IN THE COURT OF APPEALS OF IOWA

No. 8-869 / 07-1892
Filed February 19, 2009

IN RE THE MARRIAGE OF DEBRA R. RODGERS AND DENNIS A. SCHNEIDER

Upon the Petition of
DEBRA R. RODGERS f/k/a
DEBRA R. SCHNEIDER,
Petitioner-Appellee,

And Concerning
DENNIS A. SCHNEIDER,
Respondent-Appellant.

Appeal from the Iowa District Court for Palo Alto County, Nancy L. Whittenburg, Judge.

Appellant challenges the denial of his request for summary judgment in an action to modify an injunction, claiming that the district court erred in ruling that he was required to file a petition for postconviction relief before being able to modify the injunction. **REVERSED AND REMANDED.**

Timothy Braunschweig of Braunschweig Law Firm, Algona, for appellant.

Richard Meyer of Fillenwarth & Fillenwarth, Estherville, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

VAITHESWARAN, P.J.

Dennis Schneider appeals the denial of his motion for summary judgment in an action to modify an injunction.

I. Background Facts and Proceedings

This case has a lengthy and convoluted procedural history, only some of which is relevant to the ruling that is challenged here. Dennis Schneider and Debra Rodgers divorced in 1998. Several months after the dissolution decree was entered, Rodgers applied for a permanent injunction against Schneider to prevent a claimed pattern of harassment. The application was filed under the same caption as the dissolution matter even though the dissolution decree contained no injunctive relief. Following a hearing, the district court issued an injunction directing Schneider to have no contact with Rodgers. The order was dated April 1, 1999. Schneider did not appeal the order.

A state district court subsequently found Schneider in contempt for violating the injunction and sentenced him to thirty days in jail. Schneider petitioned a federal court for a writ of habeas corpus. The federal district court focused on whether Schneider exhausted state court remedies before proceeding to federal court. The court concluded that a state court needed to determine whether a state postconviction relief action was a cognizable means of challenging a finding of criminal contempt. The court stated,

> If the state courts determine that a postconviction relief application will not lie from a conviction for criminal contempt, then it will be clear that Schneider has both attempted to exhaust state remedies and that the State's postconviction relief process is "ineffective" to protect his rights.

Schneider's federal court petition was ultimately dismissed without prejudice.

Meanwhile, Schneider filed a state court petition to modify and clarify the April 1, 1999 injunctive order. This petition, like the injunction that it challenged, was filed under the caption of the dissolution action and alleged several grounds for dissolving the injunction, including changed circumstances. Years after filing the petition, Schneider moved for summary judgment. He asserted that the 1999 order was actually a chapter 236 (1999) domestic abuse injunction which automatically expired one year after its issuance. He also raised constitutional grounds for dissolution of the injunction. The district court denied the motion. Relying on the federal court's ruling concerning exhaustion of state court remedies, the court concluded, "If Respondent wishes to attack the [1999] order, he will have to do so in a postconviction action."

Schneider sought interlocutory review of the district court's ruling. His request was granted and the appeal was transferred to the court of appeals for disposition.

II. Analysis

Schneider first takes issue with the district court's conclusion that he would have to file a postconviction relief application to challenge the 1999 order. Our review of the ruling is for errors of law. *See Benavides v. J.C. Penney Life Ins. Co.*, 539 N.W.2d 352, 354 (Iowa 1995).

As noted, the district court relied on the federal court decision in the habeas corpus action. That habeas corpus action was a challenge to the state court's earlier finding of contempt. The procedural question before the federal court was whether the contempt finding could be challenged in a state court

postconviction relief action. If it could, Schneider was obligated to exhaust that state court avenue before seeking redress in federal court. *See Doty v. Lund*, 78 F. Supp. 2d 898, 901 (N.D. Iowa 1999) (quoting *Weeks v. Bowersox*, 119 F.3d 1342, 1349 (8th Cir. 1997)) ("[A] state prisoner wishing to raise claims in a federal petition for habeas corpus ordinarily must first present those claims to the state court and must exhaust state remedies."). The habeas corpus action was not a direct challenge to the 1999 injunctive order.

This action, in contrast, is an action to modify the 1999 injunction. Setting aside the question of whether Schneider could attack the 1999 order by filing a petition to modify the injunction years after it was issued and the appeal deadline had expired,[1] we find no authority requiring challenges to injunctive orders such as this to be made in a postconviction relief action. *See* Iowa Code § 822.2(1) (2001) (stating statute applies to "[a]ny person who has been convicted of, or sentenced for, a public offense"). Therefore, we reverse the district court's ruling denying Schneider's motion for summary judgment on the ground that he was required to challenge the injunction via a postconviction relief action.

Schneider also argues that the 1999 order was in fact a domestic abuse order under Iowa Code chapter 236 and, under the authority of that chapter, the injunction should have automatically expired within a year of its issuance. *See* Iowa Code § 236.5(2)(e) (1999). The district court did not address this argument on the merits. "It is a fundamental doctrine of appellate review that issues must

[1] Rodgers argued that Schneider's action was an impermissible collateral attack on the 1999 order. The court did not address that argument or the question of whether the changed circumstances alleged in the petition to modify rendered this a permissible action rather than an impermissible collateral attack on the 1999 order.

ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). As this issue was not decided, we have nothing to review. *See Stammeyer v. Div. of Narcotics Enforcement*, 721 N.W.2d 541, 548 (Iowa 2006) ("If the court does not rule on an issue and neither party files a motion requesting the district court to do so, there is nothing before us to review.").

The same holds true for Schneider's constitutional arguments. Schneider appears to concede this. He states that he "sought a determination of other constitutional issues, which the District Court did not address, and which are not before this court on appeal." These issues, therefore, are not preserved for review and are waived. Iowa R. Civ. P. 6.14(1)(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.").

Rodgers seeks appellate attorney fees. Assuming without deciding that fees are authorized under the circumstances of this case, we decline the request at this juncture.

III. Disposition

We reverse the district court's denial of Schneider's motion for summary judgment on the only ground properly before us. This effectively vacates the decision of the district court. As Schneider did not preserve error on his remaining grounds for summary judgment, we remand for further proceedings.

REVERSED AND REMANDED.