IN THE COURT OF APPEALS OF IOWA

No. 2-088 / 11-0440
Filed February 29, 2012

IN RE THE MARRIAGE OF CAROL J. DIETZ AND MARK S. DIETZ

Upon the Petition of
CAROL J. DIETZ,
Petitioner-Appellant,

And Concerning
MARK S. DIETZ,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Gregory W. Steensland, Judge.

Carol Dietz, now known as Carol Chase, appeals from the district court's ruling concerning her purported property settlement agreement with decedent Mark Dietz. **AFFIRMED.**

Carol Dietz, Sioux City, pro se.

James L. Stanton of Stanton Law Office, Omaha, Nebraska, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

DANILSON, J.

I. Background Facts and Proceedings.

The marriage of Carol Dietz and Mark S. Dietz was dissolved on June 22, 2009, and Carol Dietz was restored to her previous name of Carol Chase.[1] However, the property distribution issues were preserved and set for trial on July 24, 2009. Unfortunately, Dietz met an untimely death. Two agreements concerning some of the property were filed before Dietz's death, but Chase now contends the parties had an oral agreement on various other issues. Because we agree with the district court that an oral agreement was not established by the evidence and the property award was equitable, we affirm.

After several continuances, trial was "confirmed for June 24, 2010." However, a June 23, 2010 status hearing was continued to August 16, 2010. On August 12, 2010, Chase filed a motion to continue the status hearing, asserting the parties agreed to the continuance and: "Progress is being made on the settlement agreement. Agreed upon items of property have been sold. The few remaining items of property are being advertised and more time is needed to sell them." The status hearing was continued to September 27, 2010. A September 27 order then continued the hearing to October 25, 2010.

On October 25, an attorney for Mark Dietz's heirs reported Dietz had died. The court entered an order noting attorney Jim Stanton "is investigating whether or not an estate needs to be opened and what the issues are regarding the

[1] Both parties appeared pro se at the June 22, 2009 dissolution hearing. Chase states she is an Iowa attorney and is representing herself in these proceedings. Attorney Steven Krohn entered an appearance for Dietz in March 2010.

property settlement in the above-captioned dissolution." The status hearing was continued to November 22, 2010.

On November 22, the district court entered an order allowing Dietz's attorney, Steven Krohn, to withdraw and setting an evidentiary hearing on December 23, 2010, "to resolve remaining issues."

At the December 23 evidentiary hearing, Attorney Stanton appeared for Dietz's heirs. The court stated, "Ms. Chase has indicated that there was, in fact, a settlement in the dissolution and would like to prove up that settlement." Chase's exhibit 20[2] is a writing dated May 13, 2010, signed by herself and Dietz, in which they agreed to sell "the sunroom" for not less than $5000 and they would split the proceeds "50/50 between us." Exhibit 14 is a writing signed by herself and Dietz dated May 18, 2010, indicating Chase was to have the 1974 El Camino free and clear and Dietz would have the "Bayliner boat and trailer" free and clear. Chase also presented an unsigned document entitled "settlement agreement," which she contended was made between Chase and Dietz "following the filing of [Dietz's] witness and exhibit list on June 16, 2010, and prior to trial scheduled for June 24, 2010."[3]

Chase testified the settlement agreement was the result of a telephone conversation she and Dietz had during which she took contemporaneous notes on an envelope. She stated Dietz owed her $3000 remaining on a loan;[4] had

[2] A copy of this writing was submitted as exhibit 6.

[3] Chase's proposed final decree states the "issue presented is whether a settlement agreement *as drafted by Carol after Mark died* was made between Carol and Mark." (Emphasis added.)

[4] This was a home equity loan Chase took out on a house she owned prior to the marriage, the proceeds of which were purportedly used for various reasons, including

agreed to pay her $25,000 over a period of five years as a property settlement; and would purchase a life insurance policy in the amount of $25,000 naming her as an irrevocable beneficiary. Chase stated they had agreed Dietz would receive certain personal property and she would receive as her separate property: kitchen cabinets, countertop pieces, a built-in dishwasher,[5] mattress and box spring, bed frame, double oven, gas stove top, stove, and furniture owned before the marriage. Chase complained that when she obtained the El Camino from Dietz in May 2010, it was damaged. She also complained that in March 2010, Dietz's son had taken the sunroom and countertop and placed them in storage in his name, despite a court order Dietz not sell, transfer, or otherwise dispose of assets pending further order of the court.

Following presentation of the evidence, Chase summarized:

> As set out in the settlement agreement, what's in my name—titles, property—is mine. What was in Mark's name—titles, property—is his. The $25,000 for wages, the [$]3000 for the home equity loan, which hasn't been paid completely, the sun room and the Corian is mine.

Attorney Stanton argued the divorce was finalized in June 2009 and only those items in the signed documents were agreed to. He stated:

> [W]e're saying she can go ahead, have the entire sun room as is, the Dodge truck as is, which she has under her control, as she indicated, and the Corian countertop which is also in the storage. We would only ask that she get it out of there as soon as possible . . . .

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business expenses and fixing up a rental property belonging to the estate of Mark's previous wife.

[5] An attachment to the purported settlement agreement indicates many of the items were offered for sale, some had sold, and the sale proceeds deposited with Chase's lending bank.

The court asked each party to submit a proposed ruling, "to get a handle on what you want."

On January 18, 2011, the court entered an "order for property and financial settlement." The court concluded that "in addition to the money and property that Petitioner had received from Respondent prior to his death,[6] it would be equitable for Petitioner to be awarded the Corian counter-top and the Sunroom in their present condition and nothing more."

Chase appeals, contending the court erred in numerous respects, including failing to enforce the settlement agreement.

II. Scope of Review.

Because the case was tried in equity, our review is de novo. Iowa R. App. P. 6.907. We give weight to the factual findings of the district court, but are not bound by them. Iowa R. App. P. 6.904(3)(*g*).

III. Discussion.

A "settlement in a dissolution proceeding is a contract between the parties." *In re Marriage of Jones,* 653 N.W.2d 589, 593 (Iowa 2002). It is enforceable like any other contract. *Id.*

Generally, the death of a party to a dissolution abates the dissolution proceeding. *See In re Estate of Peck*, 497 N.W.2d 889, 890-91 (Iowa 1993); *see also Jahnke v. Jahnke*, 526 N.W.2d 159, 161 (Iowa 1994). And ordinarily, where

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[6] Chase acknowledged at trial she had received in excess of $14,600 after the sale of the rental property owned by Deitz's deceased wife. Exhibit 21 is a settlement statement from the sale of that property. Chase also acknowledged she received a check from Dietz, dated June 24, 2010, for $5000, a copy of which was admitted as Exhibit 7.

the dissolution proceedings are abated, the survivor retains all the vested rights of a surviving spouse in the decedent's estate. *See Peck*, 497 N.W.2d at 890.

Here, the parties' marriage was dissolved, and Chase had lost her status as the surviving spouse before all of the property and debts could be equitably divided or allocated. *See* Iowa Code § 598.20 (2009) (stating "[w]hen a dissolution of marriage is decreed the parties shall forfeit all rights acquired by marriage which are not specifically preserved in the decree"). The order granting the dissolution of marriage in this action, filed on June 22, 2009, recites, "property issues will also be shortly resolved," and the "remaining issues shall come on for trial . . . ." Because we find the order properly preserved Chase's rights to property, the district court was correct to assume jurisdiction. *See Jahnke*, 526 N.W.2d at 161 ("The parties' rights are determined on the basis of the relationship as it existed at the time one of the parties died." (citing *Peck*, 497 N.W.2d at 891)). Further, death of a party does not prevent an appeal of property issues in a dissolution action. *Oliver v. Oliver*, 216 Iowa 57, 58, 248 N.W. 233, 234 (1933).

The issues before us then are whether Chase has proved the existence of a binding agreement between herself and Dietz, or otherwise received an equitable portion of the marital assets.[7]

The district court found, and Attorney Stanton conceded, the written contracts entered on May 13 and May 18, 2010, were enforceable. Chase contends she and Dietz also entered into an additional purported settlement

[7] Chase's request for damages and her request that sanctions be imposed upon a nonparty, Dietz's son, were not properly before the district court, and we will not address them on appeal.

agreement on the eve of the June 2010 trial, but acknowledges she did not prepare the written document until after Deitz's death. She gave no satisfactory answer to why the agreement was not reduced to writing and presented to the judge in August 2010, stating instead she sought a continuance and asked Deitz's attorney to draft the agreement. And her testimony that "we were trying to get as much off that agreement as we could" indicates there was not yet a final agreement.

The existence of an oral contract, as well as its terms, are ordinarily questions for the trier of fact. *Gallagher, Langlas, Gallagher v. Burco,* 587 N.W.2d 615, 617 (Iowa Ct. App. 1998). Giving weight to the district court's findings, we agree with the following:

> [O]nly the matters pertaining to the two written agreements, Exhibits 20 & 14, the payments made to [Chase] as reflected in Exhibits 7 and 21, and the sale of personal items by [Chase] while [Dietz] was alive, the proceeds of which were taken by [Chase], are supported by the evidence and that any other claims made by [Chase] are not supported by the evidence and should be disregarded.

In considering the property distribution, we observe the additional property concessions made by Attorney Stanton were adopted by the court. Chase was also awarded the $5000 paid to her by Dietz during the pendency of the proceedings. Considering Chase acknowledged Dietz was intending to file for bankruptcy, we find the district court's property award to her was equitable. We also find no merit to other issues raised by Chase. We affirm.

Costs are assessed to Chase.

AFFIRMED.