

IN THE COURT OF APPEALS OF IOWA

No. 2-602 / 11-1640
Filed August 22, 2012

**IN RE THE MARRIAGE OF
MICHELLE E. LANIGAN AND
THOMAS J. LANIGAN**

**Upon the Petition of
MICHELLE E. LANIGAN,**
Petitioner-Appellant,

**And Concerning
THOMAS J. LANIGAN,**
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Michelle Lanigan appeals the district court's order interpreting language of her and Thomas Lanigan's 1995 dissolution decree. **AFFIRMED.**

Teresa A. Rastede of Dunakey & Klatt, P.C., Waterloo, for appellant.

Michael J. Lanigan of Law Office of Michael Lanigan, Waterloo, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ. Bower, J., takes no part.

DOYLE, J.

Michelle and Thomas Lanigan married in 1976. During their marriage, Thomas made contributions from his salary toward a retirement pension. In 1995, Michelle filed a petition for dissolution. Following a trial, the district court entered its findings of fact, conclusions of law, and judgment and decree.

At issue here is the decree's language concerning the requirement for Thomas to designate Michelle as "surviving spouse" in regard to Thomas's pension. The decree noted Thomas had worked for his employer twenty years at that time, and the parties had been together nineteen of those years. Relevant here, the decree states in the "findings of fact" section:

[T]he court believes it is reasonable that [Thomas] would be retiring [when he reaches age fifty-five] and beginning to draw his retirement pay. Michelle has no pension fund at the present time and presently she does not have the capabilities of earning the kind of money to fund a pension adequately. The court finds that she should receive \$884.00 per month from [Thomas's] retirement when he retires. [Thomas] shall be required to designate [Michelle] as a surviving spouse in regard to said pension.

In the "judgment and decree" section, the decree states:

[Michelle] shall be entitled to receive \$884.00 from [Thomas's] retirement when he commences his retirement. [Thomas] is required to designate Michelle as his surviving spouse *until such time as he begins to receive his retirement.*

(Emphasis added.)

Thomas appealed and Michelle cross-appealed from the dissolution decree. Thomas challenged the amount and manner of the division of his pension on appeal. This court determined the dissolution court incorrectly calculated the amount to be paid to Michelle, and it modified the benefit awarded to Michelle based upon a different mathematical calculation. See *In re Marriage*

of *Lanigan*, No. 95-2037 at 5 (Iowa Ct. App. July 30, 1997). Neither Thomas nor Michelle appealed from the surviving spouse designation language in the decree, and this court did not address or modify the language in its opinion. See *id.*

In 2011, Michelle filed an application for a hearing concerning the surviving spouse designation language in the decree, explaining “it has come to her attention . . . that in the event [Thomas] should pass away, . . . all [of Michelle’s] benefits would cease, and survivor’s benefits would go entirely to [Thomas’s] current spouse.” She felt this was in error and asserted the dissolution court’s intent was to award her a portion of Thomas’s pension benefits for the rest of her life. Following a hearing on the application, the district court entered its order, later corrected, finding Michelle’s designation as a surviving spouse continued only until Thomas’s retirement. Michelle now appeals.

“We review the construction of a dissolution decree as a matter of law.” *In re Marriage of Goodman*, 690 N.W.2d 279, 282 (Iowa 2004). “A dissolution decree is construed like any other written instrument.” *In re Marriage of Brown*, 776 N.W.2d 644, 650 (Iowa 2009).

The decree should be construed in accordance with its evident intention. Indeed the determinative factor is the intention of the court as gathered from all parts of the decree. Effect is to be given to that which is clearly implied as well as to that which is expressed. Of course, in determining this intent, we take the decree by its four corners and try to ascertain from it the intent as disclosed by the various provisions of the decree.

Goodman, 690 N.W.2d at 283 (quoting *In re Roberts’ Estate*, 131 N.W.2d 458, 461 (1964)). “In construing a dissolution decree, we give force and effect to every word, if possible, in order to give the decree a consistent, effective and

reasonable meaning in its entirety.” *Brown*, 776 N.W.2d at 650. Of course, when a document is unambiguous, intent is determined by the words of the document itself. See *Hofmeyer v. Iowa Dist. Ct.*, 640 N.W.2d 225, 228 (Iowa 2001).

Here, the district court concluded the dissolution court intended that Michelle only be designated the surviving spouse until Thomas retired. We agree. The language of the decree is unambiguous, and the dissolution court’s intent can be ascertained by the clear words stated in the decree. Accordingly, we affirm the district court’s order.

Both parties request an award of appellate attorney fees. “An award of appellate attorney fees is not a matter of right, but rests within our discretion.” *In re Marriage of Berning*, 745 N.W.2d 90, 94 (Iowa Ct. App. 2007). In exercising this discretion, we consider several factors: the financial needs of the party seeking the award, the ability of the other party to pay, and the relative merits of the appeal. *Id.* Upon consideration of these factors and in light of our resolution of the claims, we decline to award appellate attorney fees. Costs on appeal are assessed to Michelle.

AFFIRMED.