



IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF CAROL LYNNE PAYTON
AND PATRICK HOWARD PAYTON

Upon the Petition of	)	229
CAROL LYNNE PAYTON,	)	
Petitioner-Appellee,	)	
And Concerning	)	
PATRICK HOWARD PAYTON,	)	8-321
	)	<u>87-1773</u>
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Polk County
(No. DM 46-27112), James P. Denato, Judge.

Appellant appeals a decision modifying child support
payments and a subsequent order filed by the court.
REMANDED IN PART AND DISMISSED IN PART.

Karla J. Fultz of Fultz Law Office, Des Moines, for
respondent-appellant.

Susan L. Ekstrom of Ekstrom & Richardson, Des Moines,
for petitioner-appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

HABHAB, J.**230**

The appellant Patrick Payton appeals a decision modifying child support payments and a subsequent order filed by the court. He argues the district court was without jurisdiction to enter either order. We dismiss in part and remand in part.

On November 13, 1987, the district court issued a final decree in the modification matter. The parties had stipulated to the substance of the decree prior to its submission to the court.

There was pending a November 5 motion of appellee, Carol, to compel. On November 19, 1987, the court without notice or hearing ruled on Carol's November 5 motion to compel. That ruling ordered Patrick to produce his 1987 tax returns¹ upon completion, with the additional provision that the modification matter be reopened if such production revealed a discrepancy with testimony previously given.

Patrick timely filed a motion to quash and to set aside that order and he further asked the court to reconsider its second ruling. On December 2, 1987, a hearing was held on Patrick's motion. Patrick's request that an oral evidentiary hearing be held and that his client be

1. We note from the record that Carol did not file a RCP 129 motion to produce; and when we review the interrogatories submitted by Carol, we find no request that Patrick furnish, in lieu of a RCP 129 motion, his 1987 income tax returns nor do we find any mention in the motion to compel that relates to a request for Patrick's 1987 tax returns.

permitted to be present was denied by the trial court. On December 14, 1987, the court issued its order denying Patrick's motion. Patrick filed his notice of appeal on December 17, 1987.

We review de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I.

Patrick first contends the district court did not, without notice, have jurisdiction to enter its order of November 19, 1987, regarding Carol's motion to compel, because by that date the final decree had entered. Carol counters by arguing that the November 19th order was the result of a hearing held on November 6, 1987, and thus the court yet had jurisdiction.² In this respect, we note there is no transcript in the record of any hearing which purportedly took place on November 6, 9, or 19, 1987. We decline to speculate as to what transpired at that hearing.

We agree with Patrick's contention that he was not given notice nor the opportunity to be heard regarding those matters which are embodied in the November 19th

2. The record is not clear as to when the hearing took place. Patrick states the hearing took place on November 9. The order itself states the hearing took place on November 19, 1987. However, transcription of the December 2, 1987, hearing states the court believed the hearing to have occurred on the 9th of November.

order. Accordingly, we determine that the November 19, 1987, ex parte order of court must be set aside.

The pending modification proceeding was concluded by the entry of the consent decree on November 13, 1987. The November 19 order constitutes a change from that decree. Although subject matter jurisdiction in dissolution matters is retained, the parties are entitled to notice and an opportunity to resist before changes in the decree are made. In re Marriage of Myer, 285 N.W.2d 10, 11 (Iowa 1979).

Since the final decree had entered, the trial court was without authority to change the same without notice to the appellant. Kwentsky v. Sirovy, 142 Iowa 385, 394, 121 N.W. 27, 31 (1909). We accordingly remand this cause with directions to set aside the November 19, 1987, order.

II.

Patrick appeals the district court's final decree of modification entered on November 13, 1987. Carol resists on the grounds his appeal was not filed until December 17, 1987, and is thus untimely. We note that no motion pursuant to Iowa Rule of Civil Procedure 247 or 179(b) was filed. We agree with Carol that this court lacks jurisdiction and accordingly we dismiss that portion of this appeal as it pertains to the November 13, 1987, order of the district court. Hayes v. Kerns, 387 N.W.2d 302 (Iowa 1986).

DISMISSED IN PART AND REMANDED IN PART.