

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF NORMAN S. VENENGA AND SANDRA K. VENENGA

Upon the Petition of)

NORMAN S. VENENGA,)

Petitioner-Appellant,)

Filed November 24, 1981

And Concerning)

SANDRA K. VENENGA,)

1-260

2-66025

Respondent-Appellee.)

Appeal from Grundy District Court - Peter Van Metre.

Petitioner husband appeals from the trial court's order refusing to find him in contempt for nonpayment of child support and alimony during the pendency of his appeal from the parties' dissolution decree. AFFIRMED.

James Ellefson of Lundy, Butler & Lundy, Eldora, for petitioner-appellant.

Donald C. Wilson of Wilson, Hall, Wilson & Craig, Eldora, for respondent-appellee.

Considered by Oxberger, C.J., and Danielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Petitioner husband appeals from the trial court's order refusing to find him in contempt for nonpayment of child support and alimony during the pendency of his appeal from the parties' dissolution decree.¹ He asserts that the trial court's refusal to find him in contempt was correct, but that he should not have been ordered to pay support during the pendency of the appeal because this would waive his right to appeal with regard to the amount of support.

Our review of this proceeding is de novo. Iowa R. App. P. 4. We find petitioner's argument to delay payment of his child support and alimony obligations to be both novel and imaginative, but nonetheless, without merit. We affirm.

I.

The parties' 1980 dissolution decree provided, inter alia, that the petitioner pay alimony of \$200.00 per month and child support of \$250.00 per month. Petitioner appealed, contesting the amount of support. (See footnote 1.)

During the pendency of the above-mentioned appeal, the respondent sought to have petitioner held in contempt and to have certain funds garnished when petitioner failed to either pay the support as ordered by the decree or to post a supersedeas bond. In an order filed on October 21, 1980, the trial court found that the petitioner was not in contempt, but garnished the funds and ordered him to pay support during the pendency of the appeal despite his claim that such payments would waive his right to appeal.

II.

"Ordinarily voluntary compliance with a judgment by a party requires dismissal of his appeal." Starke v. Horak, 260 N.W.2d 406, 407 (Iowa 1977). Petitioner correctly notes that this rule has never been applied to a dissolution of marriage case. Contempt is a proper remedy for the court to use when a party is in default on support payments. § 598.22, § 598.23, The Code 1981. Contempt is generally considered to be a coercive remedy, thus payment of support obligations under the threat of contempt would not be voluntary compliance and would not waive the right to appeal.

Respondent has made an application for allowance of attorneys fees in the amount of \$377.64. Petitioner is ordered to pay said fees and the costs of this appeal.

AFFIRMED.

¹ In re Marriage of Vencenga, no. 2-65223, petitioner's direct appeal from the parties' dissolution decree was filed by this court on June 30, 1981, and affirmed the trial court's award of child support and alimony.