IN THE COURT OF APPEALS OF IOWA

No. 8-342 / 07-1746
Filed May 14, 2008

IN RE THE MARRIAGE OF CONNIE SUE TREIMER AND RODNEY GEORGE TREIMER

Upon the Petition of
CONNIE SUE TREIMER,
Petitioner-Appellant,

And Concerning
RODNEY GEORGE TREIMER,
Respondent-Appellee.

Appeal from the Iowa District Court for Muscatine County, Marlita A. Greve, Judge.

Connie S. Treimer appeals from a decree dissolving her marriage to Rodney G. Treimer. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Bradley L. Norton, and Valerie L. Clay, Clarence, for appellant.

John E. Wunder, Muscatine, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Connie S. Treimer appeals from a decree dissolving her marriage to Rodney G. Treimer. The court in dissolving the marriage found the parties had entered into a settlement and approved the settlement, found it equitable and incorporated it in the decree. Connie contends the district court erred in finding there was a settlement and that the settlement was equitable. We reverse and remand.

I. BACKGROUND.

The parties were married in 1997. Connie filed for dissolution of the marriage in February of 2006. In her petition she asked that the property of the parties be equitably divided. There are two children affected by the controversy, the first born in 1992 and the second in 1999. Connie requested the children be placed in the joint custody of the parties and in her primary physical care. She also requested that she be awarded child support. Rodney answered Connie's petition in March of 2006. He requested that the children be placed in the parties' joint physical care and that child support should be set accordingly. He also asked for an equitable division of the parties' property. In May of 2006 Connie filed an affidavit of financial status. She indicated that the parties had farmland, personal property and bank accounts but she indicated the value of many of the assets was unknown to her. Rodney never filed an affidavit of financial status.

The parties attended a trial settlement conference set for September 22, 2006. Following the conference the district court noted the parties had worked on a settlement but had an impasse. The district court, Judge Pelton, noted the

case would "probably settle." The case was then scheduled for trial on October 26, 2006. On that date Rodney filed a motion to continue the trial date noting the parties had participated in a settlement conference and had come close to settling the case but Connie sought additional financial information from him concerning his farming operation. The district court, Judge Kelley, continued the case to March 1, 2007.

In February of 2007 several yet unresolved discovery disputes occurred. On February 23, the case, by the agreement of the parties, was rescheduled for trial on April 23, 2007. On April 13, ten days prior to trial, Rodney and his attorney and Connie's attorney again met in an attempt to settle the parties' differences. Connie was not present at the conference as she had just taken a new job but she was in telephone contact with her attorney. On the same day the district court noted the case "probably settled."

There were no further filings until August 7, 2007, when the district court, Judge Madden, filed a notice of pending dismissal noting that on April 13, 2007, a settlement conference was held and it was determined the case may settle and it did not proceed to trial, but no order had been entered to finalize the dissolution. The judge ordered the case to be dismissed on August 28, 2007, unless a contrary order was entered prior to that date.

Rodney responded to the order on August 27, 2007 by filing a motion to enforce a settlement contending after much effort the case had been settled. He claimed Connie's attorney, on May 24, 2007, had sent a proposed decree and shortly thereafter Rodney's attorney discussed what he termed minor revisions to the decree. He contended Connie's attorney agreed the revisions were

reasonable and could be incorporated in the final decree. He further advanced that after the August 7 notice of pending dismissal, Connie's attorney advised Connie disavowed the settlement. Rodney sought enforcement of the settlement agreement.

The district court, Judge Greve, after a hearing, enforced an oral agreement the court found was made on April 13, 2007. Connie had testified no agreement was made that day and Rodney testified an agreement was reached. The district court in enforcing the agreement found Connie's testimony about the agreement not credible and appeared to rely heavily on this conclusion in determining to enforce the agreement. The court also commented that it was hard-pressed to believe Connie's attorney would have drafted a proposed decree of dissolution with such specificity and detail had Connie not agreed to the terms. The court also found after a review of the agreement that it was fair and equitable.

II. SCOPE OF REVIEW.

We review de novo a challenge to a refusal to enforce a settlement agreement in dissolution. *See In re Marriage of Jones*, 653 N.W.2d 589, 592 (Iowa 2002); *In re Marriage of Zeliadt*, 390 N.W.2d 117, 118 (Iowa 1986). In a de novo review we examine the entire record and adjudicate anew the issues properly presented on appeal. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1982). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*); *In re Marriage of Grady-Woods*, 577 N.W.2d 851, 852 (Iowa Ct. App. 1998).

III. ANALYSIS.

The law favors settlement of controversies. A settlement agreement is essentially contractual in nature. *Wright v. Scott*, 410 N.W.2d 247, 249 (Iowa 1987). The typical settlement resolves uncertain claims and defenses, and the settlement obviates the necessity of further legal proceedings between the settling parties. *Id.* Voluntary settlements of legal disputes should be encouraged, with the terms of settlements not inordinately scrutinized. *Id.* Settlement agreements are by their very nature the voluntary resolution of uncertain claims and defenses. *Id.*

District courts have authority to enforce settlement agreements. *Strong v. Rothamel*, 523 N.W.2d 597, 600 (Iowa Ct. App. 1994); *Starlin v. State*, 450 N.W.2d 257, 258 (Iowa Ct. App. 1989). This authority is ordinarily exercised two ways. If the important facts are not in dispute, courts may summarily enforce the agreement on motion by one of the parties. *See Wiltgen v. Hartford Accident & Indem. Co.*, 634 F.2d 398, 400 (8th Cir. 1980).

> Courts should . . . support agreements which have for their object amicable settlement of doubtful rights by parties . . . . [S]uch agreements are binding without regard to which party gets the best of the bargain or whether all of the gain is in fact on one side and all of the sacrifice on the other.

Wright, 410 N.W.2d at 250. If the material facts surrounding the settlement are disputed, the issue must be resolved by the finder of fact. *See Wiltgen*, 634 F.2d at 400.

Rodney, the proponent, bears the burden of proving a binding oral agreement was made. Aside from his testimony that there was a settlement agreement on April 13 that comported with Connie's attorney's proposed

settlement agreement, there is little evidence to support the district court's conclusion the case was settled that day. Also, there is evidence contradicting Rodney's position. At 4 p.m. on April 13, the district court, Judge Madden, made a filing as to disposition of the Treimer divorce and said, "Probably Settled." There was no formal written document until May 23, 2007, when Connie's attorney sent by facsimile to Rodney's attorney, a written settlement agreement which the attorney identified as being attached to the front page of the facsimile and noting "Attached is the *proposed* Settlement Agreement, Decree and Child Support Guidelines Worksheet for your review." (emphasis supplied). The facsimile also noted that the documents were being forwarded that day to Connie for her review and approval.

Even after the written settlement proposal was forwarded to Rodney's attorney, the attorney sought changes. He contacted Connie's attorney after May 23, told him that Rodney accepted the proposal with what he termed "very minor revisions." The revisions specified were a common well agreement and electricity, which Rodney's attorney related was previously discussed and agreed upon in April, and revision of the allocation of unpaid medical expenses; for, the provision in the proposed decree was not consistent with Iowa law. Rodney's attorney said he asked that these provisions be made to the agreement. While he stated Connie's attorney agreed to make those revisions, that agreement is binding on Connie only if she too is in agreement, for in order for an attorney to settle or compromise a claim on behalf of his or her client, the attorney must have authority from the client. *See Starling v. State*, 450 N.W.2d 257, 258 (Iowa Ct. App. 1989).

Connie's attorney also made a professional statement where he noted he sent the agreement as a proposed agreement and notified Rodney's attorney that he sent it to Connie for review. Connie's attorney said nearly a month passed from the time he sent the proposed agreement during which he contacted Rodney's attorney and asked what Rodney was doing with it. He said subsequently Rodney's attorney contacted him about the changes and he told Rodney's attorney that Connie needed to review it and that at no time did he ever say Connie accepted the settlement agreement.

On our de novo review, while giving the required deference to the factual finding of the district court, we find no settlement agreement was made. In reaching this conclusion we consider the following facts, among others. There is no signed written settlement agreement nor is there any written recording of the agreements allegedly made during the April settlement conference. The written agreement sent by Connie's attorney does not purport to be an agreement memorializing an oral settlement. Rather it was sent only as a proposed settlement. A motion in the court record following the April conference refers only to a probable settlement and contained no statement that Connie agreed to the proposal. Unlike the district court we give no weight to the completeness of the agreement as it indicates nothing more to us than that there was a proposed agreement to all the factors that needed to be resolved.

Even if we were to agree that an agreement was made, there is insufficient evidence for us to determine whether or not it was equitable. Connie's financial affidavit is incomplete. Rodney never filed a financial affidavit.

We understand the frustration that accompanied a belief that a settlement would be reached. This points to the need for prompt written documents to finalize a settlement. The fact that the proposed document did not come until more than a month after the alleged settlement makes it appear more a proposal than a memorialized settlement.

We reverse the district court's enforcement of the alleged settlement agreement. We affirm the dissolution of the marriage but vacate the balance of the decree entered by the district court and remand for trial on the issues. Appellate costs are taxed to Rodney. We award no appellate attorney fees.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.