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IN THE COURT OF APPEALS OF IOWA
CLERK SUPREME COURT

SOO TRACTOR SWEEPRAKE CO., INC.,
a corporation,

Appellee,

v.

DISTRICT LODGE NO. 162, INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO, and GEORGE WAGNER and
RICHARD STURGEON, Business Agents of said
Organization and all Members, Agents and Representatives
of said Union,

Appellants.

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) Filed
) December 28, 1977
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Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Appeal from judgment and sentence for contempt imposed for violation of an
injunction in a labor dispute — appeal treated as petition for certiorari, writ granted
and sustained in part.

Don W. Thompson, of Sioux City, for appellee.

Macdonald Smith and Harry H. Smith, of Sioux City, for appellants.

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

PER CURIAM

We have been asked to review an entry of judgment and sentence for contempt against two business representatives of a labor union based upon alleged violation of an injunction enjoining the union and its striking members from violence and mass picketing in connection with a labor dispute. The finding of contempt and judgment was against both the union and the business representatives. Only the latter appeal.

At the outset we note that these business representatives, George Wagner and Richard Sturgeon, seek to appeal the judgment, contrary to the provisions of section 665.11, The Code. That section, while prohibiting appeal, provides that proceedings may, in proper cases, be taken to a higher court for revision by certiorari. Counsel for the appealing parties, at oral argument, directed our attention to rule 304, Rules of Appellate Procedure, which authorizes us to proceed as though the proper form of review had been sought. We conclude that under the authority of this rule the appeal should not be dismissed. It will be treated as if a writ of certiorari had been timely applied for and granted. See Allen v. Lindeman, 164 N.W.2d 346, 350 (Iowa 1969); Penland v. Penland, 255 Iowa 308, 122 N.W.2d 333 (1963).

The thrust of the argument advanced by the business representatives is that there is no evidence that either of them personally participated in or aided and abetted the acts found by the court to be violative of the injunction. Contempt proceedings are commonly treated as criminal in nature even when they arise in a civil action, but proof of acts constituting contempt need not be beyond a reasonable doubt — it is said that the proper standard is proof by clear and satisfactory evidence. Brown v. District Court of Webster County, 158 N.W.2d 744, 748 (Iowa 1968). In reviewing the trial court's findings in contempt matters our review is not de novo but only to assure that the proof of contempt is clear and satisfactory. State v. District Court of Polk County, 231 N.W.2d 1, 5 (Iowa 1975).

The acts which the trial court found violative of the injunction were:

- (a) attempts by two striking union members to force an automobile in which a nonstriking employee and his wife were riding off the road on July 16, 1974;
- (b) the breaking by two striking union members of the windshield on a nonstriking employee's car with a baseball bat on August 7, 1974; and
- (c) maintaining more than four pickets at the entrance to the plaintiff's plant on seven different dates.

We agree with the contentions of the two business representatives that, under the proper standard of review previously set forth, there is not sufficient evidence in the record to sustain a finding of contempt on their part based on the violations of the injunction described in paragraphs (a) and (b) above. Wilfully contemptuous conduct cannot be established vicariously and, although other union members were involved in these activities, there is no evidence the business representatives were personally involved in or aided and abetted the conduct in question.

We conclude, however, that a different result may prevail as to the acts described in paragraph (c) above. The record would support a finding that the business representatives were personally responsible for the number of pickets at the plant entrance. They were the persons who coordinated this effort; they frequently visited the plant entrance; and in the words of one of these representatives, "kept a very close watch on the picket line." In the written explanation of their conduct filed in the trial court pursuant to section 665.7, The Code, they did not disclaim personal responsibility for the number of pickets, nor did they deny that on occasion more than four people were in the picket line. Instead they sought to justify the presence of these "extra persons" on grounds which the trial court was not bound to accept.

While the evidence was in conflict as to these alleged violations of the injunction, it would support the trial court's findings that they occurred. As previously noted we also believe that the record ties the business representatives to the picketing situation sufficiently to support a finding of contempt on their part if the trial court chose to draw such an inference from the evidence. By so stating, we do not suggest that the trial court was compelled to draw such an inference. In this respect we face the problem that the trial court did not clearly delineate, in its findings of fact, which of the several defendants were responsible for the separate and distinct acts found to constitute violations of the injunction.¹ We are thus unable to ascertain whether the

¹ While the specificity of written findings required by section 665.10, The Code, applies on its face only to cases in which warrants of commitment are issued, we conclude that the better practice requires, in all cases involving multiple acts and multiple defendants, that the acts for which each defendant is found to be in contempt be delineated.

business representatives were found guilty of contempt on grounds supported by the evidence or on grounds for which the evidence lends no support. Because our review is not de novo, this determination must be made in the first instance by the trial court. Within the alternatives which are available to the trial court, consistent with this opinion, we express no opinion as to what this determination should be.

We order that the writ of certiorari which we issue to sustain our jurisdiction be sustained in part, that the judgment against the two business representatives, George Wagner and Richard Sturgeon, be vacated, and that the matter be remanded to the trial court for entry of a new judgment, consistent with this opinion, on the record previously made.

OXBERGER, J., dissents.

OXBERGER, J. (dissenting)

I dissent. I cannot join the majority in ruling that the evidence in this record would support a trial court's finding that the injunction was violated by the union's maintaining more than four pickets at the entrance to the company premises at one time.

In contempt, the court redresses its own injury. Its exercise of its contempt power has long been subject to extraordinary scrutiny. More than 120 years ago the Iowa court said:

Ordinarily, it is true, the presumption is in favor of the regularity of the proceedings of the District Court. . . . In cases of contempt, however, the provision of the Code is positive. . . . The power to punish for contempt, is a necessary one; but at the same time it should be carefully exercised, in strict accordance with law, and a due regard to the rights of those charged.

Skiff v. State of Iowa, 2 (Clark) Iowa 550 (1856). The cases decided since 1856 have further illustrated what the *Skiff* "strict accordance with law, and a due regard to the rights of those charged" means. In *United Packing House Workers v. Boynton*, 240 Iowa 212, 223, 35 N.W.2d 881, 887 (1949) the court said:

The power to proceed summarily without formal indictment and without a jury to hear charges of contempt of court and to assess punishment, although statutory in Iowa, has always been an attribute of all courts of record in every stage of development of our system of judicial procedure. The object is not to punish an offense but to compel obedience and respect for the order of the court. *State v. Baker*, 222 Iowa 903, 270 N.W. 359. The keystone of this government has been, is, and must be, respect for and obedience to orders of the courts. Courts should not hesitate to use the powers granted to them by contempt actions in obtaining obedience to their orders, but all courts should recognize it as an extremely dictatorial weapon and use it only where both the violation and the violator are identified by clear, convincing and satisfactory proof. (emphasis added).

Significantly in the case at bar, the Application for Order to Show Cause and its subsequent Amendment included no charge that the union maintained more than the four pickets allowed by the injunction. At the hearing the testimony of company official Allen Mahaney revealed occasions when he had observed and noted in his log that there were five pickets and once eight pickets. In its written explanation of conduct addressed to the trial judge the union claimed any excessive numbers of pickets was quite isolated in occurrence and incidental to the

maintenance of strike activity - either the changing of shifts, bringing relief food and drink, or inquiring regarding picket duty. Mahancy himself had testified there was no real problem with the number of pickets ". . . other than the fact that the injunction stated there were only supposed to be four."

I would rule such a record, conceded by the company to rise no further than the level of a mere technical violation, cannot support a finding of contempt. **United Packing House** requires the violation be identified by clear, convincing and satisfactory proof. A "no-harm-done but technically-in-violation-of" showing does not meet that test. Without a violation of the injunction there cannot be a finding of a violator acting in contempt of the court's orders.

I would sustain the writ of certiorari and dismiss the citation.