IN THE COURT OF APPEALS OF IOWA

No. 0-679 / 90-839

FILED
JUN 25 1991
CLERK SUPREME COURT

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LINDA S. HUNT,

Appellant,

vs.

JOHN E. KINNEY,

Appellee.

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge.

The parties' 1975 dissolution decree awarded a house to Linda, subject to a $4000 lien in favor of John. The lien became payable in June 1989 upon the high school graduation of the parties' younger child. A dispute then arose over interest on the lien. The district court entered a declaratory judgment that John was entitled to seven *percent* interest from the date of the 1975 dissolution decree. Linda appeals. **AFFIRMED.**

James W. Affeldt of Elderkin & Pirnie, Cedar Rapids, for appellant.

R. M. Fassler, Cedar Rapids, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

Linda Kinney Hunt and John Kinney were formerly married to each other. The marriage was dissolved in 1975. The dissolution decree incorporated a stipulation of the parties which provided that Linda was awarded title to the parties' homestead and John was awarded a lien in the amount of $4,000. No mention of interest was included in the decree. The decree also provided the lien was to be paid in full and, if necessary to satisfy the lien, the house was to be sold (1) should there no longer be any of the children in high school, or (2) should Linda remarry, or (3) should Linda have a male roomer in her home. Linda married Thomas Hunt on November 21, 1975. Upon Linda's remarriage John demanded payment of his $4,000. He instituted a partition suit against Linda in March 1976 for the purposes of having the home sold and to obtain payment on the lien.

The parties entered into a new stipulation on March 16, 1978, which provided that the property did not have to be sold at this time. This stipulation was approved by the court. Under this 1978 modification of the decree, John's $4,000 lien was to become payable when (1) Linda sold the residence, (2) John's child support obligation terminated, or (3) neither of the parties' children remained under Linda's care, custody or control. Again, there was no mention of interest.

The parties' younger child graduated from high school in June 1989. Shortly thereafter, John requested a general execution to collect his lien. Linda acknowledged that John was entitled to $4,000, but a dispute soon arose over whether John was entitled to interest on the $4,000. John sought interest from the date of the 1975 dissolution decree. Linda requested a declaratory judgment that she owed interest on the lien only from June 1989. The district court entered a declaratory judgment concluding Linda owed John seven percent interest on the lien from the date of the 1975 dissolution decree.

Linda has appealed. She challenges the conclusion that she must pay interest on the lien from the date of the 1975 dissolution decree. She contends John should receive interest on the lien only from the date the lien became payable in June 1989. We must disagree.

Absent an express provision to the contrary in the stipulation, a stipulation of settlement in a divorce proceeding becomes merged in the decree when approved by the district court. Bowman v. Bennett, 250 N.W.2d 47, 50 (Iowa 1977). Consequently, when the stipulation of the parties was approved by the district court, the stipulation was superseded by the decree. Id. The rights and obligations of the parties are those imposed by the decree and enforceable as such. Id. (citations omitted).

> At common law, judgments do not bear interest.

> However, section 535.3, Code, 1962, provides in part: "Interest shall be allowed on all money due on judgments and decrees of courts at the rate of five cents on the hundred by the the year, * * *"
>
> It is at once apparent this statute makes no distinction between judgments entered in law actions and those entered in equity cases. Furthermore, we find no basis for differentiation.
>
> In fact, past pronouncements by this court affirmatively disclose any lawful monetary award made in the final determination of a divorce action has the essential qualities of a judgment and may be enforced by execution.
>
> We are satisfied fixed awards of money for child support, alimony, and property settlement draw interest at five percent per annum from the date of judgment, or in case of specified periodic payments from the date each such payment becomes due and owing. Furthermore this rule applies even though the judgment itself fails to make reference to the matter of interest.

Arnold v. Arnold, 258 Iowa 850, 854-55, 140 N.W.2d 874, 877 (1966) (emphasis added) (citations omitted).

The 1975 decree provided John with a fixed award of money in the amount of $4,000. Because the decree made no reference to the matter of interest, the general statutory interest provision applies.[1] Iowa Code section 535.3 (1975), applicable at the time of the entry of the parties' dissolution decree, called for interest at the rate of seven percent per annum. We affirm the district court's declaratory judgment to this effect.

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1. We note that the district courts of this state, sitting in equity, retain the power to award, or refuse to award, interest according to the equitable principles required by Iowa Code section 598.21. In re Marriage of Baculis, 430 N.W.2d 399, 404-05 (Iowa 1988); e.g., In re Marriage of Pittman, 346 N.W.2d 33 (Iowa 1984) (no interest on realty lien awarded).

We find no merit in Linda's argument that because she was not required to pay John until sometime in the future, the award constituted a periodic payment not due and owing until the happening of one of the enumerated contingencies The district court awarded John a sum certain and the decree made no reference to interest. Therefore, the award drew interest in the amount of seven percent per annum from the date of judgment pursuant to section 535 3

AFFIRMED.

Schlegel, J., concurs, Oxberger, C.J., dissents.

OXBERGER, C.J. (dissenting)

I respectfully dissent I would start statutory interest in June 1989 the date the lien became payable.