IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF MARLENE RUTH HOSKINS AND CALVIN VINCEN HOSKINS

Upon the Petitions of )
MARLENE RUTH HOSKINS, )
Petitioner-Appellant, )
And Concerning )
CALVIN VINCEN HOSKINS, )
Respondent-Appellee. )

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Appeal from Black Hawk District Court - L. John Degnan, Judge.

Petitioner in marriage dissolution action appeals from trial court's decree purportedly confirming a property settlement which had been stipulated by the parties on the record in open court. AFFIRMED IN PART; MODIFIED IN PART; AND REMANDED.

K. L. Kober of Pickett & Kober, Waterloo, Iowa, for petitioner-appellant.

David R. Nagle of Ball & Nagle, P.C., Waterloo, Iowa, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Petitioner in marriage dissolution action appeals from trial court's decree purportedly confirming a property settlement which had been stipulated by the parties on the record in open court. She contends on appeal that (1) the trial court should not have entered judgment and decree without first holding a hearing on the respondent's application for entry of judgment; (2) she did not understand the stipulation and thus should not be bound by its terms; (3) that the decree entered differs from the agreement of the parties as she understood it; (4) the stipulation is not fair or reasonable and therefore should not serve as a basis for the court's decree; and (5) the amounts of certain financial data incorporated into the stipulation were either overstated or understated. The respondent disputes all of these contentions and, in addition, urges that the court on appeal is without jurisdiction. We consider each of these issues separately.

I. We first consider respondent's challenge to the jurisdiction of the appellate court. He contends that petitioner's post-decree motion to reconsider was neither a motion for new trial under Iowa R. Civ. P. 244 or a motion to enlarge or amend the court's findings under Iowa R. Civ. P. 179(b). It is thus urged that her notice of appeal was untimely when filed more than thirty days after the judgment with regard to which reconsideration was sought.

We reject this argument. The prayer of petitioner's motion to reconsider provided, in part: "[Petitioner] further prays that the order entered by this court, dated September 14, 1979, and filed September 20, 1979, be set aside and that hearing be had to determine the property settlement between the parties, the determination of obligations to be paid by the parties, the correction of errors in matters that can be mutually agreed upon and settlement of all matters in conflict between the parties." In determining whether a particular motion falls under rule 179(b) or rule 244, we examine the substance of the motion rather than the label attached. Kagin's Numismatic Auctions v. Criswell, 284 N.W.2d 224, 226 (Iowa 1979); Sykes v. Iowa Power & Light Co., 263 N.W.2d 551, 553 (Iowa 1978). In so doing, we conclude that petitioner's post-decree motion may properly be considered as a motion for new trial, a motion for enlargement of findings, or both. Her appeal is therefore timely by reason of Iowa R. App. P. 5(a).

II. We next consider petitioner's claim that the trial court erred in entering final judgment prior to an impending hearing set by previous court order. The facts surrounding such claim are as follows. On May 4, 1979, the date set for trial of this

action, the parties appeared in open court. Evidence was offered as to the breakdown of the marriage and a stipulation of the parties with respect to the custody and economic issues was dictated on the record in open court. The cause was then submitted on this record. The oral stipulation was to be reduced to writing, signed by the parties, and returned to the court with an appropriate decree.

Following the completion of this written stipulation by respondent's counsel, petitioner refused to sign. On July 27, 1979, respondent filed an application for entry of decree in accordance with the stipulation made on the record in open court. A hearing was set on this application for September 14, 1979. On September 13, 1979 the court cancelled this hearing and signed a final decree purportedly based on the stipulations made at trial. This decree was not entered of record until September 20, 1979.

We find the procedure employed by the trial court to be somewhat irregular. The better practice would have been to permit the September 14 hearing to take place so petitioner could make such resistance to entry of decree as was available to her. The trial court at this stage was not bound to enter a decree incorporating the stipulation made by the parties at trial. It must first become satisfied that the provisions of the stipulation were fair and reasonable and that the underlying financial data was accurate. Flattery v. Flattery, 139 Iowa 420, 422, 116 N.W. 608, 609 (1908). But any arguments which petitioner might make in this regard prior to the entry of decree were available to her at the hearing on the motion to set the decree aside. Ultimately, the trial court determined that the decree was fair, a determination with which we basically agree, and therefore no prejudice to petitioner occurred from the procedure which was followed.

III. Petitioner next contends that she did not understand completely the terms of the stipulation made in open court. We find the record insufficient to support such a claim. Given the fact that petitioner was at all times represented by counsel and that the stipulation followed extensive negotiations, we conclude that petitioner may not now avoid its effects on the grounds that she misunderstood it.

IV. Next we consider the claim that the decree differs from the stipulation made at trial. On this claim we consider only two items. First, it is claimed that all insurance policies on petitioner's life were, under the trial stipulation, to go to petitioner. She states the decree which was entered fails to reflect this disposition. Respondent does not dispute this claim. Accordingly, the decree must be modified so as to correctly reflect the stipulation of the parties as to this item. Secondly, it is urged

that petitioner did not agree to a lien on her property to secure payment of debts which were made her obligation in the trial stipulation. We disagree. Given the provision in the trial stipulation that "petitioner has agreed that she will grant respondent sufficient security to protect himself in the event that she fails to pay the indebtedness" we cannot fault the trial court in providing for such lien in the decree.

V. It is next urged by petitioner that the stipulation made at trial was so unfair to her interests that the court should refuse to enforce it. Her argument in this regard is largely based on the size of the indebtedness which she is required to assume. While there is some difference in the valuations placed upon the marital assets by the respective parties, the record is susceptible of a finding that the net assets received by each party were substantially equal. Considering that this disposition was the result of an agreement which petitioner negotiated through counsel, we do not believe that it should be disturbed.

VI. Lastly, we consider petitioner's claims that the amounts of certain financial data incorporated into the stipulation were either overstated or understated. As to two items in dispute, we believe this final issue requires a remand for further proceedings. The two items we have reference to are: (1) the income tax refunds of the parties and (2) the amount of the John Deere Credit Union debt and the extent of the lien accompanying said debt. On remand the trial court shall receive evidence as to the correct amounts involved and to the extent they may differ from the amounts used in the decree, make appropriate adjustments. Without determining the extent of the adjustments, if any, which may be required, we suggest the following with respect thereto. Any additional tax refunds not noted in the original decree may be equitably divided by the trial court without affecting other aspects of the property settlement. This may or may not be possible with respect to the John Deere Credit Union debt and lien. Respondent has argued strenuously on appeal that a substantial portion of the indebtedness which petitioner is to assume under the decree is to be retired by the sale of a 1976 travel trailer encumbered by the credit union lien. Certain attorney fees of the parties were also to be paid from the proceeds of this sale. On remand, it should be determined whether, as petitioner strenuously asserts, the amount of this lien greatly exceeds the sum indicated in respondent's statement of affairs (the figures incorporated into the stipulation). Depending upon the extent, if any, to which the lien has been understated, equity may be satisfied by a simple adjustment of the indebtedness assumed by the respective parties, or, it may require that the stipulation be nullified

entirely and that all issues be litigated anew. Consistent with this decision the action is affirmed in part, modified in part and remanded for the purpose indicated. Costs are assessed three-fourths to petitioner, one-fourth to respondent. No attorney fees are allowed.

AFFIRMED IN PART; MODIFIED IN PART; AND REMANDED.