

IN THE COURT OF APPEALS OF IOWA

No. 2-960 / 11-1356
Filed January 9, 2013

**IN RE THE MARRIAGE OF JUDY DEBOER
AND AREND DEBOER**

**Upon the Petition of
JUDY DEBOER,**
Petitioner-Appellee,

**And Concerning
AREND DEBOER,**
Respondent-Appellant.

AREND DEBOER & FULL-TIME FARMS, INC.,
Appellants,

vs.

JUDY DEBOER,
Appellee.

Appeal from the Iowa District Court for Lyon County, Patrick M. Carr,
Judge.

Appellants file a joint appeal from a refusal to find a former wife in
contempt of court and an award of damages. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney, Shindler & Anderson, P.C., West
Des Moines, for appellant.

Bradley K. De Jong and Debra Sue De Jong of Klay, Veldhuizen, Bindner,
De Jong, De Jong & Halverson, P.L.C., Orange City, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VOGEL, J.

Arend DeBoer appeals a district court order refusing to hold his former wife, Judy DeBoer, in contempt, as well as appealing from an award of damages awarded to him and his solely owned company, Full-Time Farms, Inc.,¹ claiming the damages to be insufficient.

I. Background Facts and Proceedings

The thirty-year marriage between Arend and Judy was dissolved by a decree filed in January 2008. As part of the decree, real estate was to be distributed as follows:

Title to the following real estate shall transfer to Judy DeBoer: Parcel B in the Northeast Quarter of Section Thirty-three, Township One Hundred North, Range Forty-three West of the 5th P.M., Lyon County Iowa; and the Northwest Quarter, EXCEPT Parcel A; AND a tract of 14.22 acres in the Northwest corner of the Northeast Quarter, all in Section Sixteen, Township Ninety-nine North, Range Forty-three West of the 5th P.M., Lyon County Iowa.^[2]

(Emphasis original in decree).

Arend was awarded Full-Time Farms and a Case IH tractor. Arend Could not continue to pay the loan for the tractor because he was serving a prison term on a conviction for operating while intoxicated, third offense. In October 2007, prior to the dissolution trial, Judy obtained a court order, giving her the authority to sell the tractor as long as it was for an amount equal to, or greater than, the appraised value. Rather than immediately selling the tractor, Judy refinanced it, incurring additional interest charges of \$443.86 before it was eventually sold the

¹ The spelling of Full-Time Farms is inconsistent throughout the record. We choose Full-Time Farms for the sake of consistency throughout this opinion.

² The original decree contained a small error in the legal description of the land, which was correct by a nunc pro tunc order.

next spring. At the December trial, the district court put a value on the tractor at \$45,000. No appeal was taken from the decree. Around the same time as the decree, Judy obtained two appraisals, one valued the tractor between \$38,000 and \$40,000, and the second appraisal set a value between \$28,500 and \$29,000. In March 2008, Judy sold the tractor for \$38,000 to the couple's son. She used the proceeds from the sale to pay off the tractor loan and then put the remainder towards the money Arend owed her from the settlement under the dissolution decree.

During Arend's incarceration, Judy retained possession of the corporate checkbook and used the corporate checkbook for some personal expenses; however, once Judy was notified by the bank of the mistake, she transferred money back into the corporate account and paid all of the related overdraft charges. Judy also arranged for the 2008 crop to be tended and cleaned Arend's home. Also, while Arend was incarcerated, the couple's son farmed a 3.3 acre parcel after making an arrangement with Arend's attorney-in-fact to pay for a survey of the land in lieu of paying rent.

Arend filed two separate actions that have been consolidated for this appeal. First, he filed a civil suit for damages and injunctive relief brought by both Arend, in his individual capacity, and on behalf of Full-Time Farms. This action claimed Judy misappropriated funds before, during, and after the dissolution, including allowing their son to farm the 3.3 acre parcel without paying rent. The second action was an application for rule to show cause claiming Judy was in contempt of court for (1) refinancing the tractor then selling it,

(2) misappropriating funds in violation of the dissolution decree, and (3) failing to tender a quit claim deed for the 14.22 acre plot.

The district court determined that while the legal description in the dissolution decree was “slightly ambiguous,” the 14.22 acres in question were awarded to Judy. Therefore, she could not be held in contempt for failing to convey title to Arend. The district court also found Judy complied with the court order regarding the sale of the tractor, and the “mix-up” with the checkbooks was not a willful violation of the decree. Regarding the civil suit, the district court awarded Arend and Full-Time Farms \$1724.11 in damages for post-dissolution personal expenses Judy paid from the Full-Time Farms account. Arend and Full-Time Farms appeal these two rulings that have been consolidated before us.

II. Contempt

Arend argues that the trial court erred in finding Judy not to be in contempt for selling the tractor for less than valued at trial, misappropriating funds, and not transferring title to the disputed land. In this respect, an action for contempt of court is treated in the nature of a criminal proceeding. *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 140 (Iowa 1988). No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. *Id.* Contempt is sufficiently shown if some of the default was willful. *Id.* When a trial court refuses to hold a party in contempt in a dissolution proceeding, our review is not de novo. *In re Marriage of Anderson*, 451 N.W.2d 187, 191 (Iowa Ct. App. 1989). Instead, we review the record to determine if substantial evidence exists to support the trial court’s finding. *In re Marriage of Wegner*, 461 N.W.2d 351, 354 (Iowa Ct. App. 1990). The decision of

the trial court will not be lightly reversed and will not be reversed unless the district court “grossly abused” its discretion. *In re Marriage of Swan*, 526 N.W.2d 320, 326 (Iowa 1995).

A person can be held in contempt if that person “willfully disobeys the order or decree.” Iowa Code § 598.23(1) (2009). A party alleging contempt has the burden to prove the contemnor had a duty to obey a court order and willfully failed to perform that duty. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). If the party alleging contempt can show a violation of a court order, the burden shifts to the alleged contemnor to produce evidence suggesting the violation was not willful. *Id.* However, the person alleging contempt retains the burden of proof to establish willfulness beyond a reasonable doubt because of the quasi-criminal nature of the proceeding. *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007).

Regarding the sale of the tractor, the district court found Judy’s compliance with the pre-dissolution court order allowing her to sell the tractor for the appraised value was proper. We agree. Judy followed the court order by selling the tractor for not less than the higher of two appraisals. As the district court found, Arend did not appeal from the dissolution action, which valued the tractor at \$45,000, nor does he point us to any facts which would indicate the sales price several months later was not the actual value. Arend did not carry his burden of proof, and the district court did not abuse its discretion in determining there was no cause for holding Judy in contempt for the tractor sale.

Regarding the 14.22 acres described in the decree, the district court found that while the language of the decree may be slightly ambiguous, the 14.22 acres

in question were awarded to Judy. The district court came to this determination by looking at the pretrial stipulations as well as the plat maps and determined that the property was awarded to Judy. Arend offers nothing to dispute this finding. We agree with the district court and find Judy did not violate the court order in refusing to convey title to Arend.

Regarding the contempt allegation for misappropriation of Full-Time Farms's funds, the district court correctly found that the parties' net worth was valued at the time of the trial. See *In re Marriage of Klein*, 522 N.W.2d 625, 628 (Iowa Ct. App. 1994). Judy was an officer of Full-Time Farms throughout the marriage, and as an officer, she was permitted to write checks on the corporate bank account. Therefore, the district court was correct in limiting its analysis to transactions occurring after the December 2007 trial. The district court found Judy's testimony regarding the "mixing up" of her personal checkbook and the corporate checkbook credible, and all funds were properly replaced. We see no reason to disrupt this credibility finding and agree that Judy did not willfully violate a court order.

III. Damages

In addition to the contempt proceeding, Full-Time Farms and Arend filed a civil action for damages against Judy, claiming she misappropriated funds since May 2007. As stated above, because Judy was an officer of Full-Time Farms until the dissolution trial, the appropriate time frame to consider is after the December 2007 trial.

When an action is tried at law, our review is for correction of legal errors and the district court's findings of fact are binding if supported by substantial evidence. *Chrysler Fin. Co. v. Bergstrom*, 703 N.W.2d 415, 418 (Iowa 2005).

Arend provided the district court with a list of various expenses for which he believed Judy was liable. We agree with the district court that any alleged misuse of assets or funds before the dissolution should have been litigated and considered in the dissolution trial, not this action as a collateral attack on the decree. *See, e.g., Heishman v. Heishman*, 367 N.W.2d 308, 309 (Iowa Ct. App. 1985) (finding a decree cannot be collaterally attacked unless it is void for lack of jurisdiction, and attacking a previous, non-appealed dissolution in a separate, subsequent action was improper). For expenses listed after the decree, the district court went through item by item, discussing the merits of each in its ruling. Arend does not assert that the district court overlooked any information nor misapprehended his evidence. Rather, he simply asserts the district court should have accepted his testimony over Judy's. The court clearly found Judy to be more credible, and we will not disturb that finding. Moreover, on our review of each item of claimed damage, there is substantial evidence that supports the district court's findings. Therefore, we affirm the district court's damage award.

IV. Conclusion

The district court was correct that Arend did not carry his burden of proof in the contempt proceedings. We affirm as to the damages award.

AFFIRMED.