# IN THE COURT OF APPEALS OF IOWA

No. 6-804 / 96-0811

**IN RE THE MARRIAGE OF KIMBERLY ANN KRUZAN AND EDWARD SCOTT KRUZAN**

**Upon the Petition of**
**KIMBERLY ANN KRUZAN n/k/a**
**KIMBERLY ANN CARPENTER,**

Petitioner-Appellant,

**And Concerning**
**EDWARD SCOTT KRUZAN,**

Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

Kimberly Carpenter appeals from a district court order requiring her to sign amended income tax returns. **REVERSED.**

Leslie Babich of Babich, McConnell & Renzo, P.C., Des Moines, for appellant.

Tim Pearson and Gregory D. Brandt of Hyland, Laden & Pearson, P.C., Des Moines, for appellee.

Considered by Habhab, C.J., and Huitink and Streit, JJ.

**PER CURIAM**

This is an appeal by a wife claiming the district court should not have ordered her to sign certain income tax returns. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Kimberly and Edward Kruzan were married in 1991. Kimberly is a pharmaceutical representative. Edward owned a business, Computer Resources Group, Inc., which was operated as a subchapter S corporation. The parties filed joint tax returns for 1991 and 1992. Kimberly filed a petition for dissolution of marriage on December 3, 1993. The parties filed separate tax returns for 1993.

The district court entered a dissolution decree for the parties on December 12, 1994. Pursuant to the parties' prenuptial agreement, each party retained the property he or she brought to the marriage. Edward was awarded Computer Resources. The decree provided:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Kimberly] shall sign any and all tax returns and tax forms necessary for Computer Resources Group, Inc. to file federal and/or state corporate income tax returns, and federal and/or state amended corporate income tax returns subject to [Kimberly's] certified public accountant's approval. [Edward] shall receive any refund or be responsible for any taxes.

At the time the decree was issued, Edward had not yet filed his 1993 tax returns.

Computer Resources suffered a net operating loss in 1993. Edward sought to carry this loss back to 1991 and 1992 by filing an amended return and receiving a

refund for taxes paid in those years. Because Computer Resources is a subchapter S corporation, only an informational return is filed for the company. The profits and losses of the company are passed through to the individual stockholders. In order to obtain a refund for 1991 and 1992, Edward needed to file amended individual tax returns for years when the parties filed joint tax returns.

Kimberly refused to sign amended individual returns for 1991 and 1992, claiming the dissolution decree required her to sign only corporate tax returns. Kimberly stated she would sign the tax returns only if she received one-half of the refund. Kimberly's CPA, Ronald Nims, did not advise her to sign the amended returns. Nims was concerned Edward had not shown a cost basis in the corporation's stock, which is a prerequisite to recognizing such a loss.[1]

Edward filed a petition seeking to have Kimberly found in contempt of court for her failure to sign the amended tax returns. The district court concluded the language of the dissolution decree was broad enough to require Kimberly to sign the amended individual returns. The court found that she was not in contempt, however, because she did not act in bad faith by refusing to sign. The court directed Kimberly to sign the amended 1991 and 1992 individual tax returns. Kimberly appealed.

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[1]Nims also gave the opinion the stipulation did not require Kimberly to sign any individual income tax returns. We give no consideration to Nim's attempted legal advice.

When a trial court refuses to hold a party in contempt in a dissolution proceeding, appellate review is not de novo. *In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa App. 1993). We review the record to determine if substantial evidence exists to support the trial court's ruling. *Id.*

We agree with the district court's interpretation of the dissolution decree. The decree requires Kimberly to sign "any and all tax returns and tax forms necessary for Computer Resources Group, Inc. to file . . . federal and/or state amended corporate income tax returns." The evidence showed it was necessary to file amended individual income tax returns to reap any benefit from the amended corporate income tax returns.

We find, however, that the approval of Kimberly's CPA was a condition precedent to requiring her to sign these forms. Nims specifically disapproved of the proposed amended income tax returns. In the area of contracts, the failure to perform a condition precedent, based on personal satisfaction or otherwise, generally vitiates the contract. *Employee Benefits Plus, Inc. v. Des Moines General Hospital*, 535 N.W.2d 149, 155 (Iowa App. 1995). Here, the failure of Kimberly's CPA to approve the signing of the amended tax returns vitiates Kimberly's responsibility to sign the returns.

Edward has presented no evidence to show Nims wrongfully withheld his approval. In his affidavit Nims gives reasonable and objective reasons for not

approving the amended returns. Nims states Edward could only recognize the loss to the extent of his cost basis in the corporation's stock. Nims felt Edward had not sufficiently shown he had a sufficient cost basis to recognize the loss.

We reverse the decision of the district court ordering Kimberly to sign the amended income tax returns. Costs of this appeal are assessed to Edward.

**REVERSED.**