IN THE COURT OF APPEALS OF IOWA

No. 2-872 / 12-0494
Filed December 12, 2012

IN RE THE MARRIAGE OF SHERISE J. GIBSON AND STUART V. GIBSON

Upon the Petition of
SHERISE J. GIBSON,
Petitioner-Appellee,

And Concerning
STUART V. GIBSON,
Respondent-Appellant.

Certiorari to the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

Stuart Gibson challenges an order of contempt arising out of a dissolution decree. **WRIT SUSTAINED.**

Dani L. Eisentrager, Eagle Grove, for appellant.

Stephen G. Kersten, Fort Dodge, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

EISENHAUER, C.J.

Sherise and Stuart Gibson are the parents of a daughter, Somer, born in 1978. They divorced on December 30, 1981. In 2012, the district court adjudged Stuart in contempt for (1) failing to pay one-third of his twenty-eight-year-old daughter's college expenses and (2) failing to provide written proof of a life insurance policy. Stuart challenges the district court order,[1] and we sustain the writ.

Shortly after Somer graduated from high school in 1996, Stuart paid for a semester of tuition. However, Somer dropped out of the program after only a few days, and the tuition was refunded. Stuart and Somer did not communicate regularly. In 2006, Somer enrolled in Ashford University. Somer did not contact Stuart about college expenses in 2006 or any time during college, but "believed as soon as whenever I finished my education, that's when my dad would need to help pay for it." After Somer graduated in November 2010, she sent Stuart an email with an itemized copy of one-third of the college costs and requested payment. Stuart did not respond.

In 2011, Sherise filed a motion for rule to show cause. Stuart resisted and argued Somer does not qualify for college expenses under Iowa law and any life insurance obligation ended when his child support obligation ended.

In 1981, "support" was defined to include support for a child who is between the ages of eighteen and twenty-two and who is a full-time student in a

[1] We treat Stuart's appeal as a petition for writ of certiorari. *See* Iowa R. App. P. 6.108.

college or university. Iowa Code § 598.1(2) (1981). The parties' dissolution decree states:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Stuart] shall pay [monthly child support]. Said child support . . . shall be paid . . . until the child is eighteen years of age or completes high school, whichever time is later . . . . If the child attends any college [or] university . . . [Stuart] shall be liable for and shall contribute one-third of the child's costs for room, board, tuition, books, and school supplies for the period so attended up to a maximum of 48 months. All child support shall be paid through the Webster County Clerk of Court's office.

After hearing, the district court found the 1981 decree "was actually an acceptance and approval of a stipulation and settlement between the parties" and "the court adopted a settlement that ordered [Stuart] to pay one-third of Somer's college expenses if she attended college, up to 48 months." The district court ruled the statutory definition of support "does not limit the parties' obligations under a stipulation and agreement incorporated into a decree" and concluded: "The parties' agreement to apportion Somer's expenses without regard to her age differs from the statutory definition of support . . . . [T]he Court properly accepted the stipulation and settlement, and the parties are bound by the Decree." Stuart was ordered to serve three days in jail or purge the contempt by: (1) paying his assessed share of the college expenses; (2) providing proof of $15,000 in life insurance naming Sherise as beneficiary; (3) paying $6941.12 for Sherise's attorney fees; and (4) paying court costs.

"Contempt consists of willful disobedience to a court order or decree." *In re Marriage of Lytle*, 475 N.W.2d 11, 12 (Iowa Ct. App. 1991). "When a finding of contempt is challenged . . . , review is not de novo; rather, the court examines the evidence to ensure that proper proof—substantial evidence—supports the

judgment of contempt." *Ervin v. Iowa Dist. Court*, 495 N.W.2d 742, 745 (Iowa 1993). Substantial evidence to support the district court's contempt finding requires evidence that could convince a rational trier of fact the contemner is guilty of contempt beyond a reasonable doubt. *Ary v. Iowa Dist. Court*, 735 N.W.2d 621, 624-25 (Iowa 2007).

Stuart first argues the district court erred in determining the dissolution decree was the adoption of a stipulation and settlement by the parties. We agree. While neither Stuart nor Sherise could recall a dissolution trial and no transcript of the proceeding was offered, the decree does not contain any language stating the court is adopting the parties' agreement or stipulation. We note the last page of the decree does not contain the signatures of the parties and their attorneys.[2] Further, the decree's first paragraph provides:

> BE IT REMEMBERED the above-captioned matter came on for a hearing the 30th day of September, 1981, [Sherise] appearing in person and through her attorney . . . and [Stuart] appearing in person and through his attorney . . . . The Court listened to the arguments of counsel and reviewed the Court file and makes the following findings of fact . . . .

Therefore, the decree specifically references a September hearing involving counsel's arguments, and the court's decree dissolving the marriage was filed three months later in December. Considering all of these factors, we conclude substantial evidence does not support the district court's conclusion the decree is the court's adoption of the parties' stipulation and settlement. We turn to an analysis of Iowa dissolution law concerning college expenses.

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[2] In contrast, the record contains a January 1991 "Joint Stipulation and Application to Modify the Decree" signed by Stuart, Stuart's attorney, Sherise, and Sherise's attorney. The next day, the court filed an order adopting and confirming the stipulation's provisions.

Over a year before the parties' decree, the Iowa Supreme Court analyzed the educational support statute and ruled support terminates at age eighteen "unless the conditions in section 598.1(2) . . . relating to education are met, in which event the obligations shall continue . . . until [the child] reaches the age of 22 so long as those conditions exist." *In re Marriage of Vrban*, 293 N.W.2d 198, 202 (Iowa 1980) (quoting *In re Marriage of McFarland*, 239 N.W.2d 175, 180 (Iowa 1976)). The court recognized: "It would have been better if the trial court had spelled out that support would continue past the age of [eighteen] only if the conditions of section 598.1(2) were met . . . . However, we believe this was implicit in the decree, and we so interpret it now." *Vrban*, 293 N.W.2d at 203.

In subsequent litigation involving the *Vrban* decree's language ordering support "through school, including college," the court ruled: "Iowa courts may only order child support for a child in college until the child is twenty-two years old." *Vrban v. Levin*, 392 N.W.2d 850, 853 (Iowa Ct. App. 1986) (citing *Chambers v. Chambers*, 231 N.W.2d 23, 25 (Iowa 1975); *In re Marriage of Briggs*, 225 N.W.2d 911, 914 (Iowa 1975)). The court concluded a father could not be required to pay support for the child's college education past the statutory age limit "regardless of the support provision in the dissolution decree." *Levin*, 392 N.W.2d at 853-54.

Likewise, we conclude Stuart cannot be required to pay support for Somer's college education past the statutory age limit "regardless of the support provision in the dissolution decree." *See id*. Additionally, we reach the same result by applying the 1997 statutory revision limiting the postsecondary education obligation of divorced parents. *See In re Marriage of Vaughan*, 812

N.W.2d 688, 693-94 (Iowa 2012) (stating child must be between the ages of eighteen and twenty-two[3] to qualify for a postsecondary education subsidy and applying 1997 Iowa Code to decree provision referencing 1991 Iowa Code).

Second, Stuart challenges the court's finding he willfully violated the decree's notice of life insurance provision.[4] Stuart argues the justification for ordering life insurance was to guarantee his child support obligation under the decree and Iowa law does not allow a "general" insurance provision based on dissolution of a marriage. Sherise argues Iowa case law is inapplicable because the parties stipulated to the insurance provision and the dissolution court adopted the parties' agreement.

We have already ruled substantial evidence does not support the district court's conclusion the decree is an adoption of the parties' stipulated settlement. In Iowa, "[t]here is no authority to order distribution of a decedent's assets after death because of a dissolution of marriage." *Lytle*, 475 N.W.2d at 12; *In re Marriage of Boehlje*, 443 N.W.2d 81, 85 (Iowa Ct. App. 1989) (stating "justification for ordering life insurance is to guarantee the obligation imposed by the decree" and limiting insurance to child support/alimony obligations). There is no need for life insurance after Stuart's child support obligation ended. Because Stuart has no obligation to maintain life insurance naming Sherise as the

[3] Under the statutory language "between the ages of eighteen and twenty-two," students "qualify so long as they are older than seventeen but less than twenty-three." *In re Marriage of Neff*, 675 N.W.2d 573, 581 (Iowa 2004).

[4] "IT IS FURTHER ORDERED, ADJUDGED AND DECREED [Stuart] shall maintain at least $15,000.00 in life insurance on his life with [Sherise] named as beneficiary. At least one time per year, [Stuart] shall furnish to [Sherise], upon written request by [Sherise], proof of payment of premiums on said policy."

beneficiary, he cannot be held in contempt for failing to maintain such insurance and failing to provide written proof thereof.

We sustain the writ on the issue of whether Stuart was in contempt of the dissolution decree. We necessarily reverse the court's award of Sherise's attorney fees and trial costs. *See* Iowa Code § 598.24 (2011). Costs on appeal are taxed to Sherise.

WRIT SUSTAINED.