

Ent. on Loper let 3 Dec 11 1988
Short notice. See H. of Vand. in Jan 1989

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

WILLIAM D. LOPER,

Petitioner,

v.

JANET L. LOPER,

Respondent.

Docket 430

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FINAL DECREE

On December 20, 1988, this matter came on for trial. The petitioner was present and represented by Robert D. Zimmerman, his attorney. The respondent was present and represented by Roger C. Lott, her attorney. Opening statements were made. The petitioner adduced evidence and rested. The respondent adduced evidence and rested. The petitioner adduced rebuttal evidence and rested. The respondent adduced surrebuttal evidence and rested. The matter was argued, submitted and taken under advisement. The petitioner was given to December 30, 1988, to submit a brief and the respondent was given to January 13, 1989, to respond. The parties were advised that the Court's order of November 18, 1988, remains in full force and effect until the matter is decided.

NOW, on this 10th day of February, 1989, this matter having been previously taken under advisement, the Court finds as follows:

1. That at least one of the parties is, and has been, a resident of the State of Nebraska for at least one (1) year prior to the filing of the petition herein.
2. That more than sixty (60) days have last passed since the perfection of service of process in this matter.
3. That the court has jurisdiction of both parties and

of the subject matter of this action.

4. That neither party is a member of the Armed Forces of the United States or its allies.

5. That neither party is now a party to any other pending actions for divorce, separation or dissolution of marriage.

6. That no children have been born as issue of this marriage.

7. That, in response to the petitioner's Petition seeking a dissolution of the parties' marriage, the respondent filed a "Responsive Pleading and Petition for Conciliation" wherein she requested the Court to enter an order requiring the parties to enter into reconciliation efforts. Although the petitioner filed no response to the respondent's request for reconciliation, he strenuously opposed any further attempts at reconciliation by means of his trial testimony.

Neb. Rev. Stat. § 42-360 (Reissue 1978), as originally enacted, stated as follows:

No decree shall be entered under sections 42-347 to 42-379 unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-379 shall be subject to transfer to a conciliation court pursuant to section 42-822 or 42-823, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under sections 42-347 to 42-379 may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected.

In 1984, this statute was amended to read as follows, which is the current status of the law:

No decree shall be entered under sections 42-237 to 42-379 unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-379 shall be subject to transfer to a conciliation court pursuant to section 42-822 or 42-823, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under sections 42-347 to 42-379 may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected. In no case shall the court order marriage counseling upon the request of only one of the parties to the dissolution or his or her attorney. If both parties agree to attend counseling but do not agree on an assignment of the costs of such counseling, the court, after receiving an application for such costs and upon a showing that the parties cannot agree on an assignment of such costs, shall assign such costs in a temporary or permanent order.

Neb. Rev. Stat. § 42-360 (Reissue 1988) (emphasis added).

Neb. Rev. Stat. § 42-361(2) (Reissue 1988) provides as follows:

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation and shall make a finding whether the marriage is irretrievably broken.

With the current state of the Nebraska law and based upon the testimony of the petitioner, the Court cannot and will not order that the parties enter into further reconciliation efforts. Even assuming, arguendo, that ordering

reconciliation was an option available to the Court, the facts in this case would not warrant any further attempts. Accordingly, the Court specifically finds, from the evidence, that every reasonable effort to affect reconciliation has been made, without success, and, further, that the marriage of the petitioner and the respondent is irretrievably broken.

8. That, considering the criteria set forth in Neb. Rev. Stat. § 42-365 (Reissue 1988) and the facts of the instant case, this is not an appropriate case for the award of alimony.

9. That the petitioner should receive as his sole and exclusive property the following described property and he should assume any indebtedness thereon and hold the respondent harmless with respect thereto, to wit:

- a. The duplex at 3007-09 P Street, Lincoln, Nebraska;
- b. the duplex at 1244 Clearview, Lincoln, Nebraska; c. the 1987 motor home;
- d. the 1969 Corvette;
- e. the 1978 pickup;
- f. his Lutheran life insurance policy;
- g. his retirement/pension plan;
- h. the bedroom set he requested;
- i. the player piano;
- j. the bar with wall mirror;
- k. the air compressor;
- l. his tools;
- m. the Coke pop machine;
- n. the fireplace and chimney; and

o. his personal effects

Those items described herein awarded to the petitioner in the respondent's possession are to be made available for the petitioner to pick up, in the same condition as at the time of trial, within three (3) weeks from the date hereof, unless otherwise mutually agreed upon between the parties.

10. That the respondent should receive as her sole and exclusive property the following described property and she should assume the indebtedness thereon and hold the petitioner harmless with respect thereto, to wit:

- a. The family residence at 2000 West Van Dorn, Lincoln, Nebraska;
- b. the 1971 Dodge;
- c. the telephone company credit union account;
- d. the Christmas Club account;
- e. the Shaklee stock;
- f. the Lincoln Telephone and Telgraph stock;
- g. her Lutheran life insurance policy; and
- h. all personal property in her possession not specifically awarded herein to the petitioner.

11. That the petitioner should assume and pay in full the two (2) Visa accounts identified as numbers 4413 and 4418 and the respondent should assume and pay in full the account identified as Visa-Mastercard 4408-5418. Each party should hold the other party harmless with respect to these debts.

12. That, due to the disparity of the equity position of the parties by the Court's distribution of assets and liabilities, the petitioner should be awarded a judgment

against the respondent in the sum of \$12,000 due and payable when the family residence is sold, the respondent no longer lives in the family residence, the respondent refinances the existing debt on the family residence or March 1, 1994, whichever occurs first. Said sum is to draw interest at the rate of 6 per cent simple interest per annum until paid. If, however, payment is not made as provided for herein, interest will accrue from the date hereof, until paid in full, at the rate of 10.16 per cent simple interest per annum.

13. That each party should pay his/her own respective attorney's fees and costs incurred as a result of this dissolution action.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT:

a. That the marriage of the petitioner, William D. Loper, and the respondent, Janet L. Loper, be, and the same hereby is, dissolved, with this Decree becoming final and operative, except for the purpose of review by appeal, without any further action of the Court, on either the date of death of one of the parties to the dissolution or six (6) months after the Decree is rendered, whichever occurs first. If the Decree becomes final and operative upon the death of either of the parties, the Decree shall be treated as if it became final and operative the day it was rendered.

b. That the property division and debt distribution set forth herein in the Court's findings be, and the same hereby are, incorporated herein by reference and the parties are ordered to perform and abide by the terms thereof and,

further, if the documents, certificates of title or other like instruments and conveyances necessary to effectuate and carry out the terms and intent of said property division are not, for any reason whatsoever, signed by the parties, then, and in that event, this Decree may be utilized by either party as such document, certificate of title, deed or other like instrument and conveyance necessary to effectuate and carry out the terms and intent thereof.

c. That the respondent be, and hereby is, ordered to pay to the petitioner, through the Clerk of the District Court of Lancaster County, Nebraska, as property division, the sum of \$12,000, said sum due and payable when the family residence is sold, the respondent no longer resides in the family residence, the respondent refinances the existing debt on the family residence or March 1, 1994, whichever occurs first. Said sum shall draw interest at the rate of 6 per cent simple interest per annum until paid. If, however, payment is not made as ordered, interest shall accrue from the date hereof, until paid in full, at the rate of 10.16 per cent simple interest per annum.

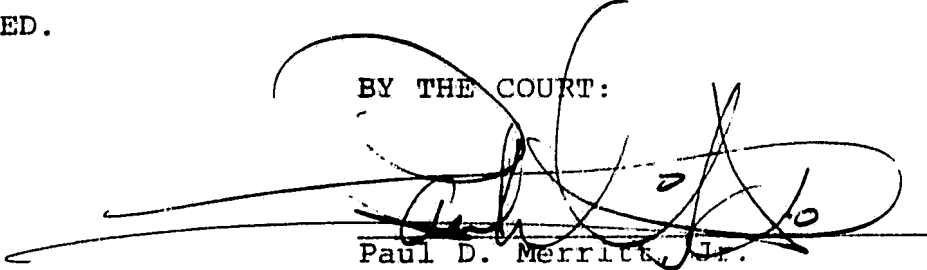
d. That each party be, and hereby is, ordered to pay his/her own respective attorney's fees and costs incurred as a result of this dissolution.

e. That either party to this action ordered to pay a judgment as part of the dissolution proceedings is hereby required to furnish to the Clerk of the District Court of Lancaster County his/her address, telephone number and social security number, the name of his/her employer and any other

information the Court shall deem relevant until such judgment shall be paid in full. Said party is also required to advise the Clerk of any changes in such information between the time of entry of the Decree and the payment of the judgment in full. Failure to comply with the provisions of this section shall be punishable by contempt.

SO ORDERED.

BY THE COURT:



Paul D. Merritt, Jr.
District Judge

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

-CERTIFICATE-

I, Marjorie A. Hart, Clerk of the District Court of Lancaster County, Nebraska, do hereby certify that the foregoing is a full and correct copy of the original instrument duly filed and of record in this Court.

This certificate, which bears the seal of the District Court of Lancaster County, Nebraska, was signed on July 31 1989

Marjorie A. Hart
Clerk of the District Court

By Shirley A. Crocker
Deputy

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INST. NO. 89 21076

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