FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Upon the Petition of	)	
HARRY P. SCHOLLARS,	)	Filed August 26, 1980
Petitioner-Appellant,	)	
and Concerning	)	
DORLEEN M. SCHOLLARS,	)	0-120 2-63659
Respondent-Appellee.	)	

Appeal from Cass District Court - E. F. Hanson, Judge.

Respondent husband appeals from an order finding him in contempt and making further disposition of certain property allegedly awarded to him by the parties' dissolution decree. - REVERSED AND REMANDED.

Rhoda E. Paas, Anita, for petitioner-appellant.

Richard G. Howard, Atlantic, for respondent-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, Harry Schollars, appeals from an order finding him in contempt and making disposition of certain property awarded by dissolution decree to the wife, Dorleen M. Schollars. We reverse and remand.

A decree of dissolution was entered which awarded custody of two children to Mr. Schollars. An equal distribution of property was ordered, whereupon each party was awarded their "personal effects" along with other real and personal property. Mr. Schollars was awarded the dwelling house and all household goods, furniture and fixtures located therein.

Mr. Schollars initiated contempt proceedings against Dorleen for removing numerous items from the house Mr. Schollars claimed were awarded to him under the decree. A show cause hearing was held at which time Mr. Schollars, Dorleen, and Dorleen's mother testified. Dorleen contended many items she had taken were those she had used personally during the marriage and, therefore, awarded to her under the decree. Dorleen's mother, Madalyn Pfaff, testified she was the owner of other items taken by Dorleen and these items had only been on loan to the parties.

The court found ambiguity in the decretal term "personal effects" and interpreted the same to mean "personal items". The court found Mrs. Pfaff to be the owner of several other items in question. The trial judge's disposition resulted in the bulk of the disputed property remaining in Dorleen's possession. He found Dorleen in contempt with respect to five items she had removed from Mr. Schollar's home. The court, on its own volition, determined Mr. Schollars was in contempt of decretal orders relative to the financial division. No punishment was ordered for either contempt and no attorney's fees awarded. Mr. Schollars appealed the property disposition, contempt finding as to him and allocation of costs and fees. He petitioned for writ of certiorari in the alternative. This court granted review by way of appeal as no punishment was ordered for the contempts. See Harkins v. Harkins, 256 Iowa 207, 127 N.W.2d 87 (1964) in relation to § 665.11, The Code 1979. Our review of this contempt proceeding is not de novo, but we are not bound by the trial court's findings. Critelli v. Tidrick, 244 Iowa 462, 56 N.W.2d 159 (1953). The trial court's decision will not be easily reversed, but the evidence to sustain a contempt charge must be clear, satisfactory and convincing.

Harkins, 256 Iowa at 211, 127 N.W.2d at 90.

The matter before the trial court at the show cause hearing was to determine whether Dorleen Schollars was in contempt of court by wilfully disobeying the original dissolution decree. See Lane v. Oxberger, 224 N.W.2d 245 (Iowa 1974). The trial court exceeded the scope of this contempt proceeding by adjudicating Mrs. Pfaff's claim of ownership and by redefining the decree.

I. During the hearing, the court was asked to exercise its equitable powers in order to circumvent future litigation concerning Mrs. Pfaff's interest in the property, but no formal intervention took place. Mr. Schollars had no notice or opportunity to prepare for this new issue or "intervening" party. Due process requirements aside, the trial court overreached in converting a contempt proceeding into one which adjudicated another party's interest. See Gilliam v. Gilliam, 258 N.W.2d 155 (Iowa 1977). See also Roach v. Oliver, 215 Iowa 800, 244 N.W. 899 (1932). (The dissolution decree established title to the property only as to these parties and acts as res judicata as to them and the property.) Any other equitable defense or action must be raised in a proper proceeding. In re Marriage of Welsher, 274 N.W.2d 369 (Iowa 1979).

II. The record discloses no request for clarification of terms of the decree or modification of the provisions to be determined along with the contempt charges. However, the charge brought against Dorleen hinged around the definition of "personal effects." The decree awarded household goods, furniture and fixtures to Mr. Schollars. It follows that the personal effects awarded to Dorleen would not include such goods, furniture or fixtures but would be limited to those articles having more or less an intimate relation with Dorleen. These articles include tangible property as attends, is worn by or is carried about the person. In Re May's Estate, 135 Minn. 299, 160 N.W. 790 (1917). See also Blacks Law Dictionary 1301 (4th Ed. 1975).

We find of the several items in question the following constitute personal effects of Dorleen Schollars and are to remain in her possession: 1 macrame plant hanger made by Dorleen, 1 macrame wall hanging made by Dorleen, 1 bell pull wall hanging made by Dorleen, 1 ecology box made by Dorleen, 4 bathroom plaques made by Dorleen and 1 bathroom scale. The rest of the property itemized in record Exhibits A-1 and B-2 are to be returned to Mr. Schollars within thirty days of filing this decision. If any of the

items to be returned are no longer in Dorleen's control, the trial court shall hear and determine which of these items existed at the time of the decree of dissolution. Dorleen shall make restitution of these items in kind or in value as determined by the court. If Dorleen does not comply with these provisions, the trial court shall conduct a hearing to determine the appropriate punishment.

III. Mr. Schollars was found in contempt by the court's own motion. During Mr. Schollars' testimony the court expressed the possibility that both parties might be in contempt. After closing arguments the court warned that it might start a contempt action of its own against Mr. Schollars. With no more notice given or hearing on this matter, the court found Mr. Schollars in contempt by failing to cooperatively carry out the terms of the dissolution decree.

Because of the quasi-criminal nature of a contempt proceeding, protections are afforded by statute to the charged party. Section 598.23, The Code 1977, authorizes the court to cite and punish a party for contempt by wilful disobedience of a dissolution decree. However, this provision does not negate the procedures set forth in ch. 665, The Code 1977, for imposing this judicial disciplinary action.

Mr. Schollars was not confronted with more than a threat the court might initiate a contempt action against him, nor was he given an opportunity to purge himself of this charge and to waive his procedural rights. The finding and adjudication of contempt against Mr. Schollars was contrary to procedures required and went beyond the trial court's authority.

IV. Trial court was correct in denying attorney fees in this action, as these awards are authorized only for custody support contempt proceedings. Section 598.24, The Code 1979.

Although we recognize the trial judge's effort to bring an end to this bitter situation, we m with this decision.

REVERSED AND REMANDED.