

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF ANTONETTE G. HARVEY
AND JOHN R. HARVEY

FILED

AUG 23 1989

CLERK SUPREME COURT

Upon the Petition of	)	
ANTONETTE G. HARVEY,	)	
Petitioner-Appellee,	)	
And Concerning	)	
JOHN R. HARVEY,	)	9-200
	)	<u>88-257</u>
Respondent-Appellant.	)	

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Appeal from the Iowa District Court for Polk County (CD 52-30631), Joel Novak and Theodore Miller, Judges, and Richard Morr, Chief Judge.

Respondent challenges the economic provisions of a dissolution decree. **AFFIRMED.**

John R. Harvey, pro se, for respondent-appellant.

Douglas R. Smalley, of Riemenschneider, Rydell & Smalley, Des Moines, for petitioner-appellee.

Considered by Oxberger, C.J., and Hayden and Sackett, JJ.

OXBERGER, C.J.

This case involves an appeal from certain district court rulings providing for the sale of the parties' home pursuant to a dissolution decree and the distribution of proceeds from the sale.

Respondent-appellant John Harvey and petitioner-appellee Antonette Harvey were granted a dissolution in January 1987. The decree made the following provision regarding disposition of the family home:

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner shall have a right to reside in the parties' home located at 3413 East 12th Street, Des Moines, Iowa, until Jodi attains the age of eighteen (18) years of age, or graduates from high school, whichever occurs last. While living in the parties' home, the Petitioner shall have the duty to pay all principal and interest payments due under the existing real estate mortgage as well as real estate taxes as they become due. As soon as Petitioner no longer is entitled to remain in the parties' home, it shall be placed for sale at a reasonable price. After the mortgage, liens, taxes and legitimate expenses of sale, the remaining equity shall be equally divided between the parties. . . .

All provisions of the decree were affirmed following an appeal by John. In re Marriage of Harvey, No. 8-595, (Iowa App. March 16, 1989). Although originally represented by counsel, John has acted pro se in all matters since his counsel withdrew after the dissolution was granted. Antonette sought to enforce the sale of the home having received two bids. An evidentiary hearing was held on the value of the home and reasonableness of the offer. On January 15, 1988, the district court ruled the \$52,000 bid

should be accepted and the house sold. In addition to finding the offer to buy was fair and reasonable, the court concluded Mr. Harvey was being completely uncooperative in the sale of the home and ordered the appointment of a commissioner to see to the transfer of Mr. Harvey's interest in the home. On February 15, 1988, Mr. Harvey filed a timely notice of appeal challenging this ruling and any other orders entered in the cause up to the date of the notice. The record reveals during this period the district court had ruled on "Applications for Dispersal of Funds" by both parties and an ex parte temporary stay granted to Mr. Harvey by the Iowa Supreme Court had expired due to his failure to post the required surety bond.

Also, on February 12, 1988, Antonette's attorney filed an "Application for Order Nunc Pro Tunc and Order" indicating the parties agreed (1) the district court's earlier dispersal of funds was incorrect, (2) the correct division of the \$15,905.05 in proceeds should be \$8,043.78 to Antonette, \$7,861.27 to John, and (3) \$115.64 was improperly paid by the clerk to creditors of a different John Harvey to remove liens from property and this money should remain on deposit until the parties agree or the court directs how it is to be divided. We note this application and accompanying order is signed by Antonette's attorney and the judge but lacks Mr. Harvey's signature.

The parties' applications and district court's rulings filed after February 15 appeal was perfected are not a part of this appeal. We note these matters also concerned the distribution of proceeds. When an appeal is perfected, the trial court loses jurisdiction over the merits of the controversy. Hulsing v. Iowa Nat. Mut. Ins. Co., 329 N.W.2d 5, 7 (Iowa 1983).

We now address Mr. Harvey's contentions of error in the district court's rulings prior to the February 15, 1988 notice of appeal. The day of the hearing on Antonette's application to enforce the sale of the house, the district court overruled Mr. Harvey's motions for continuance, dismissal, and stay of execution.

We find the court's denial of the motions well within its discretion. The denial of the stay was based, in part, on the court's determination that Mr. Harvey was in no position to post a supercedes bond and the court later denied Mr. Harvey waiver of the filing of such a bond. Given the need to act on the offer to buy with some expediency or perhaps lose the offer, we find the district court again acted appropriately when denying the stay. Any of Mr. Harvey's claims of error dealing with the temporary Iowa Supreme Court stay of execution are moot as that stay order expired when Mr. Harvey failed to post bond as ordered. We note the district court entered no orders during the time this stay was pending.

The next contention of error was the district court's determination the \$52,000 offer to buy was fair and reasonable. The record reveals Antonette also received a second offer of \$51,250. Mr. Harvey testified an FHA appraiser valued the property at \$59,950 in 1983. The parties listed the house at sale for \$56,900 in 1984 and were told it should be selling at \$54,900. Mr. Harvey presented no expert testimony as to the reasonableness of the offers contending he could not afford to do so. Antonette's evidence as to the value of the house included the offers to buy and the testimony of a lender indicating a willingness to provide financing for a \$52,000 bid but not the original \$55,000 bid.

The district court noted, and the record clearly reveals, Mr. Harvey was opposed to the sale from the beginning because he wanted to have possession of the home and felt his pending appeal of the dissolution decree regarding the home would be successful. Based on this evidence, we find the district court was correct in concluding the \$52,000 bid was fair and reasonable. The court had authority to enforce the sale of the house pursuant to the decree as Mr. Harvey did not post a supercedes bond. Lutz v. Darbyshire, 297 N.W.2d 349, 352 (Iowa 1980). Given Mr. Harvey's refusal to cooperate in completing the sale and deed forms, the district court had no choice but to appoint a commissioner for conveyance of

Mr. Harvey's ownership interest short of holding him in contempt. Iowa Code §§ 598.23(1) and 624.29-.35 (1987).

We find the district court subtracted the correct amount of real estate taxes and selling costs from the proceeds prior to making the distribution to the parties. The \$445.00 attorney fees and \$262.50 transcript costs should be considered Mr. Harvey's costs alone.

The \$115.64 of small claims judgments erroneously paid out by the clerk, shall be divided equally between the parties. Apparently Mr. Harvey has already been paid his one-half.

The district court is directed to enter any orders needed to enforce this division of the sale proceeds. The district court's ruling enforcing the sale and dispersal orders consistent with this opinion are affirmed.

Costs of this appeal are taxed to appellant Mr. Harvey.

AFFIRMED.

Hayden, J. concurs; Sackett, J. specially concurs without opinion.