FILED
JUN 1 1979
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

ARLA KAY GARLOUGH,

Petitioner,

vs.

THE HONORABLE CHARLES H. PELTON, As Judge of the District Court of Iowa in and for Clinton County,

Respondent.

Filed June 1, 1979

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2-62289

Writ of Certiorari from Clinton District Court - Charles H. Pelton, Judge.

Petitioner instituted this certiorari action following the trial court's ruling in a contempt proceeding, alleging that the trial court's ruling should be set aside. - Writ sustained and case remanded.

Dennis Bates, of Norton, Freese, Zearley & Bates, Lowden, for Appellant.

Edward J. Kross, Clinton, for Appellee.

Heard by Oxberger, C. J., and Donielson, Snell and Johnson, JJ. Carter, J., takes no part.

PER CURIAM

Petitioner, Arla Garlough, brings this certiorari action, challenging the trial court's ruling in a contempt proceeding brought by her against her former husband, Jimmie Garlough, for failure to comply with the dissolution decree. Petitioner asserts that the trial court's ruling, which fixed the value of the house for the purpose of dividing its equity between the parties, should be set aside We agree with the petitioner.

The parties were granted a dissolution on August 23, 1977. According to the decree, an independent appraisal of the parties' home was to be secured within thirty days of the date of the decree and the equity in the home, based upon the appraised value of the home less the remaining mortgage, was to be divided equally. Jimmie was to pay Arla her share in monthly installments, with an initial offset granted to Jimmie for court costs incurred from the divorce and a monthly setoff of $40, representing child support owed to Jimmie. At the time of the contempt proceedings, Jimmie had paid nothing.

The trial court, during the contempt proceedings, accepted evidence offered by Jimmie of the appraised value of the home. Arla claimed the appraisal was too low and asked for a continuance to enable her to garner her own appraisal. The trial court refused to grant a continuance, accepted Jimmie's appraisal as correct, determined an amount owed by Jimmie to Arla, and found Jimmie in contempt. Arla brings this writ of certiorari action, claiming that the trial court exceeded its jurisdiction in determining the issue of the value of the home and that insufficient evidence existed to support the trial court's determination.

An issue challenging the jurisdiction of a trial court to act is properly raised by means of a writ of certiorari. In re Marriage of Welsher, 274 N.W.2d 369, 371 (Iowa 1979); Collier v. Denato, 247 N.W.2d 236, 238 (Iowa 1976); Iowa R. Civ. P. 306. Certiorari actions are actions of law. Welsher, 274 N.W.2d at 371; Iowa R. Civ. P. 317.

Failure to comply with the mandates of a dissolution decree issued by a court of appropriate jurisdiction may be punished by a contempt proceeding. Welsher, 274 N.W.2d at 372; section 598.23, The Code 1977. Contempt proceedings may not be used to collect amounts due but are available to punish the failure to pay according to the

dictates of the decree. Welsher, 274 N.W.2d at 372. In this case, though, the amount owed by Jimmie was dependent upon the appraised value of the home. Without an appraisal, the possibility existed that there would be no or little equity remaining in the home and that Jimmie would, consequently, owe less than the monthly amounts ordered to be paid by the dissolution decree or nothing at all. A party charged with contempt should be advised of what he is being charged for in certain and definite terms. See Lynch v. Uhlenhopp, 248 Iowa 68, 72-73, 78 N.W.2d 491, 494 (1956). Therefore, we conclude that the issue of the value of the home was properly considered by the trial court in this contempt proceeding.

The evidence offered on the value of the home consisted of an appraisal by an insurance company. This evidence was offered by Jimmie and was considered by Arla to be a very low appraisal. No other evidence of the appraised value of the home was presented.

Arla claims the evidence is insufficient to establish the value of the home. A finding of fact must be supported by substantial evidence. Volkswagen Iowa City Inc. vs. Scotts Inc., 165 N.W.2d 789, 793 (Iowa 1969); see Ehrhardt v. Ruan Transport Corp., 245 Iowa 193, 198, 61 N.W.2d 696, 699 (1953). We find that the evidence here was insufficient to establish the value of the home for the purpose of determining Arla's equity variant. On remand, both parties may present additional evidence on this issue.

WRIT SUSTAINED AND CASE REMANDED FOR ENTRY OF JUDGMENT IN ACCORDANCE WITH THIS OPINION.