IN THE COURT OF APPEALS OF IOWA

No. 6-216 / 93-1629

IN RE THE MARRIAGE OF ROBERT M. PHILLIPS, SR. AND KAREN DeJEAN PHILLIPS

FILED
SEP 30 1996
CLERK SUPREME COURT

Upon the Petition of
ROBERT M. PHILLIPS, SR.,

Appellant,

And Concerning
KAREN DeJEAN PHILLIPS,

Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Robert Phillips, Sr. appeals from the provisions of the parties' dissolution decree. **AFFIRMED.**

Robert M. Phillips, Rochester, Minnesota, pro se.

Karen D. Rose, Eden Prairie, Minnesota, pro se.

Considered by Sackett, C.J., Cady, and Vogel, JJ.

CADY, J.

This is an appeal by Robert Phillips from a decree entered by the district court dissolving his marriage to Karen Phillips. We affirm on our review.

Robert and Karen Phillips were married in 1987. Robert filed a petition to dissolve the marriage on January 28, 1992. The petition alleged he resided in Des Moines, Iowa and Karen resided in Elk Point, South Dakota. Shortly before the filing of the petition, however, Robert began serving a sentence of incarceration in a federal correctional facility for embezzlement. Karen filed an answer to the petition on June 2, 1992. Robert and Karen were both represented by counsel.

On August 28, 1992, the court entered a stipulated decree dissolving the marriage and dividing the property. The parties had no children. The decree recognized the parties' antenuptial agreement.

Robert appealed following the denial of his post-decree motions. He claims the decree was void because the district court lacked jurisdiction. He asserts he was not an Iowa resident at the time the petition was filed and he failed to allege he resided in Iowa for one year prior to filing the petition. Robert also claims he was denied a fair hearing due to his incarceration.

Jurisdiction in a dissolution proceeding cannot be conferred by waiver, estoppel or consent. *In re Marriage of Bouska*, 256 N.W.2d 196, 198 (Iowa 1977). Moreover, the lack of jurisdiction may be raised at any time. *Id.* If no jurisdiction exists for a court to enter a decree, it must be set aside. *Id.*

Iowa Code section 598.6 (1993) requires a petitioner to reside in Iowa for a year prior to filing a petition for dissolution of marriage when the respondent is a not a resident of Iowa. This is required for the district court to assume jurisdiction. *Id.* Unless the respondent is a resident of Iowa and is personally served, the petition must include this jurisdictional allegation.

In this case, Karen resided in South Dakota at the time the petition was filed. The petition, however, did not include the jurisdictional allegation indicating Robert had resided in Iowa for a year prior to the filing of the petition.

Notwithstanding, the failure to include the residency allegation in the petition does not render the decree void. *See Richardson v. King,* 157 Iowa 287, 135 N.W. 640 (1912). Instead, the record may also be used to determine if the jurisdictional requirements were met. *Id.*

The record in this case shows Robert resided in Iowa for more than a year prior to the filing of the petition. Both Robert and Karen resided in Iowa in 1991. Karen moved to South Dakota on August 1, 1991, and Robert remained in Iowa until he began to serve his sentence in November 1991. However, we conclude his Iowa domicile did not change when he entered the federal correctional system. *See In re Marriage of Kimura,* 471 N.W.2d 869, 877 (Iowa 1991). The petition confirms this because Robert designated Des Moines to be his residence even though he had been incarcerated in a federal correctional facility outside Iowa since November 1991. Robert continued to be an Iowa resident following his incarceration.

We conclude the district court had jurisdiction to enter the decree. We summarily reject Robert's claim he was denied a fair hearing. He was represented by counsel, and participated by telephone in the proceeding which resulted in the stipulated decree.

AFFIRMED.