

IN THE COURT OF APPEALS OF IOWA

No. 2-827 / 11-1395
Filed October 17, 2012

**IN RE THE MARRIAGE OF CHERYL LYNN CAPPS
AND MICHAEL CAPPS II,**

Upon the Petition of

**CHERYL LYNN CAPPS, n/k/a/
CHERYL LYNN FORQUER,**
Petitioner/Appellee,

And Concerning

MICHAEL CAPPS II,
Respondent-Appellant.

Appeal from the Iowa District Court for Des Moines County, Mary Ann Brown, Judge.

Respondent appeals the district court decision refusing his request to clarify the property division in the parties' dissolution decree. **AFFIRMED.**

Michael Capps II, Strawberry Point, appellant pro se.

Robert J. Engler of Swanson, Engler, Gordon, Benne & Clark, L.L.P., Burlington, for appellee.

Considered by Vogel, P.J., Danilson, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

SACKETT, S.J.

BACKGROUND. On April 27, 2011, appellant Michael Capps II filed pro se a “Motion for Clarification” asking for the motion to modify the Stipulation.¹ He set forth two paragraphs stating his reasons. While confusing, this court assumes from his explanations that he seeks clarification of a July 29, 2010 decree dissolving his marriage to Cheryl Capps, now known as Cheryl Forquer. Property was divided in the decree and his motion in large part addresses issues of property division.

Cheryl responded to the motion, denying the allegations of the motion and indicating the issue advanced was resolved in a ruling in proceedings Michael filed to have her held in contempt. On May 4, 2011, Michael filed what he titled as “Supplement of facts for motion for Clarification,” where he supplied additional facts as to the property addressed in the dissolution decree.

On May 4, 2011, the district court ruled on the “Motion for Clarification.” The court noted Michael’s motion did not set forth a specific prayer for relief and as a result the court was not clear what Michael asked the court to do, but in considering the motion as well as the supplemental facts the district court found it appeared Michael did not believe Cheryl complied with the dissolution decree concerning the division of their assets. The court found:

[Michael] filed an Application for Order for Rule to Show Cause on December 2, 2010. That rule to show cause proceeded to hearing on February 1, 2011. The Court entered its ruling on said rule to show cause on February 17, 2011. [Michael] then sought to have [Cheryl] found in contempt of court in said

¹ It appears the motion was filed in the dissolution file.

proceeding based upon an allegation that [Cheryl] had failed to provide [Michael] certain personal property. It would appear the issues presented in the "Motion for Clarification" were those actually litigated in the contempt action. As a result, it appears that the matters [Michael] seeks to have resolved by the Court have already been litigated.

If [Michael] is dissatisfied with how [Cheryl] is complying with the terms of the Decree, a contempt action is the appropriate avenue. He has already done this. If [Michael] is dissatisfied with how the Court has actually divided the property, a motion to reconsider is the appropriate recourse. Such a motion had to be filed within fifteen days of the entry of the decree. The court file reflects that [Michael] did file a Motion to Enlarge or Amend which was resisted by [Cheryl] back in August 2010. He did not at that time bring these matters to the court's attention.

Based upon all of the foregoing, the Court concludes that the Motion for Clarification should be denied.

On May 13, 2011, Michael filed a motion to enlarge or amend the findings and conclusion in the May 4, 2011 ruling, advancing that the ruling neglected to rule on his request, among numerous other things, for an order clearly defining an asset with a value of \$450 or determining its replacement value.

Cheryl resisted the motion. On August 2, 2011, the district court ruled on the motion, basically restating the reasons it was denied earlier. On August 31, 2011, Michael appealed from the ruling on this motion.

On October 27, 2011, a single justice of the Iowa Supreme Court concluded that the August 2, 2011 ruling was a final appealable judgment under Iowa Rule of Appellate Procedure 6.101(1)(b), and that the notice of appeal was filed within thirty days. The court concluded it had appellate jurisdiction and further appellate proceedings would be conducted pursuant to the Iowa Rules of Appellate Procedure.

ISSUES. Michael presents four lengthy statements of the issues presented for review. Each statement contends the district court abused its discretion when it failed to rule on a particular point that Michael contends he asked the district court to rule on.

Cheryl in response contends Michael states facts in his brief not relevant to the matter. She further contends that since no hearings were conducted related to the issues, Michael is limited to the motions and orders filed between April 27, 2011 and August 2, 2011. Cheryl further contends that Michael has failed to comply with the rules of appellate procedure in a number of ways.

Michael's appellate brief complies in part with the appellate rules of procedure in that he has a certificate of service and filing, a table of contents, a statement of authorities where he lists certain code sections and rules of appellate procedure, a statement of the issues, a routing statement, a statement of the case, the course of proceedings and disposition in the district court, a statement of the facts, his argument, a conclusion, a statement of costs, and a certificate of compliance.

However, as Cheryl argues, he has also failed to comply in a number of important ways with the rules of appellate procedure and his failure to do so has made it difficult for her to determine the real issues, noting that his brief is based on conjecture and opinion. We agree with Cheryl that there are numerous violations of the rules of appellate procedure.

First, there is no statement a transcript is unavailable, nor is there a statement of the evidence having been filed with the clerk of the district court and

served on appellee as provided for in Iowa Rule of Appellate Procedure 6.806(1), (2), and (3).

Second, the appendix fails to meet the requirements of rule 6.905(1).

Third, the statement of the case is not supported by appropriate references to the record or the appendix in accordance with rule 6.904(4)(b). *See also* Iowa R. App. P. 6.903(2)(e).

Fourth, the statement of facts is not supported by appropriate reference to the record in accordance with rule 6.904(4)(b). *See also* Iowa R. App. P. 6.903(2)(f).

Fifth, the argument section does not comply with rule 6.903(2)(g) by stating how the issue was preserved for appellate review, the scope and standard of appellate review, citations to the authorities relied on, and reference to the pertinent part of the record as provided for in rule 6.904(4)(b).

Michael appears pro se. We recognize a litigant has a right to appear in court pro se. *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 599 (Iowa 1998); *Arthaud v. Griffin*, 210 N.W. 540, 541 (Iowa 1926). A lay person who fails to utilize professional assistance should be ready to take the consequences. *State v. Walker*, 236 N.W.2d 292, 295 (Iowa 1975). We cannot permit substantial departures from statutory appellate procedures on the basis a lay person is handling his own appeal. *State v. Dunham*, 232 N.W.2d 475, 477 (Iowa 1975); *Simmons v. Brenton Nat'l Bank*, 390 N.W.2d 143, 145 (Iowa Ct. App. 1986).

That said, we have made an effort to consider Michael's issues and find them without merit. We must affirm.

Cheryl contends Michael should be required to pay her attorney fees of \$2847, but cites no authority to support her position that attorney fees are allowable in the action before us. Costs on appeal are taxed to Michael.

AFFIRMED.