FILED
JUN 24 1980
CLERK SUPREME COURT

220

IN THE COURT OF APPEALS OF IOWA

JAMES ADRIAN ERICKSON,

Plaintiff-appellant,

vs.

HON. SHIRLEY HORAN, MAGISTRATE, 5TH JUDICIAL DISTRICT,

Defendant-Appellee.

Filed
June 24, 1980

0-114
2-63518

Certiorari to Dallas District Court - Shirley Horan, Magistrate.

Plaintiff challenges by certiorari a magistrate's order punishing him for contempt. - WRIT SUSTAINED.

Joseph E. Owens, Ankeny, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa, and Jeanine Freeman, Assistant Attorney General, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff challenges by way of certiorari pursuant to section 665.11, The Code 1979, a magistrate's order punishing him for contempt for failing to comply with the magistrate's order that he forward his hunting license to the magistrate court. Plaintiff contends he did not receive notice of the magistrate's order, that the State did not prove his willful disobedience of the order by clear and satisfactory evidence, that the magistrate erred in failing to take into account a change in the statute regarding the revocation of combination hunting and fishing licenses, that the magistrate erred in allowing testimony on matters that were irrelevant and of which the declarant had no personal knowledge, and that the contempt judgment was void because of the magistrate's failure to file a written statement of facts on which the order of punishment for contempt was founded. We sustain the writ and reverse the magistrate's order punishing plaintiff for contempt.

On March 22, 1978, plaintiff pleaded guilty to a charge of unlawful possession of deer in violation of sections 109.32 and 109.38, The Code 1977. Plaintiff was ordered to pay a fine, as well as liquidated damages, and the magistrate informed him that his license would be revoked for a period of one year from the date of the guilty plea. A letter dated March 30, 1978, was allegedly sent to plaintiff directing him to forward his hunting license to the magistrate court. The letter was addressed to Rural Route 1, Perry, Iowa. Plaintiff asserted that he resided on Rural Route 2, Perry, Iowa, and that he had never resided on Rural Route 1. Plaintiff claimed he never received the letter, and thus, could not be punished for contempt for disobeying the order since he never received it. In its "Finding of Fact and Order," the magistrate found that the letter was mailed to plaintiff and that all previous correspondence was mailed to that address. The magistrate also took notice of a statement by plaintiff at an appearance before the magistrate on February 28, 1979, admitting receipt of the letter but claiming that he had lost it. Based on those facts the magistrate found plaintiff in contempt and sentenced him to fourteen days in jail.

On certiorari to question a judgment of contempt, we review the record to determine whether proof of the contempt is clear and satisfactory. Huston v. Huston, 255 Iowa 543, 549, 122 N.W.2d 892, 896 (1963). Our review is not de novo, but the

judgment does not have the force and effect of a jury verdict. Id. We give weight to the trial court's findings of fact but we are not bound by them. Orkin Exterminating Co. v. Burnett, 160 N.W.2d 427, 431 (Iowa 1968).

We do not think the State has fulfilled its burden of clearly and satisfactorily showing that plaintiff knowingly violated the magistrate's order requiring him to forward his hunting license to the magistrate. The basis for our decision lies in the resolution of the issue of receipt of the magistrate's letter containing the order. There is no direct proof in the record that plaintiff received the letter. The presumption of receipt of a letter sent through the mail can only be invoked if the letter was properly addressed. See Roshek Realty Co. v. Roshek Brothers Co., 249 Iowa 349, 356, 87 N.W.2d 8, 12 (1957); Central Trust Co. v. City of Des Moines, 205 Iowa 742, 746, 218 N.W. 580, 582 (1928). Here, the record clearly shows that the letter was addressed to an address at which plaintiff was not residing. The magistrate found that all previous correspondence was sent to that address. However, there is nothing in the record supporting that statement. Assuming arguendo that all previous correspondence was sent to that address, there is no evidence in the record showing that it was correspondence requiring the type of response from plaintiff that would prove that plaintiff received the prior correspondence. Moreover, even if a presumption of receipt could be invoked, that presumption is rebutted by a denial of receipt. Roshek Realty Co., 249 Iowa at 356-57, 87 N.W.2d at 13. Plaintiff clearly expressed such a denial in the case at bar.

The State requests us to take judicial notice of the fact that Perry, Iowa is a small, primarily rural community where the mail would be expected to be delivered to the correct address even if improperly addressed. We decline to take judicial notice of such a fact, especially considering that Perry's population of approximately 7000 people hardly characterizes it in our mind as a "small, primarily rural community."

The magistrate found that in an appearance in magistrate's court, plaintiff admitted receipt of the letter but stated that he had lost it. Our review of the record leads us to conclude that plaintiff's statements to the magistrate at that time were in reference to receipt of a copy of the letter that plaintiff obtained for purposes of preparing his defense to the contempt action. Consequently, those statements have no

bearing on the grounds for contempt alleged in this case.

In light of the record, we cannot conclude that the State has sustained its burden of proving a knowing disobedience of the magistrate's order by clear and satisfactory evidence. Consequently, we sustain the writ of certiorari on that ground, and reverse the magistrate's order punishing plaintiff for contempt. In light of that determination, we need not address the other issues raised by plaintiff.

WRIT SUSTAINED.