IN THE COURT OF APPEALS OF IOWA

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No. 7-286 / 96-0839
Filed September 24, 1997

FILED
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CLERK SUPREME COURT

JULIE ANN HOLADAY,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POWESHIEK COUNTY,
Defendant.

Appeal from the Iowa District Court for Poweshiek County, James D. Jenkins, Judge.

The supreme court granted Julie Holaday's petition for writ of certiorari from the district court's order finding her in contempt of the parties' dissolution of marriage decree. **WRIT ANNULLED.**

C. Jean Pendleton of Charnetski, Olson, Lacina, Pendleton & Garland, L.L.P., Grinnell, for plaintiff.

Charles M. Manly III of the Manly Law Firm, Grinnell, for defendant.

Considered by Sackett, P.J., and Huitink, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, J.

I. Background Facts and Proceedings.

Julie and Dean Holaday divorced in January, 1996. They have one minor child, Shelby, born October 28, 1994. The dissolution decree granted the parties joint legal custody of Shelby, Julie primary physical care of Shelby, and Dean reasonable visitation. Julie denied Dean visitation on Saturday, March 30, 1996; Sunday, March 31, 1996; and Wednesday April 3, 1996.

On April 5, 1996, Julie filed an application to suspend unsupervised visitation, affidavits of Julie Holaday and Jeanne White (Julie's counselor), a motion for psychological evaluation, and an application for restraining order and writ of temporary injunction. Julie withdrew these filings because the court did not have jurisdiction, and she filed a petition for order modifying decree of dissolution of marriage together with the above filings on April 15, 1996. Dean filed an application for finding contempt on April 10, 1996.

The Iowa District Court for Poweshiek County entered an order finding Julie in contempt for willful denial of visitation granted Dean in the dissolution decree, ordering Julie to make up ninety hours of missed visitation, assessing costs of $40 to Julie, and awarding $500 in attorney fees to Dean.

We hear this case upon Julie's petition for writ of certiorari granted by the supreme court. Julie argues her denial of visitation was not willful, rather it was in Shelby's best interests. Julie claims she only denied visitation one time, on March 30,

1996, because Dean appeared agitated and exhibited bizarre behavior. On the other days at issue, March 31, 1996, and April 3, 1996, Julie, acting on the advice of her counselor, withheld unsupervised visitation until Dean had a psychological examination. Julie claims she would have granted supervised visitation.

II. Standard of Review.

We apply a special standard of review in contempt cases. *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992). We examine the record to determine whether substantial evidence supports the judgment, not de novo. *McKinley v. Iowa Dist. Ct.*, 542 N.W.2d 822, 824 (Iowa 1996); *Palmer College of Chiropractic v. Iowa Dist. Ct.*, 412 N.W.2d 617, 619 (Iowa 1987). We are not bound by the trial court's conclusions of law and may inquire whether the trial court applied erroneous rules of law that materially affect its decision. *Patterson v. Keheler*, 365 N.W.2d 22, 24 (Iowa 1985).

Proof of contempt in this context requires a showing that there was a willful violation of a clear provision of the court's order. *McKinley*, 542 N.W.2d at 824. Willfulness is intentional and deliberate conduct with a bad or evil purpose; or a wanton disregard of others' rights, contrary to a known duty, or unauthorized conduct, coupled with an unconcern whether the contemnor had the right or not. *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980). A contempt adjudication requires proof of the person's allegedly contumacious actions beyond a reasonable doubt. *McKinley,* 542 N.W.2d at 824; *Phillips v. Iowa Dist. Ct.*, 380 N.W.2d 706, 709 (Iowa 1986).

A parent does not have discretion to grant, deny, or qualify the other parent's visitation privileges. The terms of the dissolution decree are controlling. Absent circumstances presenting immediate and readily apparent risk of harm to the child, both parents are expected to comply with the visitation provisions of the dissolution decree or seek remedial relief from the court.

Two defenses to contempt are available: (1) indefiniteness of the court order or (2) absence of willful disobedience. *McKinley*, 542 N.W.2d at 824. Julie does not raise the first defense, rather she argues that she did not willfully disobey the decree. Our review of the record discloses substantial evidentiary support for the trial court's finding of contempt. Julie admits denying Dean visitation. The trial court, as the trier of fact, was free to accept or reject the validity of Julie's explanantion for denying Dean visitation. There is no evidence that Dean presented an immediate and readily apparent risk of harm to Shelby at the time he sought visitation. Under these circumstances, the trial court could reasonably infer Julie willfully failed to comply with the visitation provisions of the decree. We annul the writ and and assess costs of this appeal to Julie.

WRIT ANNULLED.