

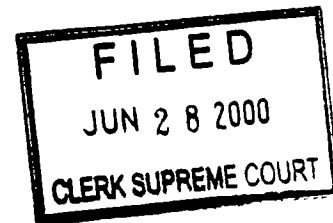
IN THE COURT OF APPEALS OF IOWA

No. 0-229 / 99-741
Filed June 28, 2000

**IN RE THE MARRIAGE OF W. JOYCE RICHARDS
AND JEFFREY W. RICHARDS**

**Upon the Petition of
W. JOYCE RICHARDS,
Petitioner-Appellant,**

**And Concerning
JEFFREY W. RICHARDS,
Respondent-Appellee.**



Appeal from the Iowa District Court for Ida County, Richard J. Vipond,
Judge.

The petitioner appeals the division of marital property provisions of the
parties' dissolution decree. **APPEAL DISMISSED.**

Carrie L. O'Connor of Flannery & O'Connor Law Office, LeMars, for
appellant.

Dan C. Connell, Storm Lake, and Laura L. Pattermann of Sheldon M.
Gallner, P.C., Council Bluffs, for appellee.

Considered by Streit, P.J., Zimmer, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

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HAYDEN, S.J.

The question this court must determine is whether we have jurisdiction to consider ~~this~~ attempted appeal.

We first consider the timeliness of W. Joyce Richards (Joyce) motions for a new trial, to enlarge, and to amend the trial court's decree.

The time for filing a motion to enlarge and amend or for a new trial is governed by Iowa Rule of Civil Procedure 247. That rule provides such a motion or motions must be filed within ten days after the decision is filed with the clerk of court. Iowa R. Civ. P. 247.

The decree in this case was filed with the Ida County clerk of court on March 11, 1999.

Joyce filed a motion to amend or enlarge findings pursuant to rule 179(b) or motion for new trial on March 23, 1999. March 22, 1999, was the last day for filing a motion to enlarge, amend, or for a new trial.

The trial court correctly held the petitioner's post-trial motions were untimely. The trial court further held it had no authority to consider the merits of a post-trial motion filed after the ten-day time period provided by rule 247. The court cited *Graber v. Iowa District Court*, 410 N.W.2d 224, 229 (Iowa 1987) as authority.

On April 6, 1999, Joyce filed a motion to amend her motion for a new trial by attaching an affidavit. The trial court noted an untimely motion can not be revived or augmented by amendment, and overruled the motion to amend.

The trial court overruled Joyce's motion to amend and enlarge, filed on March 23, 1999. The trial court also overruled Joyce's motion for new trial filed on March 23, 1999.

As noted above the trial court filed its decree on March 11, 1999 with the Ida County clerk of court. Joyce, through her attorney filed notice of appeal of final judgment dated May 4, 1999 and filed May 6, 1999 with the clerk of the Iowa Supreme Court.

Iowa Rule of Appellate Procedure 5 provides appeals to the Iowa Supreme Court must be taken within, and not after, thirty days from the entry of the decree. It was a span of fifty-five days from the trial court's filing of its decree to the date Joyce's notice of appeal was filed in the Iowa Supreme Court clerk's office.

Joyce requests this court invoke a pragmatic finality rule and decide this case on its merits as being timely filed on appeal. She cites the case of *Ahl's v. Sherwood/Division of Harsco Corp.*, 473 N.W.2d 619, 623 (Iowa 1991). This case concerns a federal court rule. *Ahl's*, 473 N.W.2d at 622-23.

In the *Ahl's* case the trial court was prepared to start the trial of a civil case. The jury panel was present, and the attorneys and parties were present. Immediately before trial commenced the attorneys for the parties advised the trial court they had arrived at a settlement. The trial judge dismissed the jury. Neither the parties nor the judge dismissed the case. The court assessed fines for late settlement and assessed court costs. This order did not constitute a final adjudication of the parties' rights. The Iowa Supreme Court relied upon the federal court rule of "pragmatic finality" and held : dismissal of all remaining

claims by the parties terminated the trial court's proceedings and provided the necessary finality to permit an appeal within thirty days of filing the dismissals. *Id.* at 623.

Joyce argues, in the interest of fairness we should invoke the pragmatic finality rule to this appeal, and in effect consider it timely filed.

We refuse to expand, extend, or graft a pragmatic finality rule to the facts of this case. It is not applicable here as there was a final decree from which to appeal. To permit this would be opening the proverbial "Pandora's box" to any and all litigants who want to appeal from a final decision after the time for timely appeal has lapsed.

We note with interest Joyce acknowledges in her reply brief that no 179(b) motion was necessary to preserve her right to appeal.

We do not have jurisdiction to entertain this appeal and it is therefore dismissed at appellant's cost.

APPEAL DISMISSED.