FILED
AUG 30 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-242 / 89-1159

IN RE THE MARRIAGE OF CAROL ANN OLSON AND ROBERT DEAN OLSON

Upon the Petition of

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CAROL ANN OLSON,

Appellant,

And Concerning

ROBERT DEAN OLSON,

Appellee.

Appeal from the Iowa District Court for Webster County, Newt Draheim, Judge.

The petitioner wife appeals a judgment of the district court refusing to hold respondent husband in contempt for failure to timely pay alimony and child support over a period of several years. **AFFIRMED.**

Mark S. Soldat, Algona, for appellant.

Peter J. Leehey of Estes & Leehey, Fort Dodge, for appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ. Habhab, J., takes no part.

OXBERGER, C.J.

The marriage of Robert and Carol Olson was dissolved on April 12, 1984. Pursuant to the decree, Robert was to pay Carol $7500 in five equal installments of $1500 without interest commencing January 1, 1985. Robert was to pay child support in the amount of $400 per month commencing May 1, 1984 and continuing to December 1, 1984. The decree also provided that should the couple's youngest child, Curtis, wish to continue in a course of vocational training, Robert was to pay one-half the tuition and pay to Carol $200 per month if Curtis remained at home while in school. Robert was to pay alimony of $350.00 per month starting May 1, 1984 with the amount decreasing over a scheduled period of time and terminating after April 1, 1991. Robert was also to pay the costs of the action and $600 towards Carol's attorney fees.

On April 11, 1989, Carol filed a motion for contempt proceedings and a subsequent affidavit in support of rule to show cause. At a hearing held on July 17, 1989, Carol asserted that Robert failed on at least 126 occasions to make timely alimony, child support and property settlement payments and stopped paying alimony entirely from February through June 1989. Robert did pay arrearages off on June 23, 1989. Robert maintained that he paid his bills between the first and the tenth of each month and that he considered such payments timely. Robert also claimed

financial inability citing specifically financial assistance given to his daughter for college expenses and car repairs. Lastly, Robert stated that he had stopped payments during 1989 pursuant to negotiations with Carol about her purchase of his interest in the family home.

The district court ruled that Robert was not behind in his child support or alimony payments, and that Carol had failed to establish beyond a reasonable doubt that Robert's previous tardiness was willful. The court refused to find Robert in contempt, and taxed all costs to Carol. Carol has appealed.

Carol argues that from 1983 to 1989 Robert had thoroughly flaunted the decree's order that he pay Carol on specific dates. Carol argues that the decree mandates that each payment be made on the exact date stated in the decree. Carol further argues that since Robert did not make a full and fair disclosure of his income, his remarks that he did not always have the money to pay on time should be given no weight. Carol additionally maintains the district court should have found Robert in contempt for failing to pay the total judgment interest. Carol lastly maintains the trial court erred in taxing the costs of the present action to her.

Where an application for contempt is dismissed, review on direct appeal is on assigned error only. Iowa R. App. P.4; Matter of Guardianship and Conservatorship of Cerven,

334 N.W.2d 337, 339 (Iowa App. 1983). Contumacious actions must be established by proof beyond a reasonable doubt. Phillips v. Iowa District Court for Johnson County. 380 N.W.2d 706, 709 (Iowa 1986).

Noncompliance with a provision in a dissolution decree must be willful to be a ground for a contempt citation. Callenius v. Blair, 309 N.W.2d 415, 419 (Iowa 1981). The burden of persuasion with respect to the willfulness issue remains on the complainant at all times. Skinner v. Ruigh, 351 N.W.2d 182, 185 (Iowa 1984). Even if the contemnee makes a prima facie case and the contemner introduces no evidence the court must still weigh the contemnee's evidence to determine whether the elements of the offense have been established by the requisite proof. Id.

We find substantial evidence to support the district court's decision to dismiss the contempt petition against Robert and therefore affirm the dismissal. Since Robert was not found in contempt the costs of that action were correctly assessed against Carol.

The costs of this appeal shall be assessed to Carol and both parties shall pay their own attorney's fees.

AFFIRMED.