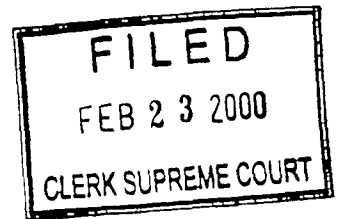


IN THE COURT OF APPEALS OF IOWA

No. 1999-333 (9-586) / 98-1539

Filed February 23, 2000



IN RE THE MARRIAGE OF KATHERINE KAY GRIFFEY
AND BILLE DALE GRIFFEY,

Upon the Petition of
KATHRINE KAY GRIFFEY,
Petitioner-Appellant,

And Concerning
BILLIE DALE GRIFFEY,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

The petitioner appeals a district court ruling declining to find the respondent in contempt for failing to pay interest on the arrearage in his child support obligations. **AFFIRMED.**

John R. Hearn, Des Moines, for appellant.

~~William~~ S. Morris of Morris & Morris, Des Moines, for appellee, until his withdrawal, then Billie Griffey, Des Moines, pro se.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

PER CURIAM

Katherine (Kay) and Billie Griffey were previously married. Kay contends the district court erred in: (1) failing to find Billie in contempt for failing to pay interest on his child support arrearage; (2) not ordering Billie to pay her trial attorney fees and accounting bill; and (3) not withholding a greater amount from Billie's wages. Kay asks for appellate attorney fees. We affirm on appeal.

Kay and Billie were divorced in 1972. The dissolution decree placed the parties' child, Billie Ray, in Kay's custody. Billie was ordered to pay child support of \$25 per week. Billie was inconsistent in making payments. He was not always gainfully employed and he spent one year in jail.

In July 1995, after Billie Ray was an adult, Kay obtained an order for income withholding. In order to pay back Billie's child support arrearage, which was more than \$16,000, \$600 per month was deducted from his paycheck. In March 1998, the court terminated the mandatory income withholding order, on the motion of the Child Support Recovery Unit, because the principal had been paid in full.

Kay filed an application to have Billie found in contempt for failing to pay interest ~~on his~~ child support arrearage. She presented the statement of an accountant, which showed the accrued interest, at a rate of five percent per year, for the period the child support was unpaid was \$10,372.

The district court found Billie was not in contempt. The court determined, however, Billie should be responsible to pay interest on his child support arrearage. The court entered an order to withhold \$300 per month from Billie's

income. The court determined each party should pay his or her own attorney fees. The court denied Kay's request to have Billie pay \$400 for her accountant's fees. Kay appealed.

I. Kay contends the district court should have found Billie in contempt for failing to pay interest on his child support arrearage. On review of a contempt ruling, we must determine whether substantial evidence exists that would convince a rational trier of fact the alleged contemnor is guilty of contempt beyond a reasonable doubt. *Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 678 (Iowa 1998). A party requesting a contempt finding has the burden of proving the contemnor (1) had a duty to obey a court order, and (2) willfully failed to perform that duty. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 835 (Iowa App. 1997).

Here, there was insufficient evidence to show Billie willfully failed to pay interest on his child support arrearage. No court order specifically directed him to pay interest. He was unaware Kay was seeking interest until she filed the present action. Kay has failed to meet her burden to show Billie was guilty of contempt beyond a reasonable doubt.

II. Kay seeks to have Billie pay her trial attorney fees and accounting costs. Iowa Code section 598.24 (1997) provides for the assessment of costs against a party who has been found in contempt. See *In re Marriage of Anderson*, 451 N.W.2d 187, 189 (Iowa App. 1989). We have determined Billie was not in contempt. Therefore, Kay is not entitled to an award for attorney fees and costs under this section.

III. Kay claims the district court should have increased the amount withheld from Billie's income. She asserts Billie should be required to pay \$450 per month, which is the amount he would be required to pay under the child support guidelines. The district court determined the child support guidelines did not apply under the facts of the case, and we agree. Billie Ray is an adult and the payments are not necessary for his support. We affirm the order withholding \$300 per month from Billie's income.

IV. Kay requests appellate attorney fees. We determine each party should be required to pay his or her own attorney fees for this appeal.

We affirm the decision of the district court. Costs of this appeal are assessed to Kay.

AFFIRMED.