IN THE COURT OF APPEALS OF IOWA

No. 9-951 / 09-1028
Filed June 16, 2010

IN RE THE MARRIAGE OF DAVID GENE BARKER AND RUTH ANN BARKER

Upon the Petition of
TRACY PLESCHOURT and JENNIFER ROBERTS,
As Executors of the ESTATE OF DAVID GENE BARKER,
Petitioner-Appellee,

And Concerning
RUTH ANN BARKER,
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen A. Kilnoski, Judge.

A wife appeals a district court order enforcing a property settlement in a dissolution action, contending no settlement was ever reached. **AFFIRMED.**

M. Brett Ryan of Willson & Pechacek, P.L.C., Council Bluffs, for appellant.

Anthony W. Tauke and Dustin P. Kreifels of Porter, Tauke & Ebke, Council Bluffs, for appellee.

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

VAITHESWARAN, J.

Ruth Barker appeals a district court order enforcing a property settlement in a dissolution action. She contends no settlement was ever reached.

I. Background Facts and Proceedings

David Barker filed a petition for dissolution of his marriage to Ruth Barker. During a break in the trial, the parties' attorneys entered into negotiations about a property settlement. After the break, they told the judge they had "settled the case." At David's request, the district court immediately entered an order dissolving the marriage. The order stated that a written decree would follow.

The attorneys proceeded to exchange drafts of proposed decrees. The first draft, prepared by David's attorney, was rejected by Ruth's attorney on the ground that it did not reflect the terms that were discussed during the in-court negotiations. The second draft was rejected on the ground that it was missing a provision concerning a motorhome. The third and final proposed decree was described by David's attorney as conforming to the agreement reached at the courthouse. When this draft was proffered, Ruth's attorney indicated that Ruth no longer wished to sign a decree.

David's attorney filed a motion to enforce the settlement agreement. Before this motion could be heard, David and Ruth reconciled. Several trial and appellate rulings followed. *See In re Marriage of Barker*, No. 08-0367 (Iowa Ct. App. Dec. 17, 2008). In the end, the original order[1] divorcing the parties was upheld, the reconciliation attempt failed, and David filed a new petition for

[1] The order was filed on June 8, 2007, and only dissolved the parties' marriage. The order also stated that a "[d]ecree to be submitted." This action involves issues relating to the decree.

dissolution of the marriage. David died before this petition could be heard, and the petition was ultimately dismissed.

We arrive at the crux of this appeal. The executors of David's estate filed a motion to enforce what they contended was the settlement agreement negotiated during the trial on the first dissolution petition. Following an evidentiary hearing, the district court concluded that the parties reached an agreement which was reflected in the third draft of the proposed decree. The court approved the draft and ordered it implemented.

Ruth appealed but then filed a bankruptcy action, which stayed the appeal. The parties have since informed the clerk of the appellate courts that we may resolve the appeal.

Ruth asserts, and David's estate agrees, that our review is for correction of errors at law. *See In re Marriage of Ginsberg*, 750 N.W.2d 520, 522 (Iowa 2008).

II. Analysis

A. Contract Formation

A settlement in a dissolution proceeding is a contract. *In re Marriage of Jones*, 653 N.W.2d 589, 593 (Iowa 2002). "Therefore, it is enforceable like any other contract, and a party may not withdraw or repudiate the stipulation prior to entry of judgment by the court." *Id.*

Ruth contends there was no "meeting of the minds" concerning a property

settlement.[2] The general rule is as follows:

> If there is a misunderstanding in the language that relates to the object of the agreement so that "one party [understands] [it] is buying one thing and the other party thinks [it] is selling another thing, no meeting of the minds occurs, and no contract is formed."

Schaer v. Webster County, 644 N.W.2d 327, 338 (Iowa 2002) (quoting *Hill-Shafer P'ship v. Chilson Family Trust*, 799 P.2d 810, 814 (Ariz. 1990)). Ruth points to no misunderstanding concerning the object of the agreement. In fact, Ruth's attorney, whose authority to bind her is not challenged, advised the district court that a settlement agreement had been reached.

We recognize Ruth's attorney initially disagreed with the manner in which that agreement was expressed. This type of disagreement would at best have entitled Ruth to reformation of the contract. *See State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 151 (Iowa 2001). Reformation is not a remedy she is seeking. In any event, as that remedy presumes the existence of a contract, it is inconsistent with her theory that there was no meeting of the minds to support

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[2] Ruth also suggests "there was a mutual mistake which prevented any meeting of the minds." We are not convinced the mutual mistake doctrine is applicable.

A mistake is "'a belief that is not in accord with the facts.'" *Nichols v. City of Evansdale*, 687 N.W.2d 562, 570 (Iowa 2004). If the mistake is in the formation of the contract and is mutual, the mistake could render the contract voidable. *Id.* at 571; *State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 150–51 (Iowa 2001) ("Generally, mutual mistake will render a contract voidable by the party who is adversely affected by the mistake when the parties are mistaken on a basic assumption on which the contract was made, unless the adversely affected party bears the risk of mistake."). The following is an illustrative mistake that would permit avoidance of the contract: parties enter into a contract to sell timbered land believing the timber is still there but in fact the timber has been destroyed by fire. Restatement (Second) of Contracts § 152 cmt. b, illus. 1, at 387 (1981).

Ruth has pointed to no mutual mistake concerning a basic factual assumption of this nature. She simply argues that the parties "mistakenly believed they had reached a resolution as to the distribution of the marital property between the parties." This is not the type of mistake in the formation of the contract that would render it voidable. *See Lakeside Boating & Bathing, Inc. v. State*, 402 N.W.2d. 419, 423 (Iowa 1987) (noting compromise of competing claims of which both parties were aware did not warrant relief on the ground of mistake).

the formation of a contract. *See Lamson v. Horton-Holden Hotel Co.*, 193 Iowa 355, 363, 185 N.W. 472, 475 (1921). Moreover, Ruth's attorney essentially conceded that the third draft of the proposed decree memorialized the courthouse agreement. He testified, "I will say that that decree reflected the terms that I thought was the agreement on [the date of the courthouse negotiations]." While he back-tracked in subsequent testimony, he later reiterated that the third proposed decree "would reflect what [the attorneys] talked about [during those negotiations]." Based on this evidence, we conclude the district court did not err in finding a meeting of the minds concerning a property settlement.[3]

B. Rescission

Ruth next argues that she and David effectively rescinded the agreement when they reconciled. She fails to acknowledge, however, that the agreement was part of the original dissolution action that was upheld on appeal. As noted, "[A] party may not withdraw or repudiate the stipulation prior to entry of judgment." *Jones*, 653 N.W.2d at 593; *accord In re Matter of Prop. Seized*, 501 N.W.2d 482, 485 (Iowa 1993) (affirming refusal to permit withdrawal of stipulation after stating "a stipulation for disposition of an entire issue is entitled to all of the sanctity of an ordinary contract if supported by legal consideration"). For this reason, we conclude the district court did not err in declining to rescind the property settlement.

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[3] Ruth also raises a statute of frauds argument that was not preserved for our review.

C. Common Law Marriage

Ruth finally argues that she and David had a common law marriage rendering enforcement of the settlement agreement improper. As the district court noted, such a marriage, even if proven, is irrelevant to enforcement of this settlement agreement, which arose from the dissolution of the original marriage. *See* Iowa Code § 598.21(1) (2007) (stating that "[u]pon every judgment of . . . dissolution . . . the court shall divide the property of the parties"). For that reason, the district court did not err in rejecting this argument.

III. Appellate Attorney Fees

David's estate seeks appellate attorney fees. "Appellate attorney fees are not a matter of right, but rather rest in this court's discretion." *In re Marriage of Okland*, 699 N.W.2d 260, 270 (Iowa 2005). Given Ruth's financial situation, we decline the request to have her pay all or a portion of the estate's fees.

AFFIRMED.