FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE MARRIAGE OF CAROL J. GOETZINGER AND RONALD L. GOETZINGER

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Upon the Petition of)
CAROL J. GOETZINGER,)
Petitioner-Appellee,) Filed October 23, 1984
And Concerning)
RONALD L. GOETZINGER,) 4-365 / 83-1479
Respondent-Appellant.)

Appeal from the Iowa District Court for Shelby County - Keith E. Burgett and Leo F. Connolly, Judges.

Respondent appeals from the decree dissolving the parties' marriage asserting that he was denied due process when the trial court modified a proposed settlement without permitting presentation of additional evidence, and complaining of the trial court's refusal to find petitioner in contempt for her failure to turn over to him various items of personalty allegedly awarded to him. AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Robert Kohorst of Louis, Moore, Kohorst, Louis, Murtuagh & Kohorst, Harlan, Iowa, for respondent-appellant.

Robert J. Laubenthal of Smith, Peterson, Beckman & Willson, Oakland, Iowa, for petitioner-appellee.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

HAYDEN, J.

Respondent appeals from the decree dissolving the parties' marriage asserting that he was denied due process when the trial court modified a proposed settlement without permitting presentation of additional evidence. Respondent also complains of the trial court's refusal to find petitioner in contempt for her failure to turn over to him various items of personalty allegedly awarded to him.

Our review of this proceeding in equity is de novo. Iowa R. App. P. 4.

The record shows that on the date scheduled for trial of the parties' dissolution a settlement agreement was announced to the court. Petitioner testified concerning the basic facts supporting the dissolution. A disagreement subsequently arose concerning whether petitioner's proposed decree accurately reflected the settlement. Specifically, the decree provided for interest, disposition of a bank account in the name of a grandchild, and determined the amounts owed the parties by two of their children, none of which had been considered in the settlement. The trial court signed the decree and denied respondent an opportunity to present evidence on the disputed issues.

We agree with respondent's claim that the trial court's approval of additional matters in the decree not covered by the settlement denied respondent his day in court. By entering into the settlement, respondent did not waive his right to present relevant evidence on issues not covered by the proposed settlement. Furthermore, there was no evidence before the trial court upon which a decision could be based concerning those additional matters. Therefore, the portions of the decree dissolving the parties' marriage and providing for custody of the minor daughter are affirmed. The portions of the decree dividing the parties' property are vacated and the case is remanded to allow presentation of evidence on the disputed matters.

We are without jurisdiction to rule on respondent's claim that petitioner should have been held in contempt. Where an application for contempt is

dismissed, a direct appeal is permitted. State v. District Court in and for Polk County, 231 N.W.2d 1, 4 (Iowa 1975). No notice of appeal was filed following the denial of respondent's application for contempt. Iowa Rule of Appellate Procedure 5(a) setting the time limits for appeals is mandatory and jurisdictional. Kunau v. Miller, 328 N.W.2d 529, 530 (Iowa 1983).

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.