IN THE COURT OF APPEALS OF IOWA

No. 1999-19 (9-129) / 98-1125
Filed July 23, 1999

IN RE THE MARRIAGE OF DOUGLAS B. ROSS AND DAWN L. ROSS

Upon the Petition of DOUGLAS B. ROSS,

Petitioner-Appellant,

And Concerning DAWN L. ROSS,

Respondent-Appellee.

FILED
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

Petitioner appeals from the district court ruling denying as untimely his motion to reconsider provisions of the parties' dissolution decree. **AFFIRMED.**

John J. Scieszinski of Scieszinski Law Office, Des Moines, for appellant.

Roger J. Hudson, Sr., and Andrew B. Howie of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., Des Moines, for appellee.

Considered by Huitink, P.J., and Streit and Mahan, JJ.

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MAHAN, J.

Douglas Ross appeals from the district court ruling denying as untimely his motion to reconsider provisions of the parties' dissolution decree. He contends the court erred by failing to find that his delay in filing the motion was excused due to difficulties in obtaining new counsel. We affirm.

Douglas filed his petition for dissolution of marriage on September 3, 1997. Trial was scheduled for April 22, 1998. His counsel withdrew prior to trial and he appeared pro se. Douglas requested a continuance of trial which was denied by the court.[1] The district court filed a decree of dissolution of marriage on April 24, 1998.

Douglas obtained new counsel after the entry of the decree. A motion to amend the decree was filed on May 8, 1998. The motion was denied by the district court as not being timely filed. Douglas appeals.

I. STANDARD OF REVIEW. Our review of proceedings concerning subject matter jurisdiction is at law. *S.S. v. Iowa Dist. Ct.*, 528 N.W.2d 130, 132 (Iowa 1995); *Tigges v. City of Ames*, 356 N.W.2d 503, 512 (Iowa 1984). Our scope of review is for correction of errors at law. Iowa R. App. P. 4.

II. TIMELINESS OF MOTION. Douglas filed his motion to amend pursuant to Iowa Rule of Civil Procedure 179(b). This rule requires the motion be filed "within the time allowed for a motion for new trial." Thus, the motion was to be filed within ten days of the entry of the decree of dissolution of marriage. Iowa R.

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[1] Douglas does not appeal on this issue.

Civ. P. 247. Douglas filed his motion on May 8, 1998, which was clearly beyond the ten-day requirement. The district court found the matter was jurisdictional and denied the motion. We agree.

Our supreme court has held the timeliness of post-trial motions is jurisdictional. *State ex rel. Miller v. Santa Rosa Sales & Mktg., Inc.*, 475 N.W.2d 210, 214 (Iowa 1991). Thus, a rule 179(b) motion must be filed within ten days unless the court grants additional time for good cause shown. Iowa R. Civ. P. 247. Any request for additional time *must* be filed before the expiration of the original ten-day period. *State ex rel. Miller*, 475 N.W.2d at 213. Douglas did not file any request for additional time before the expiration of this deadline. Thus, the district court was correct in concluding it was without jurisdiction to rule on Douglas's motion.

Douglas contends he should be given some additional consideration and latitude because of his pro se status and his difficulty finding new counsel. We disagree. "Substantial departures" from trial or appellate procedures cannot be permitted simply because a person acts in a pro se capacity. *Polk County v. Davis*, 525 N.W.2d 434, 435 (Iowa App. 1994). A person proceeding pro se does so at his own risk. *Id.* In addition, the delay in finding counsel does not excuse noncompliance with a rule of civil procedure which is jurisdictional.

We have carefully reviewed this matter and affirm the decision of the district court.

AFFIRMED.