

IN THE COURT OF APPEALS OF IOWA

No. 1-446 / 11-0118
Filed July 27, 2011

**IN RE THE MARRIAGE OF KATHRYN JUNE MORRIS
AND DENNIS EUGENE MORRIS**

**Upon the Petition of
KATHRYN JUNE MORRIS,**
Petitioner-Appellant,

**And Concerning
DENNIS EUGENE MORRIS,**
Respondent-Appellee.

Appeal from the Iowa District Court for Clarke County, Sherman W. Phipps, Judge.

Kathryn Morris appeals the denial of her request for entry of an order requiring Dennis Morris to designate her as the beneficiary of a military retirement survivor benefits plan. **AFFIRMED.**

Anjela A. Shutts and Diana L. Miller of Whitfield & Eddy, P.L.C., Des Moines, for appellant.

John D. Hartung of Hartung & Schroeder, Des Moines, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Kathryn Morris appeals the denial of her request for entry of an order to effectuate the decree to require Dennis Morris to designate her as the beneficiary of a military survivor benefit plan (SBP). Kathy contends the plain language of the parties' stipulation, as incorporated into their dissolution decree, evidences their intent that she be awarded half of all Marine Corps retirement benefits to which Dennis is entitled, including the SBP. Upon our de novo review, we conclude the court correctly denied Kathy the relief she requested. We cannot construe Kathy's application as seeking to effectuate the parties' decree where the decree does not order a designation of Kathy, as a former spouse, as a military SBP beneficiary. We affirm the ruling of the district court.

I. Background Facts and Proceedings.

The parties married in February 1980 and divorced in September 2003. Dennis served in the Marine Corps, and all of his service, with the exception of a year or two, occurred during the parties' marriage. Dennis accrued military retirement benefits and had the option to participate in the military's survivor benefit plan (SBP). During the marriage, the parties decided to forgo Dennis's participation in the SBP, because designating a surviving spouse beneficiary at that time would have decreased his monthly benefit payment. Instead, Dennis procured a \$350,000 life insurance policy insuring his life for Kathy's benefit.

In preparation for the dissolution of their marriage, the parties signed a stipulation dividing their marital and non-marital property that provided in part:

8. PENSIONS AND TRUSTS: Each party shall receive half of Dennis's Marine Corps Retirement received in the future.

9. STOCKS, BONDS, MUTUAL FUNDS, LIFE INSURANCE:

. . . Dennis shall immediately procure life insurance until age 60 in the amount of \$350,000, and each party shall pay half of the monthly premium for \$350,000 in coverage, with Kathy designated as the primary Recipient and the parties' children secondary beneficiaries.

The district court determined the stipulation was fair and equitable, and incorporated it into the decree dissolving the parties' marriage.

Dennis will begin receiving retirement benefits in May 2017, when he turns sixty years old. In March 2010, Kathy filed an application for an order setting hearing, requesting the court to effectuate the "unambiguous" provision in the decree dividing Dennis's Marine Corps retirement. Kathy asked the court to effectuate the decree by requiring Dennis to name her as beneficiary to the military SBP, in order to prevent her from losing her share of the benefits when Dennis begins to receive them. As Kathy's application stated in part:

2. Pursuant to the parties' dissolution decree, "Each party shall receive half of Dennis's Marine Corps Retirement."

3. Kathy has applied for and received verification on August 18, 2008 that she will receive one-half of the retired pay pursuant to the Uniformed Services Former Spouses' Protection Act.

4. However, Dennis failed to designate Kathy as the surviving spouse to his military pension. Therefore, upon Dennis's death, Kathy will no longer receive any retirement benefits.

5. Due to the length of the parties' marriage (23 years) and the fact that Dennis's entire military pension was accumulated during the parties' marriage, it is equitable for Dennis to be required to designate Kathy as the surviving spouse and/or maintain life insurance to insure Kathy receives the retirement following Dennis's death.

Dennis filed a resistance to Kathy's application. Following an unreported hearing, the court entered an order denying the relief requested by Kathy. She filed a motion to enlarge or amend, which the court also denied. Kathy now appeals.

II. Scope and Standard of Review.

“A proceeding to modify or implement a marriage dissolution decree subsequent to its entry is triable in equity and reviewed de novo on appeal.” *In re Marriage of Pals*, 714 N.W.2d 644, 646 (Iowa 2006). We decide the issues raised on appeal anew, but we give weight to the district court’s factual findings, especially with respect to the credibility of the witnesses. *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009). “Precedent is of little value as our determination must depend on the facts of the particular case.” *Id.*

III. Analysis.

Kathy argues that in order to effectuate the intent of the parties as set forth in the stipulation, a supplemental order should be entered requiring Dennis to designate Kathy as the beneficiary of his survivor benefit plan. She contends the plain language of the parties’ stipulation (i.e., “Each party shall receive half of Dennis’s Marine Corps Retirement”) evidences the parties’ intent that Kathy be awarded half of all Marine Corps retirement benefits to which Dennis is entitled, which Kathy alleges includes the SBP. Dennis disagrees, and points out that the SBP is a survivor annuity product that will be available for Dennis to purchase if he chooses at the time of his retirement. He contends that based on the parties’ stipulation, the SBP cannot be considered a marital asset subject to division.

It is a well-established rule that a property division in a dissolution decree, like any ordinary judgment, cannot be modified or vacated after it has become final in the absence of fraud, coercion, or other grounds on which ordinary judgments may be reviewed, modified, vacated, or set aside. *In re Marriage of*

Full, 255 N.W.2d 153, 156 (Iowa 1977); see also Iowa R. Civ. P. 1.1012 (setting forth grounds for vacating or modifying judgments). “A primary ground for asserting modification of a property division is through an alleged mutual mistake.” *In re Marriage of Prendergast*, 380 N.W.2d 431, 433 (Iowa Ct. App. 1985) (listing cases where mistakes justifying a modification of property division have been found). Modification of a property division due to a mutual mistake may be accomplished through the procedure outlined in Iowa Rule of Civil Procedure 1.1013.¹ Kathy’s application did not attempt to comply, and does not comply with the requirements of rule 1.1013, or the requirements for filing a notice of appeal.² “[T]he divorce decree was therefore final and settled all rights and interests of the parties in the property of one another.” *In re Marriage of Brown*, 776 N.W.2d 644, 647 (Iowa 2009).

Instead, Kathy filed an application for an order setting hearing, and requested the court to enter a supplemental order designating her as the beneficiary of the SBP. Kathy contends her application sought the court to effectuate the parties’ decree. A district court retains jurisdiction after a final order to enforce the judgment, but does not have the authority to revisit and decide differently the issues concluded by that judgment. See *Franzen v. Deere & Co.*, 409 N.W.2d 672, 674 (Iowa 1987). In other words, after a court’s final ruling, the district court retains inherent power to enforce the judgment, but not to render a new judgment.

¹ Rule 1.1013 requires a party seeking relief under rule 1.1012 to file and serve a petition on the adverse party “in the original action within one year after the entry of the judgment or order involved.”

² Iowa Rule of Appellate Procedure requires that a notice of appeal be filed “within 30 days after the filing of the final order or judgment.”

Kathy asks us to follow our supreme court's reasoning in *In re Marriage of Brown*, 776 N.W.2d at 647-49, and find that a supplemental "order" should be entered in order to effectuate the property division of the parties. In *Brown*, the court determined a QDRO entered nearly ten years after the Brown's marriage was dissolved was a supplemental order and not a modification of the underlying decree. *Brown*, 776 N.W.2d at 648. In so finding, the court acknowledged the QDRO at issue was ordered in the Brown's decree, which stated: "A separate Qualified Domestic Relations Order should be entered in such regard. The parties should submit such an order to the Court for its signature." *Id.* *Brown* is not instructive in this case. Here, the supplemental order Kathy seeks was not ordered as part of the Morris's decree, and the relief Kathy requests was not acknowledged in the decree.

The decree filed in this case does not require Kathy to be named beneficiary of Dennis's military SBP as a survivor annuitant allowing her to receive SBP payments in the event of Dennis's death. The decree also does not require a designation of Kathy, as a former spouse, as a military SBP beneficiary in the future should Dennis choose the survivor annuity at the time he begins to receive his retirement. We acknowledge the requirement that Dennis maintain a \$350,000 life insurance policy may suggest that the parties intended to protect either Kathy's ability to collect a survivor annuity, or simply protect her receipt of one-half of Dennis's military retirement pay receipt. But there is simply no mention of the SBP annuity option in the decree or any right of Kathy to collect military retirement upon Dennis's death.

The disposition of this case may have been different if the parties had orally agreed she was going to be the beneficiary to the SBP when Dennis turned sixty and the life insurance expired, but the parties' agreement simply was not set forth adequately in the stipulation. Here, Kathy's application merely alleges it is equitable for her to be named the beneficiary of the SBP, because she is entitled to half of Dennis's military retirement. We cannot construe her argument as seeking an enforcement of a judgment already in place, particularly where (1) the parties chose not to participate in the SBP during their marriage, and (2) the SBP remains an option to Dennis. We, like the district court, are unable to grant her request for relief.

IV. Attorney Fees.

Dennis requests attorney fees on appeal. Attorney fee awards are not a matter of right but rather rest within the discretion of the court. *In re Marriage of Benson*, 545 N.W.2d 252, 258 (Iowa 1996). When determining whether to award such fees, we look to the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *McKee v. Dicus*, 785 N.W.2d 733, 740 (Iowa Ct. App. 2010). Under these circumstances, we find it reasonable to award Dennis \$750 in appellate attorney fees.

AFFIRMED.