IN THE COURT OF APPEALS OF IOWA

No. 1-193 / 10-0771
Filed April 27, 2011

**IN RE THE MARRIAGE OF JEANNE L. KRUG
AND GLENN C. KRUG**

**Upon the Petition of
JEANNE L. KRUG,**
Petitioner-Appellee,

**And Concerning
GLENN C. KRUG,**
Respondent-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

Glenn C. Krug appeals from an order requiring him to pay temporary spousal support. **APPEAL DISMISSED.**

Carrie E. Coyle of Carrie E. Coyle, P.C., Davenport, for appellant.

Catherine Z. Cartee of Cartee Law Firm, P.C., Davenport, for appellee.

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

DOYLE, J.

Glenn C. Krug appeals from an order requiring him to pay temporary spousal support to Jeanne L. Krug. He argues his due process rights were denied because he was not given notice prior to hearing that the court would address "petitioner's request to reinstate temporary spousal support." We affirm.

Jeanne Krug filed a petition for dissolution of marriage on October 10, 2008. To recount here the tortured history of this litigation would serve no purpose. Relevant here, Glenn was found in contempt for failure to respond to discovery. Jeanne filed a motion to enter mittimus[1] and Glenn resisted. Jeanne also filed a motion for expert witness fees and attorney fees, which Glenn resisted. Hearing on both motions was held on April 5, 2010.[2] The court stayed the issue of mittimus to allow Glenn additional time to provide certain requested records. The issues of expert witness and attorney fees were not addressed in the order.

Jeanne filed another motion to enter mittimus on April 27, 2010. Glenn again resisted the motion. Hearing on the motion was held on May 12, 2010. Counsel for the respective parties appeared at the unreported hearing. After

---

[1] It is noted that throughout the district court file, numerous motions, including this motion to enter mittimus, were filed without completed certificates of service. Although certificates were affixed to the motions, they were not filled out—they indicated no date of service and were not signed. Iowa Rule of Civil Procedure 1.442(7) states in part:

> All papers required or permitted to be served or filed shall include a certificate of service. Action shall not be taken on any paper until a certificate of service is filed in the clerk's office. The certificate shall identify the document served and include the date, manner of service, names and addresses of the persons served. The certificate shall be signed by the person making service.

[2] It is further noted that orders setting motions for hearing, including this one, apparently prepared by the attorney filing the motions, are captioned "motions," not "orders."

reviewing the court file and hearing statements by counsel, the district court entered an order that day stating

> this matter came before the Court for a contested hearing with oral argument on the motion to enter mittimus filed April 27, 2010, on the motion for expert witness fees filed March 24, 2010, and the petitioner's request to reinstate temporary spousal support.

Additionally, the court ordered that mittimus issue, granted the motion for expert witness fees, and ordered Glenn to pay temporary spousal support to Jeanne in the amount of $2500 per month. By separate order, trial was continued to October 13, 2010.

Glenn filed a notice of appeal from the May 12, 2010 order. He also requested the Iowa Supreme Court to stay mittimus. The supreme court denied the request for a stay, noting "the order that this appeal has been taken from is, at least in part, not appealable as a matter of right." The court ordered Glenn to file a statement clarifying what portions of the district court's May 12, 2010 order he was intending to appeal from, and why certiorari or interlocutory review should be granted. The court observed that "while a temporary support ruling would be appealable as a matter of right, such appeal would not prevent the district court from proceeding with trial."

After Glenn responded, the supreme court entered an order denying Glenn's interlocutory appeal from the expert witness fee order and Glenn's request for writ of certiorari from the district court's issuance of mittimus for finding him in contempt. The Court further stated, "Because a temporary spousal support order is appealable as a matter of right, [Glenn] may proceed with that

issue, and that issue only, in this appeal." The appeal was transferred to this court on March 18, 2011

Here, Glenn asserts his due process rights were violated when he was not given notice the district court would address the issue of temporary spousal support at the May 12, 2010 hearing.[3] The record before us reflects the following: There was no pending motion requesting temporary spousal support. There was no order setting such a matter for hearing. The hearing was unreported, and we have no statements from the attorneys involved. The district court's order states the matter came before the court for a contested hearing on, among other things, Jeanne's "request to reinstate temporary spousal support." No such request appears in the district court file. Additionally, it appears there was no court-ordered temporary spousal support to reinstate. Although Jeanne filed an application requesting court-ordered temporary allowances after Glenn discontinued his voluntary payments of $15,000 per month to her, Jeanne's request had been denied by a ruling filed February 19, 2010.

Imposing temporary spousal support upon Glenn without informing him prior to the hearing that the issue would be addressed would ordinarily be a violation of Glenn's due process rights. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950) (noting the Due Process Clause requires that the litigant be placed on notice of the issues which the court is to consider); *Wedergren v. Bd. of Dirs.*, 307 N.W.2d 12, 16 (Iowa 1981) ("To comport with due process, a person must ordinarily be informed somehow of the issues involved in order to prevent surprise at the

[3] Jeanne has not filed an appellate brief in response to Glenn's appeal.

hearing and allow an opportunity to prepare."); *see also Silva v. Emp't Appeal Bd.*, 547 N.W.2d 232, 236 (Iowa 1996) (holding claimant's substantial rights to due process were prejudiced when claimant did not receive adequate notice of the scope of the issues to be considered at his administrative hearing). However, there is a serious error preservation issue.

With no citation to the record, Glenn claims in his appellate brief he preserved error by contesting the payment of "alimony" at the hearing. He does not claim he raised the lack of notice issue at the hearing or that he requested a continuance of the hearing. The hearing was not reported and no transcript exists. No statement of the evidence or proceedings has been submitted, as permitted by Iowa Rule of Appellate Procedure 6.806(1). Thus, there is nothing for us to review, on the appellate level, to determine whether Glenn raised or waived the due process issue or contested the payment of temporary spousal support at the hearing. An appellant has the duty to provide a record on appeal showing the alleged error in the district court's ruling. *In re F.W.S.*, 698 N.W.2d 134, 135 (Iowa 2005). If a transcript is unavailable, the parties may prepare a statement of the evidence under rule 6.806(1). *See In re T.V.*, 563 N.W.2d 612, 613 (Iowa 1997). Although a statement under rule 6.806(1) is not mandatory, "an appellant will not be entitled to a new trial or any other relief on appeal unless the appellant attempts to comply with the rule." *Id.* at 614.

Without the benefit of a full record, it is improvident for a court to exercise appellate review. *F.W.S.*, 698 N.W.2d at 136 ("It is unfortunate we have to decline to decide this appeal, especially when a person's liberty is at stake."). "[W]e will not speculate as to what took place or predicate error on such

speculation." *In re Marriage of Ricklefs*, 726 N.W.2d 359, 362 (Iowa 2007). When there is no record of the district court proceedings, we are left with nothing to review. *See Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005). We cannot decide an issue in a virtual vacuum. Due to a lack of a proper record to review, we decline to decide this appeal. Accordingly, we dismiss the appeal.

APPEAL DISMISSED.