FILED
SEP 28 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARTIN GREG SIEREN,)
Plaintiff-Appellant,)
vs.)
SUSAN KATHLEEN SIEREN BAUMAN,)
Defendant-Appellee.)

292

8-224
87-1139

Appeal from the Iowa District Court for Wapello County (12,461 & CL2662) - Max H. Ruschmeyer, District Associate Judge.

Appellant challenges the jurisdiction of the district associate judge to enter judgment against him. **AFFIRMED.**

John N. Wehr, Sigourney, and Emil Trott, Jr., of Barrett and Trott, Des Moines, for plaintiff-appellant.

Patrick F. Curran, of Vinyard & Curran, Ottumwa, for defendant-appellee.

Considered by Oxberger, C. J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Plaintiff Martin Craig Sieren appeals the district court's judgment of $1,800 against him on defendant Susan Kathleen Sieren Bauman's counterclaim based on allegations Martin had misappropriated Susan's property, sold it, and kept the proceeds. We affirm.

The parties in this action were married on August 11, 1973. The parties' marriage was dissolved on May 6 in 1985 by a stipulated decree entered by the district court. The decree ordered Susan to make, execute, and deliver to Martin a promissory note for the amount of $2,500 payable, with no interest, at the rate of $100 per month until paid in full. Each party was also awarded "his or her clothing and personal effects wherever located."

The present action for money judgment against Susan was filed by Martin in small claims court in the amount of $1,300 for nonpayment of the promissory note. Susan counterclaimed, alleging that Martin intentionally mutilated her possessions and attempted to intimidate and terrorize her. She alleged damages in the amount of $3,000.

The case was transferred to the district court. The court found that Martin was entitled to judgment against Susan in the amount of $1,300 plus interest and attorney fees. The court also made findings on Susan's counterclaim that specific items of property Martin retained after the

divorce were Susan's "personalty." The court valued these items at $1,800 and entered judgment against Martin.

Martin appeals, claiming that the district court associate judge lacked subject matter jurisdiction to construe and modify the property division of the parties' dissolution decree.

We hold that the court had jurisdiction of the action and affirm its holdings.

Section 597.1, Iowa Code (1987), states:

> A married woman may own in her own right, real and personal property, acquired by descent, gift or purchase, and manage, sell, and convey the same, and dispose thereof by will, to the same extent and in the same manner the husband can property belonging to him.

Section 597.3 provides:

> Should the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and extent as if they were unmarried.

In the case of Prochelo v. Prochelo, 346 N.W.2d 527 (Iowa 1984), the Iowa Supreme Court approved a separate action to determine the relationship of the formerly married parties to certain promissory notes.

In that case, the ex-husband brought an action at law against his ex-wife, seeking indemnity or contribution for the amount of a judgment collected from him. The judgment was on a note they had jointly executed during marriage. The parties had stipulated a settlement in their

dissolution action, but the stipulation and decree were silent on the parties' respective obligations under two notes. The supreme court, in allowing the suit, stated:

> Ordinarily, a dissolution decree settles all property rights and interests of the parties. (Citing cases.) In the context of a modification proceeding, the property division, including allocation of marital debts, of a decree is not subject to change in the absence of extraordinary grounds. (Citation.)
>
> As mentioned, Anthony brought this action at law. The court was not asked to modify the decree; it was merely asked to determine the decree's effect. Specifically, the court was asked to determine the effect of the decree on the right of each party to indemnity or contribution for their respective payment of the two notes.

The court, in Prochelo v. Prochelo, 346 N.W.2d at 529, cited with approval, the case of Cole v. Cole, 139 Iowa 609, 611-12, 117 N.W. 988, 988 (1908). In that case, the supreme court held that the action at law (replevin) was an appropriate proceeding to determine the ownership of property that was not awarded by the divorce decree.

In the case at bar, the court's decree, after making specific division of some of the property, awarded each party "his or her clothing and personal effects wherever located." The trial court was asked to award Susan the value of the property which was hers by virtue of the decree, and the possession of which had not been delivered to her. She sought to obtain the value of her property which had been converted by Martin.

The district associate court, acting within its monetary jurisdiction, found that her converted property had a value of $1,800 and awarded her judgment in that amount.

Under the authority of Cole and Prochelo, and under the provisions of Iowa Code section 597.3 (1987), the court had jurisdiction to render the judgment.

The court's award was supported by substantial evidence, is binding upon us, and was proper.

AFFIRMED.

Oxberger, C.J., concurs; Sackett, J., concurs in part and dissents in part.

SACKETT, J. (concurring in part and dissenting in part)

I concur in part and dissent in part. 297

Martin claims on appeal the district associate judge lacked jurisdiction to modify the parties' dissolution decree. The court's jurisdiction of subject matter may be raised at any time. McCarthy v. Iowa Dist. Court, 386 N.W.2d 122, 127 (Iowa App. 1986).

The district associate judge has jurisdiction in civil actions for money judgment where the amount in controversy does not exceed five thousand dollars. Iowa Code § 602.6306(2) (1987). The court had jurisdiction to consider Martin's claim on the promissory note. I would affirm that portion of the court's ruling.

The district court has original jurisdiction of dissolution of marriage matters. Iowa Code § 598.2. Susan's counterclaim requests damages for misappropriation of her property. She presented an exhibit entitled "Things I Didn't Get" after the dissolution decree was entered. I find Susan's claim is a request for modification or enforcement of the dissolution decree. Her claim cannot properly be characterized as a claim for money damages.

Property divisions in dissolution decrees are generally not subject to modification. See Heishman v. Heishman, 367 N.W.2d 308, 310 (Iowa App. 1985). If Susan's claim is a request for enforcement of the dissolution decree, the district court retained jurisdiction to enforce it by contempt or other appropriate proceedings. See Iowa Code § 598.23; Lutz v. Darbyshire, 297 N.W.2d 349, 352 (Iowa 1980).

I would find the district associate judge's ruling on Susan's counterclaim is void for lack of subject matter jurisdiction. I would vacate that portion of the court's order.