IN THE COURT OF APPEALS OF IOWA

No. 4-311 / 93-1725

FILED
OCT 25 1994
CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOSEFINA M. KERR AND CHARLES A. KERR

Upon the Petition of
JOSEFINA M. KERR,

Appellee,

And Concerning
CHARLES A. KERR,

Appellant.

Appeal from the Iowa District Court for Woodbury County, Philip S. Dandos, Judge.

Respondent appeals from a ruling of the district court refusing to find the petitioner in contempt for failing to deliver a number of his personal items to him. **AFFIRMED.**

David L. Reinschmidt of Munger & Reinschmidt, Sioux City, for appellant.

Josephine Kerr, Sioux City, pro se appellee.

Considered by Sackett, P.J., and Habhab and Cady, JJ.

CADY, J.

This appeal requires us to decide if the evidence in the case supports the district court's refusal to find Josefina Kerr in contempt of court for failing to return certain items of personal property to Charles Kerr following the dissolution of their marriage. We find the evidence supports the decision of the district court and affirm.

Charles and Josefina were divorced on May 17, 1988. The decree, among other things, provided that any property not specifically described in the decree was awarded to the party in possession of the property.

On July 20, 1993, Charles initiated contempt proceedings against Josefina for failing to return numerous personal items he believed were awarded to him under the decree, including a set of golf clubs, pictures, books, bookcase, watches, china, a chair, binoculars, tools and quilts. Some of the items were heirlooms and had sentimental value to Charles.

The property in dispute was not in Charles' possession at the time of the divorce. Charles had moved from the parties marital home prior to the divorce and left the property behind. Most of the items were located in a shed outside the house. Josefina continued to reside in the house for a period of time following the divorce. Although the decree did not specifically award the disputed items to Charles, he claimed Josefina agreed prior to the separation that he could have most of the items.

Charles looked in the shed in January 1989 and was unable to find the disputed property. Josefina testified that the parties two children are in possession of some of the items, while other items were damaged and either discarded or sold. Josefina denied the disputed items were part of a pre-divorce agreement.

The district court concluded Josefina was not in contempt because the disputed items of property were not mentioned in the dissolution decree. The court also found Charles failed to show Josefina's conduct was willful. On appeal, Charles claims substantial evidence was presented to show Josefina acted contemptuously in failing to give the disputed property to him following their divorce.

I.

Our review on appeal from the dismissal of an application for contempt or from the refusal to find a party in contempt is on errors of law. In re Marriage of Ruden, 509 N.W.2d 494, 496 (Iowa App. 1993). We are not, however, bound by the trial court's legal conclusions, and may inquire into whether it applied erroneous rules of law that materially affected its decision State v. Lipcamon, 483 N.W.2d 605, 606-07 (Iowa 1992). When a claim is made that the ruling is not supported by substantial evidence, we examine the evidence to confirm whether or not proper proof supports the judgment. Id. at 606. We recognize decisions involving contempt are generally within the sound discretion of the trial court. Id. at 607. The decision

must stand on appeal unless the discretion was grossly abused. Id.

The defenses available in a contempt proceeding include indefiniteness or uncertainty of the underlying order and the absence of willfulness in the failure to comply with the order. Bevers v. Kilburg, 326 N.W.2d 902, 904 (Iowa 1982). In this case, the underlying dissolution decree did not specifically award Charles the disputed property and did not direct Josefina to return the property to Charles. Josefina was in possession of the property at the time of the divorce and any agreement between Charles and Josefina concerning the disposition of the property was not part of the court decree. Under the circumstances, the trial court did not abuse its discretion in refusing to find Josefina in contempt of court.

AFFIRMED.