

IN THE COURT OF APPEALS OF IOWA

No. 2-086 / 91-856

HERMAN C. ROOK,

Appellee,

vs.

JUNELLA VAN HAAFTEN,

Appellant.

FILED

JUN 25 1992

CLERK SUPREME COURT

804

Appeal from the Iowa District Court for Jasper County,
Darrell Goodhue, Judge.

Van Haaften appeals from a district court decree
ordering her to remove a berm on her property so as not to
impede the water flow from the Rook property. **AFFIRMED.**

Bert A. Bandstra, Knoxville, for appellant.

Richard K. Updegraff of Brown, Winick, Graves,
Donnelly, Baskerville and Schoenebaum, Des Moines, for
appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel,
JJ.

OXBERGER, C.J.

The Rook and Van Haaften families have owned adjoining farmland for many years. The Rook land is higher and water runs off onto the Van Haaften land from two waterways. For several years, the run-off flowed westerly through the fenceline and into a north-south drainage ditch on the Van Haaften land which directed the waters to another ditch and away from both parties' land.

In 1986, Rook filed a petition alleging the Van Haaftens were obstructing the natural flow of water from the Rook property. In March 1988, the parties entered into an agreement, approved by the court, concerning the water run-off. The agreement provides the Van Haaftens would construct an underground tile system in compliance with the soil conservation service. The system was to be constructed in lieu of the previous drainage ditches on Van Haaftens' land. An underground tile system was eventually built. The north-south drainage ditch just inside the Van Haaften property remained with an earthen berm on the west side of it.

In May 1990, Rook filed an application for contempt citation for the Van Haaftens' failure to comply with the March 1988 agreement. Subsequently, Lester Van Haaften died and his widow, Junella, became the sole owner of the property.

After trial, the district court asked Rook to prepare a written order in conformity with its oral ruling. Van Haaften filed a petition for writ of certiorari with this court. On January 23, 1991, this court denied the petition without prejudice to Van Haaften to appeal following a final order. In March 1991, the district court entered its decree determining that the existence of the berm violated the 1988 agreement and requiring Van Haaften to remove it within thirty days or a show cause order would issue. The district court did not cite Van Haaften for contempt. Following a posttrial ruling, Van Haaften has filed this appeal.

SCOPE OF REVIEW: We review a trial court's dismissal of application for contempt or refusal to find party in contempt de novo. See Patterson v. Keleher, 365 N.W.2d 22, 24 (Iowa 1985).

JURISDICTION OF THE COURT: The sole issue on appeal is whether the trial court was empowered to interpret and apply the March 15, 1988 order and ruling, at the proceedings for contempt. Van Haaften asserts the trial court treated the application for contempt as a petition under Rule 253 of the Iowa Rules of Civil Procedure. Iowa Rule of Civil Procedure 253(a) provides in part:

a. Petition. A petition for relief under R.C.P. 252 must be filed in the original action within one year after the rendition of the judgment or order involved.

Iowa Rule of Civil Procedure, Rule 252 provides certain grounds by which a judgment may be vacated or modified. Van Haaften appears to argue the trial court's ruling in the contempt proceeding amounted to a modification of the prior court order dated March 15, 1988. We disagree.

The application for contempt alleged Van Haaften was in violation of an order or ruling of the court. An order or an injunction must be clear, definite and unambiguous before it may provide a basis for contempt. Palmer College of Chiropractic v. Iowa District Court for Scott County, 412 N.W.2d 617, 620 (Iowa 1987). It is an inescapable task of the court to construe the terms of an order to determine if the party alleged to be in violation of the order is in contempt. See Id.

The trial court in the present case identified the basic issue between the parties in the matter which was before the court on application for contempt citation. The court noted that issue to be the interpretation of the agreement between the parties which was memorialized by court order dated March 15, 1988. The court in ruling on the contempt proceeding explained its March 15, 1988 order and ruled, in light of that explanation, Van Haaften was not in contempt. It then clarified, for the benefit of Van Haaften, what was necessary to comply with the court order. We find this conduct was well within the jurisdiction of the court and affirm the trial court.

Counsel for Van Haaften, in oral argument, emphasized the long history of the dispute between these parties. Much was made of the unfairness in requiring Van Haaften to remove the berm. Appellant's brief however presented the following single issue and argument.

That the Court was in error and exceeded its jurisdiction, when it modified, at a hearing on contempt, the stipulation and the order entered pursuant to such stipulation at a contempt hearing when there was no contempt. (emphasis added).

Iowa Rules of Appellate Procedure, Rule 14 (a)(3) provides in part:

Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.

The sole issue presented to this court in appellant's brief is one of jurisdiction in a contempt proceeding. The appellant did not attack the substance of the court's ruling. We find the court had the jurisdiction to decide as it did.

Each party will pay his or her own attorney's fees. Costs are taxed to the appellant.

AFFIRMED.