

IN THE COURT OF APPEALS OF IOWA

No. 2-508 / 11-1589
Filed September 6, 2012

**IN RE THE MARRIAGE OF JOSEPH CULLEN WRIGHT
AND DEANNA DAWN WRIGHT**

**Upon the Petition of
JOSEPH CULLEN WRIGHT,**
Petitioner-Appellee,

**And Concerning
DEANNA DAWN WRIGHT,**
Respondent-Appellant.

STATE OF IOWA, ex rel.
Petitioner-Appellee,

vs.

DEANNA WRIGHT,
Respondent-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, Kathleen Kilnoski, Judge.

Deanna Wright appeals a district court ruling modifying the terms of her dissolution decree and imposing child support and medical support obligations upon her. **REVERSED IN PART AND AFFIRMED IN PART.**

John Kocourek, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, and Richard Arnold, Council Bluffs, Assistant Attorney General, for appellee State.

Stephen C. Ebke, Council Bluffs, for appellee Joseph Wright.

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

DANILSON, J.

This case demonstrates why it is ill-advised for a spouse to waive alimony in consideration for a waiver of, or to offset, a child support obligation. Because Joe Wright became unemployed and lost his medical coverage for the parties' minor child, he sought Title XIX coverage through the State. This request caused the State to initiate an action to require both parties to provide support for their minor child. Deanna Wright also initiated a contempt action against Joe for failure to timely pay property settlement installments. Deanna appeals the district court ruling, which imposed child support and medical support obligations upon her, ordered these obligations be offset against the property settlement installments owed to her from Joe, and ordered that Joe's monthly property settlement installments be reduced during months in which he is unemployed. Deanna further sought to impose a reciprocal debt obligation upon Joe to offset any child and medical support obligations she may be ordered to pay because she waived her right to alimony in consideration of Joe's waiver of child support. We reverse in part because child and cash medical support obligations for Deanna should be suspended except during any time in which the State is providing support, and the district court overreached by converting a contempt review hearing into a modification action to reduce Joe's property settlement installments.

I. Background Facts and Proceedings.

Deanna and Joe Wright were married in 1983. Three children were born of the marriage, two of whom were minors upon the dissolution of their marriage

in 2009.¹ The parties stipulated that they would maintain joint custody; Joe would remain in the marital home and retain physical custody of the children.

Joe worked as a union electrician and Deanna was a cashier. Joe's ability to earn was substantially greater than Deanna's.² Given the length of the marriage, the parties anticipated that an alimony payment from Joe to Deanna would have likely been deemed equitable. However, they agreed that such an award would likely have been offset by child support paid from Deanna to Joe. Thus, Deanna waived her right to alimony and Joe did not seek child support.

The parties further agreed and the court decreed that Joe would be solely responsible for providing health insurance for the children as long as it was available through his employer. Joe was solely responsible for non-reimbursed or uncovered medical expenses.

Joe was awarded the marital residence and two other parcels of real property. He was ordered to pay Deanna a \$43,000 property settlement, payable in a \$7000 lump sum followed by monthly installments of \$500 for a fixed term of seventy-two months.

Joe failed to pay the property settlement as ordered. Deanna filed a contempt action against Joe. The court found Joe in willful contempt and ordered him to make weekly payments toward the arrearage. However, Joe failed to comply with this order.

¹ Chelsie was seventeen years old when the dissolution was entered. She turned eighteen approximately seven weeks later. Haley was ten years old when the dissolution was entered. She is now the only minor child.

² In its June 8, 2011 order following the hearing to review Joe's persistent contempt and the child support recovery unit (CSRU) motion to establish a child support obligation, the court found Joe's annual earning capacity was \$53,245 and Deanna's was \$16,051.

Deanna filed a second contempt action. Joe was then unemployed. The court reduced Joe's monthly property settlement payment from \$500 to \$100 and set further review hearings.

After a period of unemployment, Joe's eligibility for health insurance through the union lapsed. He applied for state medical aid for Haley, which triggered the Child Support Recovery Unit (CSRU) to seek a child support obligation from Deanna. Joe testified that, as of approximately April 2011, Haley was covered under his union health insurance.

A combined hearing was held on June 11, 2011, to review the status of Joe's contempt and to address the State's application for a support obligation for Deanna. The court found Joe in willful contempt for failure to pay the property settlement ordered, as he had the financial ability to pay. As disposition, the court ordered Joe to pay Deanna \$5000 within three days and to continue to pay \$500 monthly plus \$100 toward his arrearage through a mandatory wage assignment while employed, to make minimum monthly payments of \$100 in any month during which he is unemployed, to notify any employer of the wage withholding order and to make every effort to remain employed or seek employment when laid off.

The court further imposed a child support obligation of \$170 per month and a medical support obligation of \$26.75 per month on Deanna. It also imposed a \$221 medical support obligation on Joe and ordered that in months when child support and medical support are not assigned to the State that Deanna's support obligation be offset by Joe's support obligation.

Deanna filed a motion to correct and clarify. Joe filed a motion to reconsider. In response, the court entered an order on September 1, 2011 providing the following revisions to the previous order: (1) the provision for Deanna's child support payments to be offset by Joe's support payments in months when support is not assigned to the State was stricken, (2) Deanna's support payments are directed to Joe in months when child support is assigned to the State, and (3) in months when support is not assigned to the State, Deanna's support obligation would be offset against Joe's monthly property settlement payment.

Deanna argues that Joe's agreement to be solely responsible for medical and child support at the time of the decree was made in exchange for the waiver of her right to claim alimony. Thus, if the State was entitled to reimbursement from Deanna under Iowa Code chapter 252E (2011), the court should require Joe to indemnify and hold her harmless to the extent of her obligation to the State. For the first time, on appeal, Deanna further asserts the legal theories of equitable estoppel and unjust enrichment to support imposition of a reciprocal burden on Joe to offset any child and medical support obligations she may be ordered to pay.

II. Standard of Review.

The matters before the district court were the State's request to determine a child support obligation and a status review of Joe's compliance with the order dictating the terms by which he could purge his contempt. Neither party requested a modification of the parties' dissolution decree.

The child support obligation involved arises from an equitable order; thus, our review is de novo. Iowa R. App. P. 6.907; *State ex rel. Heidick v. Balch*, 533 N.W.2d 209, 210 (Iowa 1995).

“No appeal lies from an order to punish for a contempt, but the proceedings may, in proper cases, be taken to a higher court for revision by certiorari.” Iowa Code §665.11. When a party files a notice of appeal instead of a writ of certiorari, “the case shall not be dismissed, but shall proceed as though the proper form of review had been requested.” Iowa R. App. P. 6.108.³ Therefore, to the extent that this appeal challenges the propriety of the punishment imposed for Joe’s contempt, we treat it as a petition for certiorari, and our review is for correction of errors at law. See *State v. Keutla*, 798 N.W.2d 731, 732-33 (Iowa 2011).

III. Discussion.

A. Child support and cash medical support obligations for Deanna.

Joe waived his right to child support in consideration of Deanna’s waiver of her right to alimony. Although agreements to waive child support are ill-advised, the parties’ reciprocal waivers were approved by the district court upon entry of the decree.

In this unique set of circumstances where the parties are bound to their agreement, but the State is not, equity requires that child support and cash

³ Iowa R. App. P. 6.108 provides, in pertinent part:

If any case is initiated by a notice of appeal, an application for interlocutory appeal, an application for discretionary review, or a petition for writ of certiorari and the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been requested.

medical support obligations should not be imposed on Deanna unless the State is providing support. The State has clear authority to impose a support obligation during any time frame in which it is providing support.⁴ *State ex. rel. Mack by Mack v. Mack*, 479 N.W.2d 327, 329 (Iowa 1992) (“[T]he state is entitled to recover in its own right without regard to the terms of court orders affecting the rights and obligations of the parents”). However, at the time of the hearing, Joe was employed and believed that his private health insurance was providing coverage for the parties’ minor child. Under these facts, the imposition of a child support and cash medical support obligation upon Deanna should have been limited to the time frame when the State was providing medical coverage for the parties’ minor child and the payment of an arrearage, if any, but suspended thereafter in compliance with the terms of the decree. In this fashion, the State is not bound by the decree when public support is provided, but when public support is not provided, the decree controls the rights and responsibilities of the parties. If Joe requires public support again in the future, the State may apply to lift the suspension to reinstate the parties’ obligations to the State.

B. Request for reciprocal obligation for Joe.

We first observe that Deanna did not plead or raise before the trial court the theories of unjust enrichment or equitable estoppel in seeking recoupment of any payments she made or makes towards child support or cash medical support. She did, however, request that Joe be required to indemnify and hold her harmless on those amounts. We decline to order any recoupment or impose

⁴ Iowa Code section 252B.6(5) provides authority for the CSRU to initiate civil proceedings “to recover from the parent of a child, money expended by the state in providing public assistance or services to the child”

any reciprocal debt on this record, where none of the theories were pled, indemnification was the only theory argued and none of the theories were addressed by the district court. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (finding that issues must both be raised and decided by the district court to preserve error on appeal).

C. Modification.

Finally, Deanna complains the district court effectively modified the parties' property distribution terms by reducing Joe's payment in the months that he is unemployed from \$500 to \$100. At the time of the combined hearing, Joe was fully employed. Although the district court was probably trying to avert the necessity of the parties returning to court during times that Joe is unemployed, we agree that the court's contempt disposition improperly modified the decree.

Neither party initiated an action to modify the amount of the monthly payments required of Joe to pay the property settlement amount fixed in the decree. We agree with Deanna that the court's order made her receipt of the property settlement installments dependent solely upon Joe's income rather than his ability to pay through income or assets. In determining the ability to pay, the general rule is not whether the contemner is currently employed "but whether he has any property out of which payment can be made." *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678-79 (Iowa 1998) (quoting *Callenius v. Blair*, 309 N.W.2d 415, 419 (Iowa 1981)). Here, the district court overreached by converting the contempt review hearing into a modification action by reducing all of Joe's future payments during periods of unemployment, notwithstanding that he was employed at the time of the hearing. See *Gilliam v. Gilliam*, 258 N.W.2d 155,

156 (Iowa 1977). Deanna should not be divested of her rights under the original decree.

VI. Conclusion.

Child and cash medical support obligations from Deanna shall be suspended except during any time in which the State is providing support. To do equity, we also suspend Joe's medical support obligation when the State is not providing support. We decline to impose a reciprocal obligation on Joe to reimburse Deanna, as error was not preserved. We also conclude the district court overreached by converting a contempt review hearing into a modification action. We therefore reverse the portion of the ruling that reduces Joe's property settlement installments to \$100 during times that he is unemployed.

Costs of appeal are assessed to Joe Wright.

REVERSED IN PART AND AFFIRMED IN PART.