

IN THE COURT OF APPEALS OF IOWA

No. 0-466 / 09-1865

Filed August 11, 2010

**IN RE THE MARRIAGE OF SHEILA ANN CLARK
AND GORDON ROY CLARK**

**Upon the Petition of
SHEILA ANN CLARK,
n/k/a SHEILA ANN SAVAGE,**
Petitioner-Appellee,

**And Concerning
GORDON ROY CLARK,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Gordon Clark appeals an order refusing to find his ex-wife in contempt for
failure to return certain personal property. **AFFIRMED.**

Joseph A. Nugent, West Des Moines, for appellant.

Tammi M. Blackstone of Gaudineer, Comito & George, L.L.P., West Des
Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

Gordon Clark appeals an order refusing to find his ex-wife in contempt for failing to return certain personal property.

I. Background Facts and Proceedings

Sheila Clark petitioned for a divorce from Gordon Clark. After the petition was filed, she sold his tool cabinet and its contents. The district court subsequently issued an order prohibiting the sale of additional items belonging to Gordon. No finding was made that Sheila purposefully dissipated assets.

The parties stipulated to contested issues, including the distribution of Gordon's personal property. The stipulation was approved by the district court.

Under the stipulated dissolution decree, Gordon was to receive several items, including "tools." Sheila transferred most of those items to Gordon by placing them in the driveway for him to pick up. When Gordon arrived to retrieve them, he discovered that numerous tools were missing.

Gordon filed an application for rule to show cause, alleging Sheila "violated [his] rights relative to her failure to return certain items of personalty pursuant to the Decree." At a hearing, he presented a five-page list of missing "tools" and the replacement cost of each.

Following the hearing, the district court declined to find Sheila in contempt, reasoning the personal property paragraph in the decree "was sufficiently ambiguous to not make any retention of contested personal property willful under the circumstances presented." The court additionally noted that most of the disputed items were sold before entry of the temporary order prohibiting disposal.

While not finding Sheila in contempt, the court did find her in “default” for retaining certain items set forth in the decree. See Iowa Code § 598.24 (2009). The court ordered her to return those items or reimburse Gordon for their reasonable market value, which was determined to be one-third of the replacement cost listed on Gordon’s itemized list. Gordon filed a motion to reconsider that was summarily denied.

II. Analysis

On appeal, Gordon takes issue with the district court’s (A) refusal to find Sheila in contempt, (B) remedy for the default, and (C) refusal to award trial attorney fees. Sheila seeks appellate attorney fees.

A. Contempt

“Contempt consists of willful disobedience to a court order or decree.” *In re Marriage of Anderson*, 451 N.W.2d 187, 191 (Iowa Ct. App. 1989). Our review of a refusal to hold a party in contempt is for a gross abuse of discretion. See *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995).

The dissolution decree stated that Gordon would receive “tools.” This term could encompass any number of items, and reasonable people could disagree as to its scope. See, e.g., *State v. Ahitow*, 544 N.W.2d 270, 272 (Iowa 1996) (“Words are ambiguous if reasonable persons can disagree as to their meaning.”); *Willis v. City of Des Moines*, 357 N.W.2d 567, 570 (Iowa 1984) (finding the word “security” ambiguous because it is a “broad general term that could mean many things”). For example, Sheila testified she did not categorize certain items listed by Gordon, such as a floor jack and jack stands, car ramps, and a creeper, as “tools.” Given the breadth of the term, we conclude the district

court did not grossly abuse its discretion in refusing to find Sheila in contempt of the decree. See *Anderson*, 451 N.W.2d at 191 (“The failure to adhere to an unclear or ambiguous decree may defeat a finding of contempt.”).

B. Remedy

As noted, the district court did find Sheila in default of the decree and ordered her to return certain items to Gordon or “reimburse [Gordon] for the reasonable market value of those items (determined by the court to be one-third [1/3] of the price listed for that item on Exhibit A).” Gordon challenges several aspects of the court’s remedy.

Gordon initially argues the district court should have required Sheila to give him every item on his list. However, some of these items were no longer in Sheila’s possession. Therefore, they could not be returned. Additionally, the district court reasonably found that “[t]he remaining items . . . either do not qualify as a category of item awarded to him . . . or he has already received that item (or its reasonable equivalent) from the petitioner.”

Gordon also argues he should have been reimbursed for the items sold by Sheila. As noted, there was no finding that Sheila dissipated the assets, a finding that would typically have resulted in including the asset in the marital estate and awarding it to the spouse who dissipated it. See *In re Marriage of Fennelly*, 737 N.W.2d 97, 106 n.6 (Iowa 2007). In the absence of such a finding and in the absence of a subsequent finding of contempt, we are not convinced the district court was obligated to order reimbursement for the sold items. See Iowa Code § 598.23(2)(d) (authorizing alternate punishments for contempt including “specific requirements or orders”).

Gordon finally argues “the value the court ordered Sheila to pay will not restore [him] to where he would have been if Sheila had not violated the Decree.” However, he testified that many of the items on his list had been in his possession for a significant amount of time. Based on this testimony alone, the district court acted reasonably in concluding that Gordon should only receive the fair market value of the items rather than the replacement cost.

We conclude the district court’s remedy for Sheila’s default was appropriate.

C. Attorney Fees

Gordon finally asserts he was entitled to trial attorney fees because “he has proven beyond a reasonable doubt that Sheila willfully violated the Decree of Dissolution of Marriage.” In light of our conclusion that the district court did not abuse its discretion in declining to find a willful violation, we reject this argument.¹

We affirm the district court’s refusal to find Sheila in contempt, the remedy for her default, and the refusal to award trial attorney fees.

Sheila requests an award of appellate attorney fees. We deny the request because section 598.24 does not authorize taxation of the claimed contemnor’s attorney fees against the party seeking a contempt finding.

AFFIRMED.

¹ We note that Iowa Code section 598.24 also authorizes attorney fees based on a finding that a party is in default. See *Anderson*, 451 N.W.2d at 189–90 (“It is not illogical to believe the legislature intended to make attorney fees available to one who though unable to prove contempt, has demonstrated the other party to be in default.”). Gordon does not argue that he is entitled to fees based simply on the finding of default.