FILED
FEB 26 1991
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-719 / 90-619

IN RE THE MARRIAGE OF ELIZABETH MAE PATTERSON AND SAM DALEY PATTERSON

Upon the Petition of

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ELIZABETH MAE PATTERSON,

Appellant,

And Concerning

SAM DALEY PATTERSON,

Appellee.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler and August F. Honsell, Judges.

Appellant seeks contempt and modification of dissolution decree. **AFFIRMED.**

Morris L. Eckhart of Milroy & Eckhart, Vinton, for appellant.

Susan K. Seiler and Annette F. Martin of Legal Services Corp. of Iowa, Cedar Rapids, for appellee.

Heard by Donielson, P.J., and Hayden and Habhab, JJ.

HABHAB, J.

In this modification action, the appellant on appeal claims the trial court erred in not finding the appellee in contempt for failure to abide by the terms of the dissolution decree and, additionally, in failing to modify the decree in the manner requested. We affirm.

The marriage of Elizabeth Mae Patterson and Sam Daley Patterson was dissolved on September 5, 1986. The decree of dissolution was entered in conjunction with a stipulation. Under its terms, the parties agreed that "no alimony shall be paid by one party to the other." The trial court followed the agreement of the parties and did not award alimony.

In its decree, the dissolution court concluded "that it should make a lump sum property settlement award to petitioner [Elizabeth] from respondent [Sam] to make the decree more equitable. The decretal part of the decree provides:

> 8. Property Settlement. The respondent shall pay to the petitioner the sum of $25,000. Said $25,000 shall be and is a judgment in favor of the petitioner and against the respondent. . . . . Within thirty days respondent shall obtain life insurance in the amount of at least $20,000 with petitioner named as beneficiary to apply to this obligation in the event of his death. Said insurance can be reduced by increments of $5,000 when said amount owed, including interest, falls $5,000 below the amount of the insurance.

The judgment is to bear interest at the rate of ten per cent per annum and is to be retired at the rate of $150 a

month. The monthly payments were to commence October 1, 1986.

Sam suffered a back injury during October of 1986. Surgery to correct the condition was had in March of 1987. He did not work from October of 1986 until October or November of 1987 due to his back problems. He filed for bankruptcy in February of 1987 and was discharged the following May. The $25,000 property settlement was listed as a debt. It was discharged. Elizabeth was provided appropriate notice and did not register an objection. Sam made no payments on the $25,000 debt.

It was not until May of 1989 that Elizabeth filed her contempt application and petition to modify. After the issues were joined, respondent sought and obtained, after a hearing, a separate adjudication that held alimony was not an issue in the modification action for there was not an award of alimony in the dissolution decree. Hearing, however, was held on Elizabeth's contempt action, and the court declined to hold the respondent in contempt.

The petitioner first contends that the trial court erred in failing to find respondent in contempt. When a trial court refuses to hold a party in contempt, we may properly review the matter on appeal. McDonald v. McDonald, 170 N.W.2d 246, 247 (Iowa 1969). Our review is not de novo; the decision of the trial court will not be lightly reversed. In re Marriage of Anderson, 451 N.W.2d 187 (Iowa App. 1989).

A contempt proceeding is essentially criminal in nature, and each element of contempt must be established beyond a reasonable doubt. In re Marriage of Schradle, 462 N.W.2d 705, 709 (Iowa App. 1990). In this respect, our supreme court has stated:

> only willful disobedience of a court order will justify a conviction for contempt. In this context a finding of disobedience pursued "willfully" requires evidence of conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or an unauthorized, coupled with an unconcern whether the contemnor had the right or not.

Id. (citing with approval from Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980), overruled on burden of proof issue only) (citations omitted). The trial court was unable to find beyond a reasonable doubt that Sam had willfully failed to comply with the decree. We agree. He was unable to work prior to filing the bankruptcy action. The $25,000 debt was discharged in bankruptcy. With its discharge, he was no longer under an obligation to make payments or to maintain the insurance policy.

The appellant next argues the trial court erred in not modifying the decree to require respondent to pay alimony. She contends the $25,000 award was in the nature of alimony. We disagree. The dissolution court made it clear that the $25,000 award was a property settlement. In addition, that court incorporated into its decree the agreement of the parties that neither was entitled to alimony from the other.

The appellant next argues that when Sam went into bankruptcy this constituted a substantial change in circumstances to warrant modification of the decree so as to award that alimony. It has long been the law in Iowa that where there is no initial award of alimony, a decree of dissolution cannot be modified to include alimony. In re Marriage of Marshall, 394 N.W.2d 392, 394 (Iowa 1986); Spain v. Spain, 177 Iowa 249, 158 N.W.2d 529 (1916). The trial court was correct in not modifying on this ground. We affirm.

AFFIRMED.