IN THE COURT OF APPEALS OF IOWA

No. 0-719 / 99-1942
Filed June 13, 2001

IN RE THE MARRIAGE OF TARA E. BARTSCH AND NATHAN R. BARTSCH

Upon the Petition of
TARA E. BARTSCH,
Petitioner-Appellant,

And Concerning
NATHAN R. BARTSCH,
Respondent-Appellee.

FILED
JUN 13 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jones County, L. Vern Robinson, Judge.

Tara Bartsch appeals the district court's order dismissing her petition for dissolution of marriage action for her failure to satisfy the one-year residency requirement of Iowa Code section 598.6 (1999). She appeals claiming that she satisfied the residency requirement. Both parties request appellate attorney fees.

AFFIRMED.

Anne E.H. Hoskins and Donald C. Hoskins of Fishel and Hoskins, Marion, for appellant.

Janette S. Voss of Remley, Willems, McQuillen & Voss, Anamosa, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

The petitioner-appellant, Tara Bartsch, appeals the district court's dismissal of her petition for dissolution of marriage. She claims the court erred in concluding she did not meet the statutory residency requirement of Iowa Code section 598.6 (1999). We affirm.

Nathan and Tara married in Iowa in May 1994. Within days, they moved to Utah. Nathan attended graduate school; Tara attended college. She received financial aid in college as a resident of Utah. After Nathan received his master's degree in 1997, the couple moved to Texas because of his employment. They returned to Utah in November 1998. Their daughter, Morgan, was born in Utah in April 1999. In October 1999 Nathan moved to Colorado and Tara moved back to Iowa with their daughter, Morgan. On October 14, 1999, Tara filed a petition for dissolution of marriage in Iowa district court. Nathan filed a motion to dismiss for lack of jurisdiction. The district court dismissed Tara's petition after finding she did not meet the residency requirements of Iowa Code section 598.6.

Tara appealed. She claims the statute is ambiguous. She argues she meets the residency requirements because, considering the "length of [her] residence therein after deducting all absences from the state," she has been an Iowa resident for more than a year. Iowa Code § 598.6 (1999).

During the pendency of this appeal, the parties' marriage was dissolved in a bifurcated proceeding in Utah in September 2000. The Utah court left open the issues of child custody and visitation for later resolution. In May 2001, Nathan filed a motion to dismiss the appeal, alleging it was moot because of the Utah

proceeding. Tara resisted, claiming the unresolved issues of child custody and visitation could be decided in an Iowa proceeding.

Nathan's motion to dismiss was filed after this appeal was submitted for our decision. We consider the motion to dismiss submitted with the appeal. *See In re Marriage of Welp*, 596 N.W.2d 569, 571 (Iowa 1999). We deny Nathan's motion to dismiss the appeal and address the merits of Tara's claim. Our review of rulings on subject matter jurisdiction is for correction of errors at law. *Keokuk County v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999).

Iowa Code section 598.6 requires, in pertinent part:

> that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting all absences from the state . . . .

Iowa Code § 598.6. Iowa courts have construed "residence" to be the same as "domicile." *In re Marriage of Kimura*, 471 N.W.2d 869, 877 (Iowa 1991); *In re Marriage of Vogel*, 271 N.W.2d 709, 711 (Iowa 1978). Nathan and Tara moved from Iowa to Utah. She claimed to be a resident of Utah. They filed state tax returns in Utah. We conclude the district court correctly applied well-settled Iowa law in dismissing Tara's petition for dissolution of marriage for lack of jurisdiction because Tara did not meet the residency requirements of Iowa Code section 598.6.

AFFIRMED.