

IN THE COURT OF APPEALS OF IOWA

No. 9-548 / 08-1929
Filed September 2, 2009

**IN RE THE MARRIAGE OF MIROSLAV VAVRA
AND JANA VAVRA**

**Upon the Petition of
MIROSLAV VAVRA,**
Petitioner-Appellant,

**And Concerning
JANA VAVRA,**
Respondent-Appellee.

Appeal from the Iowa District Court for Winneshiek County, John
Bauercamper, Judge.

Miroslav Vavra appeals from the decree dissolving his marriage to Jana
Vavra. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Marion Beatty, Decorah, for appellant.

Jana Vavra, Czech Republic, pro se appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

VOGEL, P.J.

Miroslav Vavra appeals from the decree dissolving his marriage to Jana Vavra. He contends the district court wrongly concluded it lacked personal jurisdiction of Jana, and thereafter refused to rule on the incidences of the marriage. We affirm in part, reverse in part and remand.

As this case involves personal jurisdiction in a dissolution of marriage action, our review is de novo. Iowa R. App. P. 6.4; *In re Marriage of Thrailkill*, 438 N.W.2d 845, 846 (Iowa Ct. App. 1989) (reviewing an action to set aside decree for want of personal jurisdiction de novo); *State ex rel. Miller v. Grodzinsky*, 571 N.W.2d 1, 3 (Iowa 1997) (stating that the determination of personal jurisdiction is a constitutional issue involving due process principles).

I. Background Facts and Proceedings

Miroslav and Jana Vavra were married on November 22, 2001, in Las Vegas, Nevada. No children were born to the marriage. Both Miroslav and Jana were born in the Czech Republic. Miroslav has been living in Provotin, Iowa, since approximately 1986, and is a United States (U.S.) citizen. Jana is a citizen of the Czech Republic. Following the wedding, Miroslav and Jana returned briefly to Provotin. After spending the winter of 2001-2002 in the Czech Republic, they returned to Iowa, where it appears they lived from 2002-2004. Miroslav worked as a construction worker in Provotin, and after 2004, Jana returned to the Czech Republic, where she worked as a teacher. In 2006, Jana returned to the U.S. for a month, but thereafter remained in the Czech Republic.

Miroslav visited her during the winter months while he was not working. They own real property in both the U.S. and the Czech Republic.¹

On March 21, 2008, Miroslav filed a petition for dissolution of marriage. Because Jana was living in the Czech Republic at the time, he also filed an affidavit regarding notice. The district court ordered service of the petition and any orders be mailed to Jana's last known address in the Czech Republic. See Iowa R. Civ. P. 1.310(9). The court also ordered an affidavit of mailing, and publication of notice. A "Return Receipt for International Mail" was signed by Jana on March 26, 2008, and made part of the record. Although she was not represented by an Iowa lawyer, Jana did file documents, utilizing a lawyer from the Czech Republic for some filings. Jana did not appear in person nor by counsel when the matter came on for hearing on November 7, 2008. The district court granted the dissolution of marriage, ruling that it had personal jurisdiction over Miroslav, but not over Jana, and concluded that it "lacks jurisdiction to adjudicate the incidences of marriage such as that of alimony and property division." Miroslav appeals.

II. Jurisdiction

Under Iowa Code section 598.2 (2007), the district court has jurisdiction over dissolution of marriage cases. See *Marriage of Engler*, 532 N.W.2d 747, 749 (Iowa 1995) (distinguishing the court's subject matter jurisdiction with authority to hear a particular case). The issue on appeal is whether the district

¹ Miroslav owns a home in Iowa, which he bought prior to the marriage; it does not appear Jana's name is on the title. Jana owns a condominium or cooperative apartment in Opava, Czech Republic. Miroslav's name was added to the title according to Jana's court filings.

court had personal jurisdiction over Jana, such that it could entertain and decide the “incidences of marriage.”² *Estin v. Estin*, 334 U.S. 541, 549, 68 S. Ct. 1213, 1218, 92 L. Ed. 1561, 1568-69 (1948). The district court found and ruled: “The court has personal jurisdiction of the petitioner, but does not have personal jurisdiction of the respondent, who was served only by constructive notice, does not reside in this state, and did not appear for trial.” This decision was based upon the finding that the submission of documents on Jana’s behalf by a person not admitted to practice law in Iowa, did not provide her consent for personal jurisdiction.

III. Jurisdiction over Miroslav

We begin by reviewing the court’s jurisdiction over Miroslav and hence the authority to hear this case. *Engler*, 532 N.W.2d at 749. When the respondent is not a resident of Iowa nor personally served, the petition for dissolution of marriage must state that the petitioner (1) resided in Iowa for at least one year before the petition was filed; and (2) was here in good faith and not just for the purpose of obtaining a marriage dissolution. Iowa Code § 598.5(1)(k) (2007). Therefore, in order for Iowa to have jurisdiction to dissolve the marriage, Miroslav

² Under the Due Process Clause of the Fourteenth Amendment, personal jurisdiction over a nonresident defendant exists when the defendant has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Hodges v. Hodges*, 572 N.W.2d 549, 551 (Iowa 1997) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945)). The minimum contacts necessary for personal jurisdiction must be such that there is sufficient connection between defendant and the forum state so as to make it fair to force defendant to defend an action in that state. U.S. Const. amend. XIV. Even if minimum contacts were the test for dissolution of marriage, there is sufficient evidence that Jana lived in the U.S. for a number of years during the marriage to find the necessary minimum contacts.

was required to prove he was domiciled in Iowa in good faith and for the requisite period.

Miroslav became a citizen of the U.S. in the 1980s, and has lived in Provotin, Iowa, since approximately 1986. With the exception of spending some winters in the Czech Republic, Miroslav has been domiciled in Iowa for over twenty years, well over the one-year residency requirement for a petition for dissolution. The district court appropriately found it had personal jurisdiction of Miroslav. See Iowa Code § 598.5(1)(k); see also *In re Marriage of Kimura*, 471 N.W.2d 869, 875-76 (Iowa 1991) (“Domicile continues to be the basis for a court’s jurisdiction to grant a dissolution of marriage decree. So the courts of this state have the power to grant dissolution of marriage decrees provided the petitioner is domiciled in this state. Such power exists even though the petitioner’s spouse is absent from this state, has never been here, and was constructively rather than personally served.”).

Based on his domicile in Iowa, Miroslav asserts that if the Iowa district court declares it has no jurisdiction to determine the incidences of this marriage, then “[t]here is no other jurisdiction known to Miroslav that has the authority to adjudicate his property rights here in Iowa.” We agree, as without an adjudication of the property of the marriage, even the premarital real estate Miroslav owns would carry a cloud on the title. There must be a remedy available, not just to dissolve the marriage but also to adjudicate property rights such that the parties can move forward with their separate lives. See e.g., *Harrod v. Harrod*, 526 P.2d 666, 668 (Colo. Ct. App. 1974) (stating that if a court has personal jurisdiction over both parties effective to terminate the marriage

status, regardless of whether both parties are currently residents, there need be no impediment for the court to adjudicate the property in question).

IV. Personal Jurisdiction Over Jana

Therefore, we next review whether the district court erred in determining that it lacked personal jurisdiction over Jana. In its ruling, the district court dissolved the marriage of the parties, but refrained from dividing the assets of the parties, asserting, "The assets of the parties are not subject to division by this court, due to lack of jurisdiction." In order to establish personal jurisdiction of Jana, Miroslav first had to show that Jana had notice of the dissolution proceedings. See *In re Marriage of Garretson*, 487 N.W.2d 366, 369 (Iowa Ct. App. 1992). In order to do so, when Miroslav filed his petition for dissolution of marriage, he also filed an affidavit stating that personal service to Jana was not possible. See Iowa R. Civ. P. 1.310(9) (stating that after filing an affidavit that personal service cannot be had on an adverse party in Iowa, the original notice may be served by publication in any action for dissolution of marriage against a party who is a nonresident of Iowa). Reviewing both the petition for dissolution and affidavit, the district court ordered that service of the petition be mailed to Jana at her last known address, that notice be published, and an affidavit of mailing be filed. See Iowa R. Civ. P. 1.305(14); 1.306; 1.310(9). Miroslav fully complied with the court's order.

Jana signed a return receipt for the documents sent to her and made no claim that the service of process did not meet the requirements of due process. Under our Iowa Rules of Civil Procedure, any challenge to the jurisdiction of the Iowa district court over the person, must be made by filing a pre-answer motion

to dismiss. See Iowa R. Civ. P. 1.421(1)(b) (stating that lack of personal jurisdiction is properly raised by a pre-answer motion to dismiss). If the motion challenging personal jurisdiction is not filed before the responsive pleading, the issue is deemed waived. See Iowa R. Civ. P. 104(a); *In re Marriage of Zahnd*, 567 N.W.2d 684, 686 (Iowa Ct. App. 1997). Jana filed no pre-answer motion but did file numerous responsive documents, thereby waiving any future challenge to the court's jurisdiction over her. She has submitted herself to the jurisdiction of the Iowa district court for purposes of the pending dissolution of marriage proceedings. *Cf. Kimura*, 471 N.W.2d at 878 (holding district court did not abuse its discretion in denying non-resident spouse's pre-answer motion to dismiss.)

On May 2, 2008, Jana filed an untitled but signed document which began, "I hereby submit Power of attorney that I have chosen and I since now I ask the court to service all documents at my attorney's address [in the Czech Republic]." The document continued on with a detailed explanation of Jana's response to Miroslav's petition. Additional documents filed were: (a) Jana's Power of Attorney purporting to vest "JUDr. Jaroslava Heřmanová", with authority to represent Jana; (b) a letter from Heřmanová; (c) Jana's request for Iowa court-appointed counsel, signed by her; (d) a statement of monthly expenses; (e) an "Opinion of the Respondent—expenses during the marriage," filed October 20, 2008, bearing Jana's attorney's signature "as a proxy;" a document filed November 18, 2008, which appears to have been prepared by Jana's attorney, with three attachments: (1) "Objections to division I" and "Objections to the answers to the Interrogatories submitted by the Respondent" (signed by Jana), (2) Division II—Current Income and Expense Information (signed by Jana), and

(3) Interrogatories for the Petitioner. Also included in the file were various financial records from the Czech Republic (in the Czech language).

The district court concluded “that the documents filed on her behalf by a person not admitted to the practice of law are not binding upon her.” However, upon review of the various documents, we find many bear the purported signature of “Jana Vavra,” and should therefore not have been rejected by the district court. Although her attorney is not licensed to practice law in Iowa, there is nothing to prevent the court from considering Jana’s filings, just as any pro se filing may be admitted into evidence.

Miroslav established that he was both domiciled in Iowa, and served notice of the proceedings on Jana as provided in Iowa Rules of Civil Procedure 1.305, 1.306 and 1.310, and as ordered by the district court. As the record discloses, Jana received the documents but failed to file any pre-answer motion to contest jurisdiction. In particular we note the “untitled” document filed May 2, 2008, which contains the caption of the pending case in Winneshiek County, and the words, “PETITION FOR DISSOLUTION (sic) OF MARRIAGE.” Although it appears to be written on Jana’s attorney’s stationery, it bears Jana’s signature. This document gives a detailed description of Jana’s perception of the breakdown of the marriage as well as concluding, “[I] have no choice than agree with proposal for dissolution, although I have not contributed to the breakdown of our marriage. I can evidence the above made statements.” The district court should have considered this to be Jana’s answer to Miroslav’s petition for dissolution of marriage. See Iowa R. Civ. P. 1.405. Without a pre-answer motion to dismiss, and with what should have been considered Jana’s answer to the

petition, Jana has waived any claim of lack of personal jurisdiction and has submitted herself for the purposes of this dissolution of marriage action to the jurisdiction of the Iowa courts.

V. Conclusion

We affirm the dissolution of marriage, but find that the district court erred in adjudicating only the marital status and none of the incidences of the marriage. We therefore reverse that finding and remand for the district court to address and adjudicate the merits of the remaining issues. Additional evidence may be submitted by either party as directed by and for the aid of the court. Costs on appeal shall be assessed to Miroslav.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.