**IN THE COURT OF APPEALS OF IOWA**

No. 6-330 / 95-1386

FILED
OCT 25 1996
CLERK SUPREME COURT

**EDWARD R. GEHLING,**
Plaintiff,

vs.

**THE IOWA DISTRICT COURT FOR WINNESHIEK COUNTY,**
Defendant.

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

Edward Gehling claims the district court exceeded its jurisdiction in finding him in contempt for failing to provide an accounting to his ex-wife. **WRIT ANNULLED.**

David L. Strand of Putnam & Strand Law Office, Decorah, for plaintiff.

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for defendant.

Considered by Cady, P.J., Streit, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving by order of the Iowa Supreme Court.

**HAYDEN, S.J.**

A dissolution of marriage decree was entered for Florence and Edward Gehling on May 10, 1994. The decree incorporated the parties' stipulation, which provided the parties' farming operation would be continued until the end of the year. The parties agreed to divide equally in December 1994 the livestock, grain, and proceeds from the sale of machinery. The decree provided:

> A full accounting will be made of all income and expenses between the date of this agreement and final settlement of the livestock in December 1994, upon request of the Petitioner which shall be monthly.

In another section the decree provided:

> A full accounting will be made to the Petitioner by the Respondent or his representative upon request at anytime prior to the final distribution of the livestock and machinery at year end.

On July 20, 1994, Florence filed an application for order to show cause claiming Edward should be found in contempt because he refused to give her documents necessary to make an accounting. The district court found Edward was in contempt. Edward could purge the contempt by providing the requested documents before the end of August.

On October 25, 1994, Florence filed a second application for order to show cause. She claimed Edward continued to refuse to provide the information necessary to make an accounting. The court found Edward in contempt and ordered him to pay court costs, attorney fees, and expenses.

In March 1995, Edward sought a clarification of the decree regarding hay on the farm. The court noted the decree provided Florence could request an accounting of income and expenses, but did not specify what she could do with this accounting. The court concluded the parties were generally dividing assets in half, and found Florence was entitled to one-half of the hay.

On June 30, 1995, Florence filed a third application for rule to show cause. She claimed Edward had been required to supply an accounting so an equitable division of the remaining assets could be made at the end of 1994. She stated she had an accounting prepared from the information she was able to obtain. The court found Edward was in contempt. He was allowed to purge himself by paying Florence $11,446 as her share of the farm profit, $1,176 for the expense of preparing an accounting, and $666 for attorney fees.

Edward filed a petition for writ of certiorari. The supreme court granted the writ, and the case is now before us. We review to ensure the allegedly contumacious actions have been established by proof beyond a reasonable doubt. *Kirk v. Iowa Dist. Court*, 508 N.W.2d 105, 107 (Iowa App. 1993). The two defenses available in a contempt proceeding are: (1) absence of willfulness in disobeying the order; and (2) indefiniteness or uncertainty of the order. *In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995).

**I.** Edward claims there was insufficient evidence to find, by proof beyond a reasonable doubt, he willfully disobeyed the terms of the parties' dissolution decree.

He believes the decree was not sufficiently specific as to what documents he needed to provide for the accounting. He states he provided the information he thought was necessary, and alleges other information was available from the parties' son, who was running the farming operation.

The dissolution decree clearly stated Edward should make a full accounting of all income and expenses from the date of the decree until final settlement of the livestock. This is sufficiently specific to alert Edward he needed to provide information regarding all sales and expenses. Florence should not be required to obtain the information from other sources. We conclude the finding of contempt was supported by sufficient evidence.

**II.** Edward also claims the dissolution decree did not specifically provide Florence was to receive a portion of the farm profits and argues the court improperly required him to pay Florence $11,446. He relies on the previous district court decision which stated the decree did not specify what Florence could do with the accounting to support his argument Florence was not entitled to a portion of the farm profits.

Edward only looks at a portion of the district court's ruling. The court also concluded the parties were generally dividing assets in half. This conclusion was noted by the court in the decision presently on appeal. We find the accounting was necessary to equitably divide the parties' assets, and the requirement of an accounting

shows Florence was entitled to a portion of the farm profits. We determine the district court properly found Florence was entitled to a share of the farm profits.

**III.** Edward contends he should not be required to pay accounting costs and attorney fees. The decree provided Edward was to make an accounting to Florence. We determine this means Edward was responsible for the costs of the accounting. We also agree Florence was entitled to attorney fees for the contempt action.

**IV.** Florence seeks attorney fees for this certiorari action. Section 598.24 provides when the court determines a party is in contempt of the decree, the court may tax the party the costs of the proceeding, including reasonable attorney fees. *In re Marriage of Anderson*, 451 N.W.2d 187, 189 (Iowa App. 1989). We determine Edward should pay $1,000 for Florence's attorney fees for the certiorari action.

We annul the writ of certiorari. Costs of this action is assessed to Edward.

**WRIT ANNULLED.**