

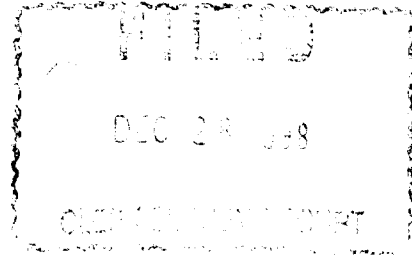
IN THE COURT OF APPEALS OF IOWA

No. 8-622 / 97-1853
Filed December 28, 1998

RAYMOND J. LIPOVAC,
Plaintiff,

vs.

**IOWA DISTRICT COURT FOR
POLK COUNTY,**
Defendant.



Appeal from the Iowa District Court for Polk County, Robert D. Wilson,
Judge.

Raymond Lipovac challenges a district court order finding him in contempt.

WRIT SUSTAINED; CASE REMANDED.

Joseph A. Nugent, Des Moines, for plaintiff.

Thomas P. Hyland, Des Moines, for defendant.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

HUITINK, J.

On writ of certiorari, Raymond Lipovac challenges the district court's order finding him in contempt. Because we find the record fails to establish his willful violation of a court order beyond a reasonable doubt, we sustain the writ and remand.

I. Background Facts and Proceedings.

This matter comes before the court on writ of certiorari. The underlying dispute arose pursuant to a child support and physical placement modification hearing. Prior to the hearing, Lipovac agreed to pay for a home study investigation. On February 29, 1996, the district court appointed Dr. Craig Rypma as the home study investigator and ordered the study be conducted at Lipovac's cost. Pursuant to the court order, Dr. Rypma informed Lipovac the study would cost about \$3000. Lipovac paid Dr. Rypma a \$3000 retainer.

On August 12, 1996, after the home study investigation was concluded, Dr. Rypma sent Lipovac a bill for an additional \$1925. No objection to the bill was made at that time by Lipovac. Subsequent to the August 12, 1996 statement, Dr. Rypma submitted an amended bill, claiming Lipovac owed an additional \$1398.85 over the \$3000 retainer. On November 14, 1995, the district court ordered Lipovac to pay Rypma's fees. The order made no mention of the total amount of Dr. Rypma's charges or whether they were disputed. The November 14, 1996 order was signed by both parties and their attorneys, approving the order as to form and content.

After the November 14, 1996 order was issued, Lipovac refused to pay Dr. Rypma the entire \$1398.85 balance, as he disputed the accuracy of some of the charges incurred.¹ On March 7, 1997, Lipovac's ex-wife, Melanie Ekeland, paid the remaining balance without consulting Lipovac. She paid the bill because Dr. Rypma refused to conduct an unrelated custody evaluation for her until the debt was settled.

Thereafter, Ekeland unsuccessfully sought reimbursement from Lipovac. She then filed a contempt action against Lipovac for his violation of the November 1996 court order. The district court found Lipovac in contempt and ordered him to pay Ekeland \$1398.85 and \$500 toward her attorney fees.

On writ of certiorari, Lipovac argues there was insufficient evidence supporting a finding of contempt. He contends he never disputed he was liable to pay Dr. Rypma, he was only disputing the amount of the bill. He contends the court should not have found him in contempt simply because Ekeland chose to pay the disputed bill for her own personal reasons.

II. Standard of Review.

We review the action of the district court on writ of certiorari. *See* Iowa Code § 665.11 (1997). A writ of certiorari shall be granted when a court exceeds its proper

¹ The limited record on this issue includes the following:

Q. Now, it's not disputed that you received a November 6 letter from the doctor -- the doctor's wife, who is an attorney, demanding that you make payment on this?

A. Yes.

Q. And you responded with a statement that you disputed the bill and wanted to go through it and work it out; correct?

A. Yes.

jurisdiction or otherwise acts illegally. Iowa R. Civ. P. 306. Illegality exists when the findings of the court do not have substantial evidentiary support. *Fetters v. Degnan*, 250 N.W.2d 25, 27 (Iowa 1977). Once certiorari is granted, we review for errors at law. Iowa R. App. P. 4; *Medina v. Iowa Dist. Court*, 552 N.W.2d 140, 141 (Iowa 1996).

III. Merits.

We apply a special rule in reviewing contempt cases. *Ervin v. Iowa Dist. Court*, 495 N.W.2d 742, 744-45 (Iowa 1993). In *Ervin*, the supreme court stated:

When a finding of contempt is challenged on appeal, review is not de novo; rather, the court examines the evidence to ensure that proper proof—substantial evidence—supports the judgment of contempt. Because of the quasi-criminal nature of the proceeding, the finding of contempt must be established by proof beyond a reasonable doubt. Hence substantial evidence can be described as such evidence as could convince a rational trier of fact that the alleged contemner is guilty of contempt beyond a reasonable doubt. (citations omitted).

Id.

Ekeland has the burden of demonstrating Lipovac had a duty to obey the court order and failed to perform that duty. *See In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). The burden then shifts to Lipovac to show he did not willfully violate the court order. *Id.* His burden is one of production and not of persuasion. *See Rater v. Iowa Dist. Court*, 548 N.W.2d 588, 591 (Iowa App. 1996). The burden remains upon Ekeland to prove beyond a reasonable doubt that Lipovac willfully disobeyed the court's order. *See Jacobo*, 526 N.W.2d at 866. Evidence establishes willful disobedience if it demonstrates:

[C]onduct that is intentional and deliberate with a bad or evil purpose, or wanton in disregard of the rights of others or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemnor had a right or not.

Amro v. Iowa Dist. Court, 429 N.W.2d 135, 140 (Iowa 1988).

The record reflects Lipovac was engaged in disputing Dr. Rypma's charges when Ekeland voluntarily paid the bill for her own, unrelated reasons. The record fails to demonstrate that Lipovac disputed his *obligation* to pay for Dr. Rypma's investigation, he only disputed the *amount* of the total charges. Lipovac's good faith is demonstrated by his payment of a \$3000 initial retainer, which Dr. Rypma represented would cover the majority of his costs associated with the investigation.

The record also fails to indicate that Lipovac acted in wanton disregard for Ekeland's rights when he engaged in disputing the amount of Dr. Rypma's bill. Lipovac correctly asserts the November 14, 1996 order did not grant Ekeland the right to use Dr. Rypma's services for matters unrelated to the instant litigation. Lipovac's dispute of Dr. Rypma's bill and Rypma's corresponding refusal to do work for Ekeland until the bill was settled did not infringe on any right granted by the November 14, 1996 court order.

Ekeland argues Lipovac should not be excused from complying with the court order "because of personal disagreement with its practicality." *Ervin*, 495 N.W.2d at 745. She contends the facts of *Ervin* are analogous to the instant case, and Lipovac should not be excused from being held in contempt merely because he disputes the *amount* he is required to pay. We disagree. *Ervin* is distinguishable on its facts. The

supreme court in *Ervin* stated “It is also clear . . . that the finding of contempt stood, not on Ervin’s failure to *complete* the fire lanes, but rather on a *total failure to attempt to do so.*” *Id.* (emphasis added.) In the instant case, the record reflects Lipovac was not shirking his obligation to pay at all, rather he was attempting to ascertain the correct amount he owed Dr. Rypma.

Because the record fails to establish Lipovac’s willful violation of the November 14, 1996 order, he should not have been found in contempt. Accordingly, the writ is sustained, and we remand to the district court for proceedings consistent with this opinion.

WRIT SUSTAINED; CASE REMANDED.