

IN THE COURT OF APPEALS OF IOWA

No. 9-249 / 88-1748

FILED

OCT 05 1989

CLERK SUPREME COURT

IN RE THE MARRIAGE OF JEROME L. ALEFF AND GLORIA G. ALEFF

Upon the Petition of
JEROME L. ALEFF,

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Appellee,

And Concerning
GLORIA G. ALEFF,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County (35022), Peter Van Metre, Judge.

Appellant appeals the district court's order in contempt
proceeding against appellee. **REVERSED AND REMANDED WITH
INSTRUCTIONS.**

Terry Diane Parsons of Olsen, Parsons & Ament, Cedar
Falls, for the respondent-appellant.

Timothy J. Luce of Randall, Anfinson & Luce, Waterloo,
for the petitioner-appellee.

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

PER CURIAM

The district court found Jerome L. Aleff to be in contempt of court for taking possession of certain items of personal property which the dissolution decree awarded to Gloria G. Aleff. Gloria has appealed a provision of that ruling which permits Jerome to purge his contempt, and retain the property, by paying Gloria the sum of \$1,200.¹

The parties' marriage was dissolved in August 1988. The dissolution decree incorporated a stipulation providing that the parties' house would be sold and that the net proceeds would be divided evenly between the parties. The stipulation also stated that Jerome agreed to vacate the premises within thirty days of the decree.

In October 1988 Gloria filed an application seeking to have Jerome held in contempt of court. Gloria alleged that Jerome had failed to vacate the house within thirty days and also had removed from the house items of personal property awarded to Gloria by the decree.

The district court found that Jerome's failure to vacate the house within thirty days did not amount to contempt. The district court did find Jerome in contempt for taking possession of certain items of personal property which the

1. Since the trial court found Jerome in contempt, Gloria's remedy was by certiorari. Instead of filing a petition for writ of certiorari, Gloria appealed. This set of events then brings rule 304, Iowa Rules of Appellate Procedure, into play. Pursuant to rule 304, we proceed to treat the case as though Gloria had filed a writ of ceritorari.

decreed had awarded to Gloria. However, the district court stated that Jerome could retain those items by paying Gloria \$1200.

Gloria, on appeal, challenges the provision that Jerome can retain the personal property if he pays Gloria \$1200. She argues this provision amounted to a de facto modification of the dissolution decree. Gloria also contends the district court should have awarded her attorney's fees. Both parties request attorney's fees and costs on appeal.

Jerome did not file a notice of cross-appeal. Nonetheless, he argues in his appellee's brief that the contempt adjudication was erroneous because there was evidence that he did not remove some of the challenged items and was justified in removing others.

We however, on our own motion, refuse to entertain Jerome's assertions that the trial court erred in finding him in contempt since he has failed to properly appeal that determination. Cf. Doland v. Boone County, 376 N.W.2d 870, 876 (Iowa 1985).

Property divisions made under chapter 598 are not subject to modification. Iowa Code § 598.21(8); see 1988 Iowa Acts ch. 1141, § 2. When a statute is plain and unambiguous, we need not venture beyond its language in our quest for its meaning. Phillips v. Iowa Dist. Court for Johnson County, 380 N.W.2d 706, 710 (Iowa 1986). The

district court did not have statutory authority to permit Jerome to retain possession of those items awarded to Gloria in the decree. While it is "proper for the court to permit purgation of contempt by imposing conditions designed to procure compliance with the court order," Callenius v. Blair, 309 N.W.2d 415, 419 (Iowa 1981), those conditions must be in conformity with Iowa law. The conditions set by the district court by which Jerome could purge his contempt through payment of \$1,200 to Gloria constitutes an unauthorized modification of the dissolution decree's property division. We, therefore, remand this cause to the district court for entry of an order nullifying that condition. By this ruling we do not direct what sanction the trial court should impose nor do we suggest what conditions the trial court may impose in the event the trial court orders, in its subsequent ruling, a provision for purgation of contempt.

Gloria also contends the district court should have awarded her attorney fees pursuant to Iowa Code section 598.24 (1987). Such an award is discretionary. We decline to disturb the district court's determination on this subject. We do, however, award Gloria \$750 in appellate attorney fees and decline Jerome's request for appellate attorney fees. Costs of this appeal are assessed to Jerome.

REVERSED AND REMANDED WITH INSTRUCTIONS.