

IN THE COURT OF APPEALS OF IOWA

No. 7-442 / 96-0386

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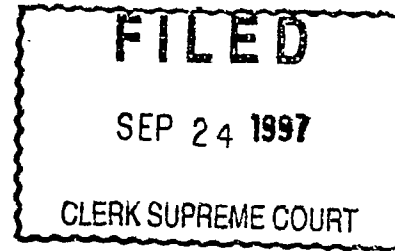
**IN RE THE MARRIAGE OF BARBARA
JOY GRADY AND THOMAS L. GRADY**

**Upon the Petition of
BARBARA JOY GRADY,**

Petitioner-Appellee,

**And Concerning
THOMAS L. GRADY,**

Respondent-Appellant.



Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Allan
L. Goode, and Gary L. McMinimee, Judges.

Thomas Grady appeals the district court's dissolution of marriage decree.

AFFIRMED.

Thomas L. Grady, Fort Dodge, pro se.

William Thatcher, Fort Dodge, for appellee.

Considered by Sackett, P.J., and Streit and Mahan, JJ.

MAHAN, J.

Thomas and Barbara Grady were married in 1986. No children were born of this marriage. Barbara filed a petition for dissolution of marriage on July 25, 1995. Thomas filed a responsive pleading on July 27, 1995, in which he made a request for conciliation. The court denied this request on October 31, 1995. The court denied his later request for a jury trial on November 16, 1995, and denied his request for a continuance on January 25, 1996. The court entered the dissolution decree on February 21, 1996. Thomas appeals the denial of his requests for conciliation, jury trial, and continuance. We affirm.

I. SCOPE OF REVIEW. In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. REQUEST FOR CONCILIATION. Thomas requested conciliation in his responsive pleading filed July 27, 1995. The trial court denied the request on October 31, 1995, because it was "untimely, and from statements made in the request, it appears that such counseling would have little chance for success."

The request made by Thomas pursuant to Iowa Code section 598.16 was not untimely since it was contained in his responsive pleading. It was simply not brought to the court's attention for more than three months. Thus, the request should have

been granted. The Iowa supreme court recognized the mandatory nature of the language in section 598.16 in the case of *In re Marriage of Schroeder*, 393 N.W.2d 808 (Iowa 1986). The supreme court concluded that conciliation is mandatory if requested in the petition or responsive pleading. It only becomes discretionary if requested later. The supreme court reversed the case and remanded it with directions to order conciliation, even though the parties had lived apart for eighteen months.

The same result is not required in the instant case. The supreme court acknowledged on page 810 of the *Schroeder* case the harsh implications of its decision. The court discussed the proper procedure to be used in future cases when mandatory conciliation is denied. The court stated:

The sense of futility over the likelihood of success should not inhibit anyone so inclined from invoking the statutory right to conciliation. It is contended that there is no practical way to enforce the demand because an interlocutory appeal is too expensive and too time consuming. This pessimism is unwarranted because a prompt remedy is available. Anyone refused a request for conciliation should file an application for permission to bring an appeal in advance of final judgment under rule of appellate procedure 2 and couple it with a request for summary reversal under rule of appellate procedure 23(c). This procedure provides a ready method for the prompt securing of the conciliation prescribed by the statute.

Id. at 810. The instant case is similar to the *Schroeder* case in that it has been eighteen months since the trial court entered the dissolution decree. However, there is no need in this case to remand with directions for conciliation. Thomas filed a "Notice of Appeal" with the supreme court on January 4, 1996, in which he raised this

issue. He did not, however, follow the specific guidelines of *Schroeder* in seeking his relief. The supreme court denied his application on February 21, 1996, and allowed the matter to proceed to trial. When parties elect to represent themselves in matters before the court, they are expected to act with equal competence with those who are trained in the law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). If lay persons choose to proceed pro se, they do so at their own risk. *Simmons v. Brenton Nat'l Bank*, 390 N.W.2d 143, 145 (Iowa App. 1986). Consequently, appellate courts will review the issues without regard as to whether the party did or did not employ legal representation. *Metropolitan Jacobson Dev. Venture v. Board of Review*, 476 N.W.2d 726, 729 (Iowa App. 1991).

Final judgment has been entered and Thomas cannot be heard to complain at this late date concerning the denial of conciliation.

III. REQUEST FOR JURY TRIAL. Dissolution proceedings are strictly statutory. *Bitner v. Bitner*, 176 N.W.2d 162, 164 (Iowa 1970). Under Iowa statute, divorce is an equitable proceeding. Iowa Code § 598.3 (1997). The Iowa supreme court has held that a jury trial is not a fundamental right in statutorily created proceedings. *Smith v. ADM Feed Corp.*, 456 N.W.2d 378 (Iowa 1990). The supreme court stated:

[T]he right to a jury trial is not a fundamental right in proceedings created by statute. We look to the common law and not to present statutes to determine when the constitutional right to a jury applies. The right to a jury trial that is preserved by the constitution is the right

that existed at common law. The common law distinguishes between cases at law where juries were allowed and cases tried in equity without a jury.

Id. at 382 (citations omitted).

The supreme court has specifically held that an issue of fact in a divorce proceeding cannot be tried by a jury and a party in an equitable proceeding cannot, as a matter of right, demand a jury trial. *Grandon v. Ellingson*, 144 N.W.2d 898 (Iowa 1966); *Hobart v. Hobart*, 51 Iowa 512, 1 N.W. 780 (1879); *State v. Orwig*, 25 Iowa 280 (1868); Jeffrey F. Ghent, J.D., Annotation, *Right to Jury Trial in State Court Proceedings*, 56 A.L.R.4th 955 (1987). The trial court properly denied Thomas's request for a jury trial.

IV. REQUEST FOR CONTINUANCE. On January 25, 1996, six months after Barbara filed the petition for dissolution, the trial court overruled Thomas's request for a continuance. The matter proceeded to trial on February 21, 1996. Our review of the record in this matter indicates the trial court did not abuse its discretion in overruling Thomas's request for a continuance.

We have carefully reviewed all of the issues presented on appeal. We accordingly affirm the decisions of the trial court.

AFFIRMED.