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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAUL S. PILLARD,)
Plaintiff-Appellant,) Filed November 26, 1980
vs.)
ELMA GRACE PILLARD,) 0-277
Defendant-Appellee.) 2-64455

Appeal from Scott District Court - N. S. Grant, Judge.

Plaintiff appeals from refusal to find defendant in contempt for failing to comply with terms of an order and asserts that he is entitled to interest on the unpaid balance of the lump sum due him under terms of the order. - AFFIRMED IN PART; REVERSED IN PART.

Larry R. Jungmann and Thomas R. Schirman, Jr., Eldridge, for plaintiff-appellant.

John A. Bowman, Davenport, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Plaintiff, Paul Pillard, appeals from trial court's refusal to find defendant, Elma Pillard, in contempt for failing to comply with terms of an order regarding a property distribution following a divorce decree. We affirm in part and reverse in part.

The parties were divorced in 1969. The decree ordered sale of certain real estate held by defendant when the children had reached the age of 21 or had become self sufficient. A share of the proceeds were to be distributed thereupon to the plaintiff.

In late 1977, plaintiff informally sought this distribution and in 1978 petitioned for specific performance. Following a hearing on the matter, the court ordered defendant to pay $20,400 to plaintiff within 60 days. This sum represented his share in the property at that time. In the event payment of that sum was not made within the 60 days, the property was to be partitioned in such manner as to permit plaintiff to recover his share equivalent in value to that sum.

After more than one year later, no payment was forthcoming nor were partition proceedings initiated by either party.

In October, 1979, plaintiff filed application to show cause why defendant should not be held in contempt. On or about November 5, 1979, defendant executed a real estate contract conveying 10 acres of the property and tendered to plaintiff $8800 of the down payment received. Defendant offered to relinquish the monthly payments of $250 to plaintiff and to pay off the remaining $11,600 in the next three-year period. The trial court found defendant had complied to the best of her ability, in light of the current real estate market, to follow the 1978 order and denied plaintiff's application. Plaintiff appeals that order.

The record in this case includes the court papers but does not include a transcript of testimony as none was heard by the court. Rather, a statement of proceedings filed by plaintiff, which defendant did not contest, provides the arguments presented at the hearing.

Evidence to sustain a finding of contempt must clearly and convincingly show willful disobedience of a court order. Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974). Our review of the entire record reveals communications between parties in an attempt to achieve a suitable distribution and partial success by defendant to comply

with the monetary payment, albeit not within the decreed time limit.

Plaintiff alleges defendant has not cooperated in partition arrangements. However, the procedures under section 631, The Code 1977, have not been attempted by plaintiff to secure this remedy. We fail to find sufficient evidence for a willful contempt determination and therefore sustain the trial court's denial.

Plaintiff seeks interest on the unpaid balance of his property share from the expiration of the 60 day period specified in the 1978 order. Trial court found no basis for this award as the previous order was silent on this provision. Fixed awards of money for property settlement draw interest at statutory rate from the date payment becomes due and owing when the judgment itself fails to include interest. Arnold v. Arnold, 258 Iowa 850, 854, 140 N.W.2d 874, 877 (1966). § 535.3, The Code 1977. The trial court correctly determined the contract sale and assignment of payments complied with the previous order in light of real estate and finance conditions at the time. However, the court erred in not allowing interest on the unpaid fixed sum awarded to plaintiff. Interest at the rate of seven per cent per annum shall be assessed to outstanding balance as of the day decreed payable; October 29, 1978.

AFFIRMED IN PART; REVERSED IN PART.