FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF BARBARA K. BERRY AND MARION E. BERRY

Upon the Petition of)
BARBARA K. BERRY,) Filed May 30, 1980
Petitioner-Appellee,)
And Concerning)
MARION E. BERRY,) 0-106 / 63112
Respondent-Appellant.)

Appeal from Scott District Court - C. H. Pelton, Judge.

Respondent appeals from trial court order purporting to interpret a prior decree dissolving the marriage of the parties and dividing their property. AFFIRMED AS MODIFIED.

Glenn F. Ruud and Dorothea O'Dean of Winstein, Kavensky, Wallace & Doughty, Rock Island, Illinois, for respondent-appellant.

Jack L. Fortini of Newport, Fortini & Hohenadel, Davenport, Iowa, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Respondent, Marion Berry, appeals from trial court order purporting to interpret a prior decree which dissolved his marriage to petitioner, Barbara Berry. Marion alleges that the trial court lacked jurisdiction to consider the application to interpret the property division contained in the prior decree and, in the alternative, that the purported interpretation by the trial court was in fact an unauthorized modification of the prior property settlement.

The parties' dissolution decree, filed July 27, 1977, incorporated a property settlement which, in 112 numbered paragraphs, made a very detailed disposition of the parties' personal property. On April 24, 1978, a document was filed in the dissolution proceeding which was entitled a Joint Application for Interpretation of Decree. Said application identifies numerous areas of continuing disagreement with regard to the property settlement portion of the decree. Hearing was held on this joint application and on January 12, 1979, trial court entered the order from which this appeal is taken.

I. We first consider Marion's claim that the joint application, which precipitated the trial court order from which this appeal is taken, was filed by his attorney without his consent. From this premise he urges that the trial court lacked personal jurisdiction to proceed against him. We disagree for two reasons. First, in view of the presumption in favor of an attorney's authority,[1] it was incumbent upon Marion to establish the claimed lack of authority by some proof. We find that he has failed to do so. Second, it appears without dispute that Marion appeared and participated in the hearing on the application, albeit through a different attorney. No mention was made of his original attorney's lack of authority until well into the course of these proceedings. Such conduct, prior to the 1976 amendments to Iowa R. Civ. P. 65, was by definition a general appearance consenting to the jurisdiction of the court. The official comment to the 1976 amendment to rule 65 suggests that such a general appearance may still arise by implication.[2] We hold any objection to the authority of Marion's original attorney to initiate the proceedings to construe the decree was waived by his active participation in the hearing.

II. Next, Marion urges that the trial court lacked subject matter jurisdiction to enter the type of order here involved. This is based upon his claim that the order is in fact a modification of the prior decree and not an interpretation. Based upon what was

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[1] See Lonning v. Lonning, 199 N.W.2d 60 (Iowa 1972).

[2] See comment to rule 65, Iowa Rules Civil Procedure Annotated (1979-80 Supp.) at 64.

asked for in the joint application, the trial court had subject matter jurisdiction to interpret the decree both as to (a) the meaning of its language, and (b) the application of such language to the particular dispute between the parties. See Forsyth v. Forsyth, 210 N.W.2d 430 (Iowa 1973). We also conclude that to the extent it appears from the evidence produced at the hearing that either party had failed to abide the provisions of the decree to the detriment of the other, the trial court was empowered to order appropriate compensatory relief.

The limitations against modification of property settlements contained in the cases cited by Marion are not jurisdictional in nature. They are rules limiting the scope of the relief a court may grant. To the extent Marion claims the alleged interpretation was in fact a modification, such contention is simply a claim of trial court error in interpreting the decree, and must be considered in this light.

III. Lastly, we consider Marion's claim that the trial court's order purporting to interpret the decree in fact modified it. Such claims are premised on two grounds: (a) that modification was not requested, and (b) that modification of property settlements is improper under the rules recognized in Knipfer v. Knipfer, 259 Iowa 347, 355, 144 N.W.2d 140, 144 (Iowa 1966). We accept both of these premises as correct, but we are unable to grant Marion any relief on the argument which he presents.

The trial court's ruling considered and decided the rights of the parties with respect to each of the 112 numbered provisions of the property settlement embodied in the dissolution decree. But in Marion's brief and argument, he only mentions ten items which are identified as violative of the Knipfer limitations. These relate to the trial court's disposition of paragraphs 2, 5, 35, 58, 104, 106, 107, 110, and 111 of the property settlement. In addition, complaint is made as to a provision in the trial court's order for refund of a private club initiation fee.

Even though the present appeal is **de novo**, we are not required to review the other 103 items for possible error. Any claim of error with respect thereto is deemed waived under Iowa R. App. P. 14(a)(3). As to the ten paragraphs which are singled out for attention in Marion's brief, nine relate to the numbered paragraphs indicated above. As to these claims, the brief simply sets forth in parallel vertical columns the language of these nine paragraphs of the property settlement and adjacent thereto the language of the trial court's order relating to said paragraphs. No argument is made with respect to why or to what extent the trial court's disposition contradicts the original decree or is not a fair enforcement of the rights of the parties with respect thereto. We therefore

conclude that these issues have also been waived under Iowa R. App. P. 14(a)(3). We do consider and accept Marion's argument that the trial court's order as to refund of the private club initiation fee was not a proper interpretation of the original decree. We accordingly modify the trial court's order by deleting this provision therefrom. In all other respects, the order is affirmed.

AFFIRMED AS MODIFIED.