties disagreed over the terms of the division of the pension.

I. Enforcement of Decree

Our review is de novo. Iowa R. App. P. 4. The Court gives weight to the fact findings of the District Court, but is not bound by them. Iowa R. App. P. 14(f)(7).

We begin our analysis by recognizing the rights and obligations of the parties to a dissolution of marriage are entered under the decree, not the stipulation. *Bowman v. Bennett*, 250 N.W.2d 47, 50 (Iowa 1977). A written stipulation in a dissolution action is a contract between the parties. *In re Marriage of Hansen*, 465 N.W.2d 906,

908 (Iowa App. 1990). It is not binding on the court. *See Bamesberger v. Bamesberger,* 238 Iowa 492, 495, 28 N.W.2d 28, 31 (Iowa 1947).

In this case, the district court told the parties it would accept their stipulation, but later entered a written decree, which varied from the oral stipulation presented by the parties. The court should have held a hearing prior to altering the terms of the stipulation after informing the parties the stipulation would be followed. Nevertheless, the crux of the dispute on appeal is not the variance between the decree and the stipulation, but the interpretation of the provision dealing with the division of the pension benefit.[1] This dispute did not arise until after the decree was entered and the QDRO was sought. Thus, our task is to construe the disputed portion of the decree.

Certain principles guide us in our construction of a decree. Although a stipulation of settlement in a dissolution proceeding is a contract between the parties, it becomes a final contract 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 with the dissolution decree it is interpreted and enforced as a final judgment of the court, not

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[1] The stipulation between the parties provided for the sale of the home and an equal division of the proceeds. The decree merely permitted Rita to purchase the home, with an equal division of the proceeds. William did not suffer any reduction in his share of the property division due to the change by the court. The provision dealing with the division of the pension account was changed to give Rita "one-half" of the pension, instead of dividing it "equally."

as a separate contract between the parties. *Prochelo*, 346 N.W.2d at 530 (citing *Bowman v. Bennett*, 250 N.W.2d 47, 50 (Iowa 1977)). Consequently, when a dispute arises over the meaning of the decree the determinative factor is the intent of the court, not the intent of the parties. *Lawson*, 409 N.W.2d at 182.

In its second ruling ordering entry of a QDRO dividing the pension benefits accumulated during the marriage, the district court correctly acknowledged its responsibility was to determine only the court's intent at the time the stipulation was adopted and the decree signed. The court considered William's claim that the term "pension benefits" meant "pension account", but found its intent was to divide the pension benefits as they accumulated during the marriage. The district court concluded it "intended that the QDRO be entered dividing the pension benefits that accumulated during the marriage. It was as simple as that."

We find the language of the decree is unambiguous. *See Berryhill v. Hatt*, 428 N.W.2d 647 (Iowa 1988)(the parties' intent controls is a cardinal principle of contract construction; and except in cases of ambiguity, this is determined by what the contract itself says). The decree states each party shall receive one-half of William's Civil Service Pension. Pension does not mean account. The same judge entered the decree and conducted the subsequent hearings. A trial courts' construction of its own decree must be given great weight in determining the intent. *Cooper v. Cooper*, 158 N.W.2d 712, 714 (Iowa 1968). We find William's arguments concerning the economic provisions of the decree are without merit.

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II. Attorney Fees

We have considered both parties' motions for award of attorney fees and costs on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Hoffman*, 493 N.W.2d 84, 90 (Iowa App. 1992). We are to consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *Id.* We find both parties have adequate funds to pay their attorney fees; therefore, each is required to pay his or her own fees without contribution from the other.

Costs are assessed to William.

AFFIRMED.