FILED
FEB 28 1973
CLERK SUPREME COURT

211

IN THE COURT OF APPEALS OF IOWA

KATHLEEN K. SHEA,	:	
Appellant,	:	Filed February 28, 1973
vs.	:	
TIMOTHY J. SHEA,	:	393 2-58636
Appellee.	:	

Appeal from Linn District Court - Robert Osmundson, Judge.

Petitioner wife appeals trial court's revision of the 1971 dissolution decree seeking specific enumeration of debts respondent husband is to pay. -- Reversed.

Fred C. Fisher, Jr., Cedar Rapids, for Appellant.

Robert D. Vanhorne, Cedar Rapids, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Petitioner Kathleen K. Shea appeals the trial court's revision of the 1971 decree dissolving her marriage to respondent Timothy J. Shea. She seeks to have the original decree reinstated with certain debts of the marriage specifically delineated to be paid by Timothy. We reverse.

Kathleen initiated an action for contempt citation in January 1975. Her application was denied; subsequently Timothy filed in April 1975 a "Petition to Vacate in Part or Modify Decree of Dissolution." Kathleen filed in May 1975 an "Application for Modification of Decree." The controversy in the trial court throughout these various 1975 filings centered on the debt distribution made in the original dissolution decree which was entered July 1971. Neither party appealed in 1971 from the property provisions of the original decree. There were no provisions for alimony or child support involved in the 1971 decree.

Section 598.21, The Code, does not authorize the trial court to divest parties of rights accrued under the original decree. Property division provisions unchallenged within the appeal period following the entry of the original decree may not be affected by subsequent application for modification. Walker v. Walker, 203 N.W.2d 320 (Iowa 1972).

Timothy has filed no cross appeal so we have no occasion to reach his claim before the trial court that he was unaware of the debt provisions until the 1975 contempt citation or that he was misled by the 1971 negotiations regarding an equal division of marital assets and debts.

REVERSED.

All judges concur except Donielson, J, who dissents.

DONIELSON, J. (dissenting)

I dissent. The dissolution petition in this case was filed June 30, 1971, with the request that the property "be divided equally between the parties." Petitioner was represented by attorney Benjamin Blackstock and respondent was not represented by counsel. At attorney Blackstock's request, respondent came to his office and signed an entry of appearance and acceptance of service, thereby waiving further notice of time and place of hearing. During this critical period of time, petitioner was fully aware that respondent was attending school at Simpson College.

On October 21, 1971, the court entered a decree of dissolution which contained references to specific debts of the parties, including the Oldsmobile vehicle in question. However, the decree was totally devoid of any reference to the largest debt concerning the purchase of King's Food Host stock. This debt arose as the result of a $2100 loan from petitioner's father. The record clearly reflects the respondent received no copy of this dissolution decree from the clerk of court, petitioner, or her attorney.

Four years later, petitioner filed an application for contempt, alleging that respondent had not paid certain debts, including those specifically enumerated in the dissolution decree as well as the stock loan which was never mentioned previously. The application for contempt proceedings was denied by another judge on March 3, 1975.

Petitioner then filed an application for modification pursuant to § 598.21, The Code, alleging:

> 1. This application is made for an amendment or modification in the terms and conditions of the decree hereinbefore entered as follows. For reference for the terms and conditions of the original decree reference is made to the files and records herein."
>
> * * *
>
> " WHEREFORE, Petitioner prays that the decree hereinbefore entered in accordance with Section 598.21 Iowa Code Annotated that the Court may find a change in the original decree is justified and expedient as follows: . . . "

Subsequently, respondent filed an application to vacate in part or modify the decree of dissolution, citing rule 252, Rules of Civil Procedure, as authority for his request.

On July 29, 1975, the court issued its ruling on the two applications, modifying the

original decree pursuant to § 598.21, The Code. A review of the modification order indicates that the judge essentially modified only that portion which related to the payment of the $2100 loan due petitioner's father. In other words, Judge Osmundson granted the precise relief requested by respondent, in accordance with the dictates of § 598.21, The Code. However, the fact that the court did not resolve this dispute as favorably as petitioner would have liked does not justify a reversal of the decision without more.

In Knipfer v. Knipfer, 259 Iowa 347, 356, 144 N.W.2d 140 (1966), the court stated that a property division is not subject to modification in the absence of fraud, duress, coercion, mistake or other grounds as would justify the setting aside or changing a decree in any other case. In my view, the mutual mistake and resulting ambiguity with regard to the payment of debts created a situation requiring modification and clarification. The fact that respondent had not received a copy of the decree and had filed an application for modification as soon as he was informed of the content and effect of the original decree constitutes a strong inference that a crucial mistake and ambiguity existed which rendered the original decree inconsistent with the property division attempted to be achieved in the court below. The existence of such a mistake is made even more obvious by the fact that petitioner filed an application for modification seeking a clarification of the very same provision of the decree relating to the assumption of debts which had never been specifically addressed by the court that formulated the dissolution decree. See In re Marriage of Maskel, 225 N.W.2d 115 (Iowa 1975). Consequently, I would affirm the trial court's decision to modify the decree.