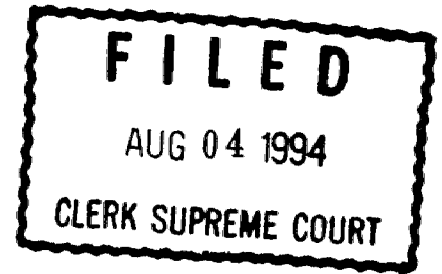


IN THE COURT OF APPEALS OF IOWA

No. 3-544 / 93-70



IN RE THE MARRIAGE OF JILL LAVAE SCALLY
AND RONALD B. SCALLY

Upon the Petition of
JILL LAVAE SCALLY,

Appellee,

And Concerning
RONALD B. SCALLY,

Appellant.

Appeal from the Iowa District Court for Black Hawk
County, Roger F. Peterson, Judge.

The respondent husband appeals a judgment of the
district court finding him in contempt for failing to pay a
tax lien from a previous business owned by his ex-wife.

AFFIRMED.

Carter Stevens of Beecher, Rathert, Roberts, Field,
Fister, Walker & Morris, P.C., Waterloo, for appellant.

David H. Correll of Correll & Sheerer, Cedar Falls, for
appellee.

Considered by Hayden, P.J., and Sackett and Cady, JJ.

HAYDEN, P.J.

This is an appeal by Ronald Scally from the trial court's ruling he is in contempt of court for failing to satisfy a tax lien from a previous business owned by his ex-wife, Jill Scally. The issue is whether the trial court should have found Ronald Scally in contempt. We affirm the trial court's decision.

Ronald and Jill Scally were divorced on December 13, 1990. Pursuant to the decree, Ronald was to receive his business, Scally Collision Repair, and was held responsible for all indebtedness thereon. On April 22, 1992, Jill filed an application for a rule to show cause based on her contention Ronald had failed to pay a tax lien arising out of a business she contends was formerly owned by him and is connected to his present business. She also alleged Ronald failed to pay child support and health insurance. Following a hearing, the district court held Ronald was in contempt for failing to pay the outstanding indebtedness on the business and was sentenced to seven days in jail. The court further ordered, however, Ronald could purge himself of the contempt if he paid Jill within fourteen days the amount owed on the tax lien. Ronald's motion to enlarge findings pursuant to Iowa Rule of Civil Procedure 179(b) was overruled, and Ronald filed the present appeal. Jill seeks attorney fees on appeal.

Ronald first notes his appeal is not the correct method of contesting the district court's finding of contempt.

Ronald maintains his appeal should be considered as an application for writ of certiorari. Ronald also argues he does not have any obligation to pay the tax lien since the business he now owns was not in any way connected to the prior business. He maintains he was only an employee at the previous business and his wife was the actual owner. Ronald points out Jill admitted at trial this debt was her obligation.

We hold the district court did not err in finding Ronald in contempt of court.

First, regarding the appropriate procedural posture of this case, a review of Iowa case law and statutes makes it abundantly clear appeal does not lie from an order to punish by contempt, but the proceedings may be reviewed by writ of certiorari. See LaRue v. Burns, 268 N.W.2d 639, 641 (Iowa 1978) (citations omitted). Ronald has treated this matter as an appeal. However, rule 304 of the Iowa Rules of Appellate Procedure provides,

If any case is brought by appeal, certiorari, or discretionary review, and the appellate court is of the opinion another of these remedies was the proper one, the case shall not be dismissed, but shall proceed as though the proper form of review had been sought. Any one of the foregoing remedies may under this rule be treated by the appellate court as the one it deems appropriate.

Thus, Ronald's appeal will be considered as a certiorari action, pursuant to rule 304 of the Iowa Rules of Appellate Procedure.

A certiorari action involving a finding of contempt allows the reviewing tribunal to review the record to determine if there is evidentiary support for the finding of contempt. Orkin Exterminating Co., Inc. v. Burnett, 160 N.W.2d 427, 431 (Iowa 1968). A contempt adjudication cannot stand unless there is substantial support for the trial court's finding. Abraham v. Beechly, 363 N.W.2d 596, 598 (Iowa App. 1984) (citing Rausch v. Rausch, 314 N.W.2d 172, 174 (Iowa App. 1981)).

Here there is ample evidence to support the trial court's finding of contempt. Ronald claims the business for which the tax lien was generated was not his responsibility under the decree since he only worked for the business. The record demonstrates Ronald worked in the the auto body business his entire married life. The record also identifies the business in question to be owned by Ronald. "Failure to adhere to an unclear or ambiguous decree may defeat a finding of contempt." In re Marriage of Anderson, 451 N.W.2d 187, 191 (Iowa App. 1989) (citing Palmer Chiropractic v. Iowa Dist. Court, 412 N.W.2d 617, 620 (Iowa 1987)). However, the clear intent of paragraph nine of the stipulation between Ronald and Jill was to make all indebtedness arising out of Ronald's auto body business or businesses to be his liability, not Jill's. The trial court properly declined to accept Ronald's contrived explanation for his contemptuous actions, for Ronald has simply attempted to avoid the trial court's order by claiming ambiguity where none exists.

Finally, Jill seeks attorney fees on appeal. In evaluating a request for attorney fees on appeal, we consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. See In re Marriage of Castle, 312 N.W.2d 147, 150 (Iowa App. 1981). Because of Jill's financial position and her obligation to defend the trial court's decision on appeal, we award Jill \$750 in attorney fees.

AFFIRMED.