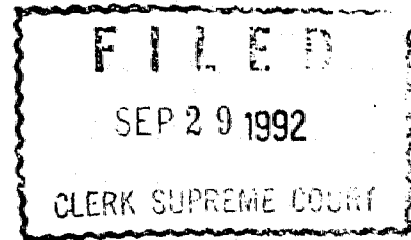


IN THE COURT OF APPEALS OF IOWA

No. 2-429 / 92-198

**EDWARD DEAN JONES,**

Plaintiff,

vs.**IOWA DISTRICT COURT
FOR JOHNSON COUNTY,**

Defendant.

Appeal from the Iowa District Court for Johnson County,
Paul J. Kilburg, Judge.

The plaintiff, Edward Dean Jones, has applied for writ
of certiorari from a judgment of the district court finding
him in contempt for nonpayment of child support. **WRIT
ANNULLED.**

John T. Nolan, Iowa City, for plaintiff.

Theodore R. Hoglan of Fairall, Fairall, Kaplan, Hoglan,
Condon & Klaessy, Marshalltown, for defendant.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

The plaintiff, Edward Dean Jones, brings this certiorari proceeding in which he seeks reversal of the district court decision finding him in contempt of court for failure to pay child support.

Edward and Linda R. Jones were divorced in 1987. Edward fell behind in child support payments, and Linda filed a contempt action against him. On July 31, 1989, Edward signed a stipulation agreeing to pay child support arrearages and increasing his child support payments to \$300 per month. Edward did make a \$400 payment on that date, but again fell behind. Linda instituted a second contempt action. A hearing was held on January 23, 1990. The district court determined that although Edward could not be held in contempt because he was unemployed and dependent on his family, he could easily obtain employment in lower paying field than his former profession, mechanical engineering. Linda subsequently filed a third contempt action, in which the district court again concluded that Edward was not in contempt because he was unemployed and dependent on his family.

Linda filed a fourth contempt action. After several scheduling delays, the district court ruled Edward had the ability to pay and found him in contempt. Edward failed to attend the hearing but was represented by counsel. He was allowed to present additional evidence at a subsequent hearing on his application for reconsideration. His motion

was denied and he was sentenced to thirty days in jail. Edward filed a petition for writ of certiorari, which was granted.

Scope of Review

On petition for writ of certiorari the standard of review is for errors at law. Johnson v. Iowa Dist. Court, 385 N.W.2d 562, 564 (Iowa 1986). As an action at law, findings of fact are generally not reviewable. Webb v. Iowa Dist. Court, 416 N.W.2d 95, 97 (Iowa App. 1987).

I. Constitutional Safeguards

Edward contends he was not afforded all of his constitutional safeguards, including the right to a jury trial and the right to confront his accusers. He also contends his trial counsel was ineffective due to an alleged failure to object to the commencement of the hearing in Edward's absence. We find these contentions without merit.

The supreme court has repeatedly held for more than 100 years that a person may be punished for contempt without a jury trial. Sarich v. Havercamp, 203 N.W.2d 260, 265-68 (Iowa 1972). We hold Edward's constitutional safeguards were not compromised in the absence of a jury trial.

Edward cites no authority providing that a person charged with contempt is entitled to confront his accusers. Pursuant to Iowa Rule of Appellate Procedure 14(a)(3), we find this issue waived due to failure to cite supporting authority.

Finally, Edward contends he was denied effective assistance of counsel when his trial counsel failed to object to commencement of the hearing and failed to request a continuance. However, the record from the hearing on the application to reconsider reflects Judge Kilburg stating trial counsel moved for a postponement or continuance on Edward's behalf. This is also reflected in Judge Kilburg's order. We hold Edward was represented by counsel at the contempt proceeding and appropriate objections were made on his behalf.

II. Contempt Challenges

Edward does not challenge his duty to pay child support nor does he contest that he has failed to do so. Edward argues that he has a complete inability to pay his child support. He contends he has a physical deformity of the back which prevents him from obtaining employment. He alleges he has sought employment from over 200 employers and even Job Service has been unable to find him employment. Edward maintains he has no income, no property, and no net worth.

Iowa Code section 598.23 (1991) provides that a person, against whom a decreed support order has been entered and who willfully disobeys that order, may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

The contempt applicant establishes a prima facie case by proving the contemner's duty and the failure to perform that duty. Lamb v. Eads, 346 N.W.2d 830, 832 (Iowa 1984). The burden then shifts to the contemner to show he could not perform the duty. Id. The contemner's burden is a burden of production on the defense of inability to perform the duty rather than a burden of persuasion. Skinner v. Ruigh, 351 N.W.2d 182, 185 (Iowa 1984). The burden of persuasion remains on the contempt applicant to show willfulness. Id. The contemptuous actions need to be established by proof beyond a reasonable doubt. Phillips v. Iowa Dist. Court, 380 N.W.2d 706, 709 (Iowa 1986).

Only willful disobedience of a court order will justify a conviction for contempt. Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980). Willful disobedience requires evidence of conduct which is "intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not." Id. When inability to pay is urged as a defense, the alleged contemner has the burden to produce evidence on that issue. Skinner, 351 N.W.2d at 185.

We affirm the district court's finding Edward in contempt of the child support order. We do not affirm the district court solely because of his failure to pay child support. We are not insensitive to economic hardship. It

is the combination of Edward's failure to pay support and his refusal to obtain any type of employment that brings us to our conclusion.

The district court determined Edward has taken an extremely narrow focus on what jobs he will or will not accept. He has not been employed for several years. We note that if Scott resided with Edward and it was Edward's sole responsibility to provide for Scott, he would, of necessity, accept whatever employment was necessary to provide for his basic needs. Although he claims he has a back deformity which limits the types of employment he may accept, he has never before alleged this nor provided any evidence to support his claim. We do not consider this now.

In addition, Edward has not paid any child support in almost three years and he was in arrears prior to that time. He has received over \$25,000 from his mother since December, 1988, including \$400 to \$600 per month from August, 1990 to September, 1991. Edward did not pay any of that money towards his child support obligation even though he was living in a home owned by his mother and was not required to pay living expenses during that time.

We have reviewed the record and affirm the trial court's finding of contempt.

WRIT ANNULLED.