IN THE COURT OF APPEALS OF IOWA

No. 7-318 / 06-0615
Filed June 27, 2007

IN RE THE MARRIAGE OF TANYA LYNN GINSBERG AND JOHN D. GINSBERG

Upon the Petition of
TANYA LYNN GINSBERG,
Petitioner-Appellee,

And Concerning
JOHN D. GINSBERG,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Donald C. Nickerson, Judge.

The respondent appeals following the district court's order enforcing a provision of the dissolution decree against him. **REVERSED AND REMANDED.**

Alexander Rhoads of Babich, Goldman, Cashatt & Renzo, P.C., Des Moines, and Timothy Pearson, Des Moines, for appellant.

Jeanne K. Johnson, Des Moines, and Jeffrey Flagg, Des Moines, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

John Ginsberg appeals from the district court's order construing a provision of the prior dissolution decree that holds John responsible for a marital debt and holds his former wife, Tanya, harmless. Because the parties agreed, prior to the entry of the decree, to leave both the description of the debt and the amount owed as "disputed", the parties are now barred under our principles of claim preclusion to revisit the terms of the decree. We therefore reverse and remand.

I. Background Facts and Proceedings.

John and Tanya's marriage was dissolved by decree on March 22, 2004. The parties had engaged in mediation and presented an agreement to the district court for approval. In approving the agreement and entering the final decree, the district court included this language:

> the parties have reached a full and complete agreement concerning all issues in this matter by way of mediation on March 4, 2004, and that said agreement is fully embodied in this Decree of Dissolution of Marriage.

After setting forth a detailed listing of property to be distributed to each party, the district court ordered:

> The respondent [John] shall pay the debt, the amount of which is disputed, to Ron Daniels and hold the petitioner [Tanya] harmless from any liability thereon.

Ron Daniels is Tanya's father, who had loaned the parties money on various occasions during the course of the marriage. The decree does not specify which debt John shall pay, nor the amount owed.

After John failed to make any further payments on the debt, Tanya

obtained a loan, and paid her father $121,000 to satisfy John's assigned debt. Tanya then filed a "Motion to Enforce the Decree, or in the Alternative, Application for Declaratory Judgment," requesting John be ordered to pay her $121,269.57, the amount she claims "which has been established to be owed" by John to Daniels under the decree.[1]

When the matter came on for trial, the district court received evidence as to what each party at the time of the decree believed was the nature of the debt and for what amount. After working through the parties' separate, pre-decree affidavits of financial status and stipulations of assets and liabilities, along with the new evidence presented, the court determined the original decree contemplated John pay Daniels $121,269.57 in order to achieve an equitable property distribution. Following the ruling, the parties each filed motions to enlarge the findings pursuant to Iowa Rule of Civil Procedure 1.904(2), which the court denied except to order John pay Tanya the amount she had paid her father ($121,000), as she was "the real party in interest" having paid her father that amount of John's debt under the decree. The court ordered the remaining $269.57 be paid by John to Daniels. John appeals.

II. Scope and Standard of Review.

Our review of an equitable action is de novo. Iowa R. App. P. 6.4. However, 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) (citing *Sorensen v. Nelson*, 342 N.W.2d 477, 479 (Iowa 1984)).

[1] Tanya presented evidence that the current debt owed to her father was $121,269.57, while John disputed the amount, claiming that he only owed Daniels approximately $32,000 after payments he claims to have made on an original loan amount of $70,000.

When the court merges an agreement of the parties into a dissolution decree, the court construes and enforces the decree as a final judgment of the court and not as a separate agreement between the parties. *In re Marriage of Goodman*, 690 N.W.2d 279, 283 (Iowa 2004). In construing a decree of dissolution, our supreme court has previously stated:

> 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 (citing *In re Roberts' Estate,* 257 Iowa 1, 6, 131 N.W.2d 458, 461 (1964)).

III. Revisiting an Agreed Upon Term: The Disputed Debt.

John's primary contention on appeal is that the court erred when it concluded the decretal court intended the debt he owed to Daniels was $121,269.57. As the mediation agreement was not made part of the record, it remains a mystery what was actually agreed upon and what was presented to the decretal court. Nonetheless, because the decree states, "that said agreement is fully embodied in this Decree of Dissolution of Marriage," we need not look beyond the four corners of the decree to review the intentions of the decretal court. *See Bowman v. Bennett*, 250 N.W.2d 47, 51 (Iowa 1977) (stating that the court is interpretively confined to the four corners of the decree and the pre-dissolution views of the parties on the intent of the stipulation are irrelevant and extraneous to subsequent proceedings to construe the decree).

The language of the decree is quite clear that the parties chose to

relinquish the right to litigate any and all issues they had regarding "the disputed debt" to Daniels. The decree was "approved as to form and content" by both parties and their attorneys and no appeals were filed following the entry of the decree. We therefore see no ambiguity in the language of the decree or in the intentions of the decretal court in approving the parties' agreement to disagree, by fully incorporating their own terms. Tanya's application is therefore barred by claim preclusion due to her concession in the original decree to allow any specifics of the debt to remain "disputed." *Shumaker v. Iowa Dep't. of Transp.*, 541 N.W.2d 850, 852 (Iowa 1995) (finding a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action). Claim preclusion under the doctrine of res judicata is based on the principle that a party may not split or try his claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial. *Id.* The principle forwards similar purposes of judicial economy and efficiency by preventing piecemeal litigation. *Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998). Claim preclusion applies not only to matters actually determined in an earlier action but to all relevant matters that could have been determined. *Shumaker*, 541 N.W.2d at 852 (citing *Lane v. Peterson*, 899 F.2d 737, 741 (8th Cir. 1990)).

Although achieving equity is always a consideration in dissolution cases, the parties cannot later reclaim this principle when they have freely decided to act otherwise. *See In re Marriage of Butterfield*, 500 N.W.2d 95, 98 (Iowa Ct. App. 1993) (holding that a stipulation of settlement in dissolution proceeding is a contract between the parties which becomes final and binding when it is

accepted and approved by court). Either party could have insisted the district court decide the debt issue prior to the entry of the decree; but instead, they chose to go forward and allowed the issue to remain "disputed" as part of the court's final order. As Tanya and John willingly relinquished their right to litigate a disputed issue, we conclude that subsequent litigation on the identical issue is barred.

We therefore reverse the ruling by the district court and remand for entry of an order consistent with this opinion.

IV. Appellate Attorney Fees.

Tanya requests an award of attorney fees on appeal. Such an award is discretionary and is determined by assessing the needs of the requesting party, the opposing party's ability to pay, and whether the requesting party was forced to defend the appeal. *In re Marriage of Gaer*, 476 N.W.2d 324, 330 (Iowa 1991). We decline to award attorney fees on appeal. Costs on appeal are assessed one-half to each party.

REVERSED AND REMANDED.