

IN THE COURT OF APPEALS OF IOWA

No. 8-019 / 97-0294

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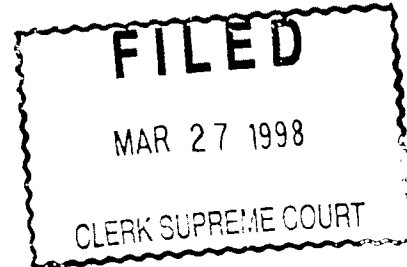
**IN RE THE MARRIAGE OF LINDA L. GROTH
AND ALAN D. GROTH**

Upon the Petition of
LINDA L. GROTH,

Appellant,

And Concerning
ALAN D. GROTH,

Appellee.



Appeal from the Iowa District Court for Buena Vista County, John P. Duffy,
Judge.

The district court denied Alan Groth's application to find Linda Groth in
contempt for failing to turn over personal property outlined in the parties' original
dissolution decree. **WRIT SUSTAINED; CASE REMANDED.**

Willis J. Hamilton Law Firm, P.C., Storm Lake, for appellant.

Ted Brown of Mack, Hansen, Gadd, Armstrong & Brown, P.C., Storm Lake,
for appellee.

Heard by Cady, C.J., and Sackett, and Mahan, JJ.

CADY, C.J.

Linda Groth appeals the district court's supplemental judgment ordering her to pay Alan Groth \$5000. She claims the district court exceeded its jurisdiction in entering the judgment. Alan cross-appeals, asserting the trial court should have found Linda in contempt and awarded him a greater sum. We sustain Linda's writ of certiorari.

The district court dissolved Linda and Alan Groth's marriage on September 28, 1995. The decree provided Alan should receive certain collectibles and personal property.

In June 1996, Alan filed an application for order of contempt, claiming he had not received from Linda the personal property described in the decree. The trial court found Linda was not in contempt. It found no evidence to establish Linda had the items or knew where they were. Notwithstanding, the district court indicated Alan may nevertheless be entitled to compensation for the items. As a part of the contempt ruling, the district court then ordered the parties to file supplemental affidavits listing the items and their value. Alan claimed the items were valued at \$9565. Linda requested a hearing to determine the value of the items. The court denied Linda's request and entered a supplemental judgment ordering Linda to pay Alan \$5000.

On appeal Linda maintains the district court erred in exceeding its jurisdiction by entering a supplemental judgment ordering her to pay Alan \$5000, even after the district court found her not in contempt. Alan cross-appeals claiming the district

court erred by failing to find Linda in contempt of court and the district court should have awarded him a judgment for \$9565.

I. Standard of Review

Certiorari is a procedure to test whether a lower court exceeded its proper jurisdiction or otherwise acted illegally. *See* Iowa R. Civ. P. 306; *French v. Iowa Dist. Court*, 546 N.W.2d 911, 913 (Iowa 1996). When we review a ruling of contempt by certiorari, we determine whether substantial evidence supports the district court's judgment. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 834-35 (Iowa App. 1997). Our review of the district court's action is for the correction of errors at law. *See French*, 546 N.W.2d at 913.

Linda filed a notice of appeal rather than a petition for writ of certiorari. She now asks us to consider her appeal as a writ of certiorari. Because Linda is appealing a matter arising out of the contempt action, the appropriate procedure for appeal is the writ of certiorari. We look to the substance and not the label of Linda's claim in treating her notice of appeal as a writ of certiorari as she requested. *See Tombergs v. City of Eldridge*, 433 N.W.2d 731, 734 (Iowa 1988) (the substance of a motion, not its label, discloses its character for purpose of court's ruling).

II. Jurisdiction

Subject matter jurisdiction can be raised at any time, even for the first time on appeal. *Hutcheson v. Iowa Dist. Court*, 480 N.W.2d 260, 262 (Iowa 1992). Subject matter jurisdiction refers to the power of a court to hear and determine the class of cases to which the proceedings in question belong. *Holding v. Franklin County*

Zoning Bd. of Adjustment, 565 N.W.2d 318, 319 (Iowa 1997). Subject matter jurisdiction cannot be conferred by consent, waiver, or estoppel. *State v. Yodprasit*, 564 N.W.2d 383, 385-86 (Iowa 1997). Any orders entered by a court lacking subject matter jurisdiction are void. See *Iowa Supreme Court Bd. of Professional Ethics & Conduct v. Hughes*, 557 N.W.2d 890, 892 (Iowa 1996).

Where subject matter jurisdiction exists, it does not necessarily follow that a court has authority to act in a specific case included within that general class. *Holding*, 565 N.W.2d at 319. Subject matter jurisdiction should not be confused with authority. “A court may have subject matter jurisdiction but for one reason or another may not be able to entertain a particular case. In such a situation we say the court lacks authority to hear that particular case.” *Yodprasit*, 564 N.W.2d at 385 (quoting *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989)). Where subject matter jurisdiction exists, however, an impediment to a court’s authority can be obviated by consent, waiver, or estoppel. *Id.*

Contempt actions in dissolution cases are governed by Iowa Code chapter 665 and Iowa Code section 598.23 (1995). See *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996); *Skinner v. Ruigh*, 351 N.W.2d 182, 184 (Iowa 1984). Generally, the punishment for contempt is “by a *fine* not exceeding five hundred dollars or *imprisonment* in a county jail not exceeding six months or *by both such fine and imprisonment*.” Iowa Code § 665.4(2) (emphasis added). Although one outcome of contempt may be to provide a remedy to the injured party, punishment, not damages, is the primary aim of a contempt proceeding under Iowa Code chapter 665.

See French, 546 N.W.2d at 914 (trial court could not order landowner to reimburse city for cost of abating nuisance in a contempt action).

Linda claims the district court exceeded its jurisdiction in the contempt action by entering a monetary judgment for Alan after finding she was not in contempt. Alan maintains the district court properly exercised its jurisdiction, but erred by failing to find Linda in contempt, and by failing to award him a judgment of \$9565.

We find substantial evidence supports the finding by the trial court that Linda did not willfully violate the decree. At the same time, we acknowledge the district court had subject matter jurisdiction to hear the contempt action brought against Linda. The fighting issue is narrowed to whether the district court had the authority in the contempt proceeding to enter judgment requiring Linda to pay Alan \$5000 for missing items he was to receive under the dissolution decree.

We recognize the actions by the trial court following the contempt hearing in this case were most likely motivated by a pragmatic attempt to structure a solution to an apparent problem. Nevertheless, we believe a predicate finding of contempt is necessary before a court has authority to impose any form of punishment in a contempt action. Furthermore, no authority exists in a contempt action for a court to enter a judgment against a party as an offset for missing items of property awarded under a decree. *See French*, 546 N.W.2d at 915 (trial court had no authority to enter judgment for costs in abating a nuisance in a contempt proceeding). Finally, the trial court had no authority to transform the action into a modification or replevin proceeding. Linda had no notice Alan would seek a judgment. *Id.* at 914.

Additionally, a court has no authority to change the allocation of property in an original decree without proof of fraud, duress, coercion, mistakes, or some other ground which would justify changing a decree. *In re Marriage of Johnson*, 299 N.W.2d 466, 468 (Iowa 1980). These issues were outside the scope of the contempt action.

We have considered all claims raised by the parties. In particular, we find Linda did not consent to the entry of judgment by requesting a hearing on the matter. The trial court denied the request and Linda's failure to affirmatively object to the district court order cannot be construed to be consent. We sustain the writ of certiorari and remand the case to the district court with directions to set aside the judgment against Linda.

WRIT SUSTAINED; CASE REMANDED.

Mahan, J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

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I **dissent**. I would **annul** the writ.

The majority has held the trial court does not have subject matter jurisdiction to enforce a provision of its dissolution decree requiring Linda deliver property to Alan. The majority, relying on *French v. Iowa District Court*, 546 N.W.2d 911 (Iowa 1996), contends no authority exists in a contempt action for a district court to enter a money judgment for items not delivered according to a dissolution decree.

This case is procedurally different from *French* because here (1) there was a request for a contempt, and (2) Linda had an opportunity to litigate the amount of the judgment and did not object during the trial to the trial court proceeding in the manner that it did.

The trial court found Linda failed to deliver personal property to Alan but did not find it wilful. The issue of Linda's failure to deliver the property was decided in the contempt action. The trial court then gave each party the opportunity to litigate the value of the personal property and entered judgment against Linda in that amount. Linda did not object to the trial court's proceeding in this manner. After affidavits were filed, the trial court entered judgment against Linda for the personal property she failed to deliver. The argument Linda now makes was not preserved for appeal.