IN THE COURT OF APPEALS OF IOWA

No. 6-222 / 94-1833

FILED
APR 23 1996
CLERK SUPREME COURT

DOUGLAS GETHMAN,

Plaintiff.

vs.

IOWA DISTRICT COURT FOR TAMA COUNTY,

Defendant.

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

The supreme court granted Douglas Gethman's petition for writ of certiorari from a district court order finding him in contempt for failure to pay temporary alimony. **WRIT ANNULLED.**

Robert W. Thompson of Thompson & Metcalf, P.C., Reinbeck, for plaintiff.

Deb Tharp of Trout & Tharp, Marshalltown, for defendant.

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

PER CURIAM.

This is a petition on a writ of certiorari by a husband, claiming the district court acted illegally in finding him in contempt of court for failure to pay temporary alimony. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Douglas Gethmann filed a petition for dissolution of marriage from Sandra Gethmann. On February 17. 1994, the district court ordered Douglas to pay temporary alimony of $500 per month and temporary attorney fees of $500. Douglas did not make payments as required by the temporary order.

On September 8, 1994, Sandra filed an application for rule to show cause why Douglas should not be found in contempt for failure to obey the temporary order. At the contempt hearing, Douglas testified he had paid some of the parties' joint debts instead of paying alimony.

On October 19, 1994, the district court entered an order finding Douglas in contempt. The court ordered him to spent thirty days in the county jail. Douglas was given the opportunity to purge himself by paying the back alimony by October 25. The court denied Douglas' motion pursuant to Iowa Rule of Civil Procedure 179(b), but did stay its decision to allow Douglas to file a petition for writ of certiorari.

This case is presently before us on Douglas' petition for writ of certiorari. He claims the district court violated his due process rights by giving him an inadequate

period of time to purge himself. He also claims the court did not give him an adequate opportunity to explain his inability to meet the terms of the court's order. He also claims the court should have recognized the importance of preserving the parties' assets by paying their joint debts.

A contempt proceeding is essentially criminal in nature, and each element must have been established by proof beyond a reasonable doubt. *Phillips v. Iowa District Court,* 380 N.W.2d 706, 710 (Iowa 1986). A finding of contempt for a violation of a court order must be willful. *State v. Lipcamon,* 483 N.W.2d 605, 607 (Iowa 1992).

We find there is sufficient evidence in the record to show Douglas willfully violated the terms of the temporary order. Douglas was employed at Fisher Controls, where he earned annual income of about $44,000. He also received rental payments on twenty-one acres of farmland. Douglas admitted that instead of paying temporary alimony he spent money to repair his garage door, repair his vehicle, put siding on the house, and contribute to a voluntary retirement program.

We find Douglas had adequate time to purge himself. We also find he had adequate opportunity at the contempt hearing to explain why he had not obeyed the court's order regarding temporary support.

We determine the district court did not act illegally or without jurisdiction when it determined Douglas was in contempt of court. We dismiss the writ of certiorari. Costs of this certiorari action as assessed to Douglas.

WRIT ANNULLED.