

IN THE COURT OF APPEALS OF IOWA

No. 2-463 / 90-821

IN RE THE MARRIAGE OF BILL KEITH KIRK
AND BEVERLY ANN KIRK

FILED

FEB 02 1993

CLERK SUPREME COURT

Upon the Petition of

BILL KEITH KIRK,

Appellee,

And Concerning

BEVERLY ANN KIRK,

Appellant.

Appeal from the Iowa District Court for Jefferson
County, Robert Bates, Judge.

The wife appeals from the economic provisions of the
parties' dissolution decree. **AFFIRMED AS MODIFIED.**

Victoria L. Herring, West Des Moines, for appellant.

Bill Kirk, Fairfield, pro se.

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

PER CURIAM

Bill and Beverly (Bev) Kirk were married in April 1979. The parties have two children, Aaron and Kimberly, both born on May 5, 1981. Bev has two children from a previous marriage.

Bill initially supported himself by a jewelry design business. He was engaged in wholesale and retail sales of jewelry. Bill brought approximately \$9,800 worth of assets and cash into the marriage.

Bev initially supported herself by retail sale of candles and seashell ornaments. She brought assets and cash worth approximately \$13,800 into the marriage. In 1982, Bill and Bev started a business selling crystals. Bev diverted her profits from the candle business into the new venture. The business expanded rapidly.

On January 13, 1986, Bev filed a petition for dissolution. This case was dismissed by the court on October 15, 1986. During 1986 the parties divided the crystal business, each taking control of seven stores. They agreed to share the same manufacturing personnel.

On February 6, 1987, Bill filed this petition for dissolution. The problems between the parties multiplied. The court issued restraining orders against each party. Each party accused the other of secreting physical and monetary assets. In 1988, Bill obtained a key and removed items of inventory from a storage locker rented by Bev. In

addition, the parties had problems regarding visitation with the children and the police were called on many occasions. Problems also developed regarding discovery.

The dissolution hearing was held on April 4, 5, and 6, 1989. It was then continued and held on March 13, 14, 15, 16, 20, 21, and 23, 1990. The value of nearly every piece of property was disputed. The parties agreed that Bev should have physical custody of the children. On April 27, 1990, the district court entered amended findings of fact and conclusions of law. The district court divided the assets and debts of the parties, awarding Bev, inter alia, certain real estate, a van, personal property and household goods. Bill was awarded, inter alia, real estate, an automobile, a van, certain personal property and household goods. Bev was ordered to pay a property settlement of \$4,000 to Bill. The district court ordered Bill to pay \$600 per month in child support and ordered Bev to pay medical expenses. The district court found joint custody would not be appropriate in light of the problems between the parties. Visitation was not allowed until the children received counseling. The district court awarded no alimony and ordered the parties to pay their own attorney fees.

Both parties filed numerous posttrial motions which were denied. Bev appeals. On July 16, 1992, Bev filed a motion for relief which is to be submitted with the appeal.

Scope of Review.

In this equity action, our review is de novo. Iowa R. App. P. 4. We give weight to the fact-finding of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

I. Transcript.

Bev argues the court's failure to provide a trial transcript denies her a meaningful appeal. In support of her position, Bev argues the application of Taylor v. Farrier, 912 F.2d 518 (8th Cir. 1990). In Taylor, the court required the district court receive a transcript or tape recording of the hearing in order to conduct a de novo review of a magistrate's findings. Id. at 520. However, the court's decision in Taylor is not based on a constitutional right to a transcript on appeal, but rather on the scope of review of magistrate's findings. Appeal of a magistrate's findings is expressly governed by, inter alia, 28 U.S.C. § 636 and portions of Title II of the Federal Rules of Appellate Procedure, which arise out of the distinction between Article III Judges and magistrates. Thus, we find the court's reasoning in Taylor inapplicable to the issue before us.

We find Iowa Rule of Appellate Procedure 10(c) dispositive on this issue:

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement

of the evidence or proceedings from the best available means, including [her] recollection. The statement shall be filed with the clerk of the trial court and served on appellee within twenty days after the filing of the notice of appeal. Appellee may file with the clerk of the trial court and serve on appellant objections or proposed amendments to the statement within ten days after service of appellant's statement. Thereupon the statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and as settled and approved shall be included in the record on appeal.

We determine Iowa Rule Appellate Procedure 10(c) provides reasonable means of creating a record to those litigants unable to afford the costly preparation of a transcript.

II. Access to the Legal System.

Bev contends the trial court's temporary order enjoining her from disposing of assets denied her the ability to support herself.

We have reviewed the available record and temporary writ of injunction issued by the trial court. We note there was evidence indicating Bev may have transferred \$70,000 to her father prior to the issuance of the writ. Disposal of parties' assets during the pendency of a dissolution has historically been frowned upon by this court. We find no error in the court's issuance of the writ.

Additionally, we note the trial court expressly allowed disposal of assets upon mutual consent of the parties or by order of the court. Thus, we determine Bev had at her disposal a means by which she could sell inventory in order

to continue to support herself. While we acknowledge obtaining a court order is a cumbersome means to continue a business, the evidence supports the trial court's imposition of the restrictions, especially in light of the evidence Bev had diverted assets to her father.

Bev next contends the court's delay in ruling on her contempt motion was unnecessary and caused additional hardship. Specifically, she contends the court's delay in hearing and eventual denial of her application was a factor in destroying her business and earning capacity.

Our review of contempt applications is for correction of errors at law. Iowa R. App. P. 4. Indefiniteness of the court's order is a defense to a contempt action. Bervers v. Kilburg, 326 N.W.2d 902, 904 (Iowa 1982). The burden of proof in a contempt action is beyond a reasonable doubt. Phillips v. Iowa Dist. Court, 380 N.W.2d 706, 709 (Iowa 1986). In this case, the injunction at issue expressly prohibited Bill from entering property occupied by Bev. Bev was not on the property entered by Bill and, accordingly, cannot be held in contempt under the terms of the order. We recognize our reasoning may appear technical, but a contempt action is a quasi-criminal proceeding. As a result, strict adherence to proof standards is required.

Bev also contends she was denied meaningful access to the courts due to the court's proceeding without a Special

Master. However, the Special Master filed an affidavit following the decision of the court. The court subsequently issued a modified decision.

Bev contends the property division was inequitable. The trial court awarded Bev property valued at \$51,512 and awarded Bill property valued at \$51,544. While Bev alleges the court overvalued the property awarded to her and undervalued the property awarded to Bill, the appendix contains no affidavits indicating a basis for determining a different value or supporting Bev's contention.

Bev also contends the child support award was wholly inadequate. We apply the Uniform Child Support Guidelines to the parties' respective incomes. The court determined Bill's monthly income at \$2,000 and Bev's monthly income at \$500 to \$600. Applying the guidelines, we modify the trial court's award and require Bill to pay \$672 per month in child support.

The decision of the trial court is affirmed as modified.

AFFIRMED AS MODIFIED.