FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

308

JOHN DAVID SMITH,	)	
Plaintiff,	)	
vs.	)	
IOWA DISTRICT COURT FOR PLYMOUTH COUNTY,	)	8-419 87-651
Defendant.	)	

Appeal from the Iowa District Court for Plymouth County (No. 25584), James L. McDonald, Judge.

Plaintiff filed this petition for writ of certiorari to challenge the district court's finding of contempt for disobeying the provisions of his dissolution decree. **WRIT ANNULLED.**

Timothy W. Shuminsky for Shuminsky, Shuminsky & Molstad, Sioux City, for plaintiff (respondent below).

No appearance for defendant.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

DONIELSON, P.J. 309

Plaintiff filed this petition for writ of certiorari to challenge the finding of contempt for disobeying the provisions of his dissolution decree by not giving certain property to his spouse. John D. Smith claims 1) the district court did not have personal jurisdiction over him; and 2) the court erred in not continuing the hearing until his counsel could be present.

The district court entered a decree of dissolution for John D. Smith and Frances B. Smith on March 10, 1987. At the time of the trial John was living in the marital residence and Frances was living with an adult child. The court awarded the residence and its contents to Frances. John was awarded, among other things, all personal properties in his possession. Frances filed a motion for enlargement asking the court to specifically set out what it meant by "contents" since John had interpreted the decree to mean that he was awarded the furniture and appliances as his personal possessions. The district court overruled the motion, finding it to be frivolous.

On April 13, 1987, Frances filed an application for citation of contempt on the ground that when she took possession of the residence John had taken all the contents of the house, including the light fixtures and shelves. John had also failed to sign documents to surrender one-half of an annuity in his name to Frances as ordered by

the court. John's attorney asked for a continuance of the contempt hearing because he was scheduled to appear in court in a different county at the same time. The court denied the continuance and found John to be in contempt. He was sentenced to thirty days in the county jail but was given the opportunity to purge himself of the contempt by restoring the residence to its condition as of March 10, 1987. John filed a petition for writ of certiorari which was granted on June 17, 1987.

Under our civil contempt statute, no appeal lies from a judgment of contempt, but proper cases may be taken to a higher court for revision by certiorari. Iowa Code § 665.11 (1987). Ordinarily review by certiorari is limited to questions of jurisdiction or illegality of the ruling of a trial court or other public official. Chidester v. Needles, 353 N.W.2d 849, 851 (Iowa 1984). We review a judgment of contempt and we examine the evidence to ensure that proof is clear, satisfactory, and convincing. Id. Here the facts clearly establish that plaintiff willfully disobeyed the dissolution decree which required that he leave the residence and its contents so that Mrs. Smith could have these assets as her separate property. He also failed to sign the necessary papers relinquishing one-half interest in the annuity.

I. Plaintiff first argues that the district court did not have personal jurisdiction because the return of

service was not filed with the clerk of court as required by Iowa Rule of Civil Procedure 59(c). He claims that there is nothing in the record to show that service was returned to the clerk or to Mrs. Smith's attorney. We disagree.

John Smith was personally served with the rule to show cause, order for rule to show cause, and the application for contempt on April 8, 1987. The papers were served by the constable of Union County for the State of South Dakota. The return of service was filed with the clerk of the district court for Plymouth County on April 13, 1987. This was the day of the hearing on the rule to show cause why John Smith should not be held in contempt. The transcript of the hearing indicates that counsel for Mrs. Smith had the constable's return and asked that it be filed with the court record. The court granted the request.

Iowa Code section 665.7 requires that the offender must be served personally with a rule to show cause or brought before the court before the court may punish for contempt. Minor irregularities may not be fatal if no prejudice results. See Lutz v. Darbyshire, 297 N.W.2d 349, 354 (Iowa 1980).

The constable's return indicates that it was received on April 6, 1987. The constable signed and dated the return on April 13, 1987. We find that Iowa Rule of Civil Procedure 59(c) was satisfied and that the district court had personal jurisdiction over John D. Smith.

II. Plaintiff contends the district court erred by failing to continue the action until such time as John Smith could have counsel present. He argues that the fundamental rights include the right to counsel and the right to have the same attorney throughout the entire action.

Trial courts have broad discretion in deciding whether to grant motions for continuances; absent a clear abuse of this discretion, we will not interfere. Department of Gen. Services v. R. M. Boggs Co., 336 N.W.2d 408, 410 (Iowa 1983). An abuse of discretion occurs when there is "an erroneous conclusion and judgment, one clearly against logic and effect of facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id., quoting with approval, State v. Morrison, 323 N.W.2d 254, 256 (Iowa 1982).

The fact that an attorney has a conflicting trial schedule does not give him or her an automatic right to a continuance. R. M. Boggs Co., 336 N.W.2d at 410. An unwarranted continuance may be "justice denied." Id. at 411.

The order for rule to show cause was signed and dated on April 2, 1987. It ordered John D. Smith to appear personally at 1:00 p.m. on April 13, 1987. The order was filed on April 3, 1987. John D. Smith was personally served on April 8, 1987. Counsel for John Smith filed his motion for continuance at 12:18 p.m. on April 13, 1987.

Plaintiff's counsel indicated that he had a conflict in another county on that day. The record shows that he called Frances Smith's attorney on April 10, 1987, to notify him that he would be a half hour late. However, when Frances Smith's counsel appeared for the hearing, he was informed that the motion for continuance had been filed around noon when the judge was not in chambers.

Under these circumstances, we find no abuse of discretion by the trial court. The district judge asked the court attendant to contact John Smith's counsel in Rock Rapids and advise him to appear before the court by 3:00 that afternoon. The judge sought to accommodate the counsel's schedule without being unfair to Frances Smith. It cannot be said that the judgment was against logic and effect of facts and circumstances before the court. Therefore, the trial court did not err by failing to continue the action.

We regret that the results in this case "visits the sins of counsel on his client. But a 'litigant chooses counsel at his peril, and here, as in countless other' contexts, counsel's disregard of his professional responsibilities can lead to extinction of his client's claim." Krugman v. Palmer College, 422 N.W.2d 470, 475 (Iowa 1988).

In conclusion, the district court had personal jurisdiction over the plaintiff and the court correctly

applied the law when it ruled on the motion for continuance. Therefore, we vacate the writ of certiorari.

WRIT ANNULLED.