

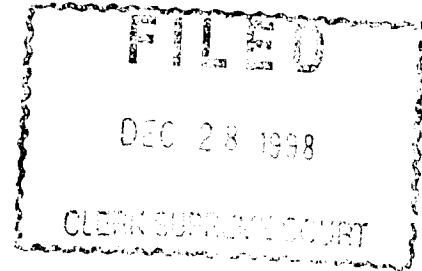
IN THE COURT OF APPEALS OF IOWA

No. 8-547 / 97-1786
Filed December 28, 1998

PENNY J. MURPHY,
Plaintiff,

vs.

**IOWA DISTRICT COURT FOR
LINN COUNTY,**
Defendant.



Appeal from the Iowa District Court for Linn County, L. Vern Robinson,
Judge.

Penny Murphy filed a petition for writ of certiorari from the district court's
order finding her in contempt. **WRIT ANNULLED.**

Stanley A. Roush, Cedar Rapids, for plaintiff.

Thomas F. Ochs of Gray, Stefani & Mitvalsky, P.L.C., Cedar Rapids, for
defendant.

Considered by Sackett, P.J., and Huitink, Streit, Vogel, and Mahan, JJ.

STREIT, J.

Penny Murphy filed a writ of certiorari from the trial court's order finding her in contempt for willfully violating court orders and sentencing her to two thirty-day consecutive jail sentences. Because we find her violations willful, we annul the writ.

I. Background & Facts.

Penny Murphy and Thomas Randolph began living together in 1992. They never had a ceremonial marriage, however, they had a child, T.J., in 1994. Murphy filed a domestic abuse petition in 1995 which resulted in a finding of domestic abuse by Randolph. Randolph was ordered to have no contact with Murphy, with the exception of shared legal custody of T.J. Randolph was ordered to pay child support.

In June 1995, Murphy was hospitalized following a suicide attempt. Randolph took care of T.J. during her hospitalization and recovery. Thereafter, he made an application to be reimbursed for child care expenses he incurred during this period. On August 28, the court ordered "Plaintiff shall reimburse Defendant for child day care expense he incurred during that period of time . . . which was not intended as visitation." This time period was approximately three weeks. Murphy has never reimbursed Randolph for the child care expenses.

Throughout these proceedings Murphy refused to allow Randolph to come to her residence and retrieve personal property at the residence. In September 1995, Randolph filed an application for permission to enter the Murphy's residence. The court ordered: "the plaintiff shall grant defendant unfettered access to the parties'

former residence on September 23, 1995, at 10:00 a.m. until 1:30 p.m. so that defendant may retrieve his personal effects and furnishings.” Further, the court ordered “judgment in the amount of \$100 . . . against plaintiff . . . to compensate for attorney fees incurred by . . . having to make . . . application.”

In May 1996, as part of the parties’ decree dissolving the parties common-law marriage, the court ordered: “Mr. Randolph is awarded all right, title, and interest in . . . the homestead.” Further, Murphy was awarded certain items of personal property and “Mr. Randolph [wa]s awarded all other personal property not awarded to Ms. Murphy.”

Murphy has never returned Randolph’s personal property or paid Randolph the \$100 in attorney fees.

Randolph filed applications for contempt against Murphy for her failure to pay the money and return his personal property. The court found Murphy in contempt and sentenced her to thirty days in the county jail in each cause; sentences to run consecutively. Murphy filed a writ of certiorari to the Iowa Supreme Court.

II. Standard of Review.

Certiorari is a procedure to test whether a lower court exceeded its proper jurisdiction or otherwise acted illegally. *See* Iowa R. Civ. P. 306; *French v. Iowa Dist. Court*, 546 N.W.2d 911, 913 (Iowa 1996). When we review a ruling of contempt by certiorari, we determine whether substantial evidence supports the district court’s judgment. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 834-35 (Iowa

App. 1997). Our review of the district court's action is for the correction of errors at law. *See French*, 546 N.W.2d at 913.

III. Contempt.

Randolph has the burden of demonstrating Murphy had a duty to obey the court order and failed to perform that duty. *See In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). The burden then shifts to Murphy to show she did not willfully violate the order or decree. *Id.* The burden is one of production and not of persuasion. *See Rater v. Iowa Dist. Court*, 548 N.W.2d 588, 591 (Iowa App. 1996). The burden of persuasion remains upon Randolph to prove beyond a reasonable doubt that Murphy willfully disobeyed the court's order. *See Jacobo*, 526 N.W.2d at 866. Evidence establishes willful disobedience if it demonstrates:

[C]onduct that 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.

See Gimzo, 561 N.W.2d at 835 (quoting *Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 140 (Iowa 1988)). Randolph must only prove some of the violation was willful in order to establish contempt. *Id.*

In regard to the orders Murphy pay money for child care expenses and attorney fees, Murphy argues she was not able to pay and, for that reason, her violation of the orders is not willful. She also argues the order she pay for child care expenses is indefinite because it did not order an exact amount to be paid.

Both the indefiniteness of the court order and the absence of willful disobedience due to inability to pay, if proven, are defenses to a contempt finding. *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996). Murphy did not offer any evidence of inability to pay or any explanation at trial for her failure to pay the amounts ordered by the court. She has not met her burden of production to prove lack of willfulness due to inability to pay.

Murphy is correct in her assertion the trial court did not order an exact amount to be paid in child care expenses. Because contempt is quasi-criminal in nature, the court order must provide for definite terms before a finding of contempt can be entered. *See Zimmermann v. Iowa Dist. Court*, 480 N.W.2d 70, 74 (Iowa 1992). However, when there is an understanding between the parties and the court's intent is understood, the order is sufficiently definite. *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996)(decree providing the parties' home be sold immediately with "the net proceeds therefrom equitably divided" was not ambiguous where wife understood the court's intent); *Bervers v. Kilburg*, 326 N.W.2d 902, 904 (Iowa 1982). Murphy had been told on several occasions the amount she owed Randolph for child care was \$366. When the court ordered Murphy to pay for child care expenses, Murphy understood the court's meaning. The court's contempt finding for Murphy's failure to pay the monetary amounts ordered is affirmed and the writ in regard to these issues annulled.

In the dissolution proceeding, the court ordered “Mr. Randolph is awarded all other personal property not awarded to Ms. Murphy.” This is a definite order. Murphy was awarded specific pieces of personal property with the remainder awarded to Randolph. When Randolph resumed residency at the home pursuant to the court order, a substantial amount of property awarded to him was missing. Murphy refused to return the items and produced no reasonable explanation for her failure to do so. Murphy’s refusal to turn over the property to Randolph was a willful violation of the order. The district court is affirmed and the writ annulled.

WRIT ANNULLED.