

IN THE COURT OF APPEALS OF IOWA

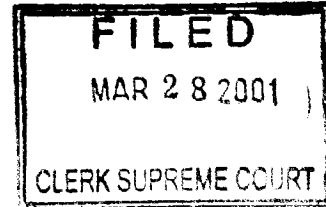
No. 1-059 / 99-1469

Filed March 28, 2001

STEPHEN J. STEIN,
Plaintiff,

vs.

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



Appeal from the Iowa District Court for Humboldt County, Kurt L. Wilke,
Judge.

In this certiorari action, the plaintiff seeks review of the district court's
decision finding him in contempt for failure to pay medical and dental bills as
required by the parties' dissolution decree. **WRIT SUSTAINED.**

Joseph J. Straub of Winkel & Straub, Algona, for plaintiff.

Steven K. Sandblom of Baker, Johnsen and Sandblom, Humboldt, for
defendant below Julie Stein.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

HECHT, J.

In this certiorari action, Stephen Stein seeks review of the district court's decision finding him in contempt for failure to pay medical and dental bills as required by the decree dissolving the marriage between himself and Julie Stein. Julie requests an award of appellate attorney fees. We sustain the writ of certiorari and reverse the district court.

I. Factual Background and Proceedings. The marriage between Julie and Stephen was dissolved by decree on February 10, 1999. The decree was the result of a stipulation agreed to by both parties regarding the terms of their dissolution. At the time of the decree, the parties had two minor children; Brook, born October 7, 1980, and Joel, born December 1, 1982. Physical custody of the children was granted to Julie and Stephen was ordered to pay child support. Stephen was also ordered to pay Julie \$8,429.76 for her share of equity in the house owned by the parties during the marriage, \$800 for credit card debt, \$463.50 in reimbursement for medical insurance, and one-half of the medical insurance costs for the children. All of these payments were to be made within sixty days of the date of the decree. At the time of the contempt hearing, Stephen had satisfied his responsibility as to these obligations and was current with his child support payments.

In addition to these payments, the decree required Stephen to pay "[o]ne half of the orthodontic bill at Dunscombe Dental Clinic in the approximate total amount of \$1,285.00." The decree did not specify a time period in which Stephen had to make the payment. The decree further provided:

Any medical expenses not covered by insurance, including but not limited to the deductible on the medical insurance policy, eye care,

dental and orthodontic care and counseling shall be split equally between the parties. . . . [Julie] shall provide to [Stephen] copies of all medical and related bills and all explanations of benefits statements. [Stephen] shall reimburse [Julie] for his share of the children's expenses set out in this paragraph within thirty days of his receipt of the medical bills and insurance statements documenting the out of pocket expense.

On July 20, 1999, Julie filed an application for contempt alleging Stephen had not paid his portion of the Dunscombe Dental Clinic bill and certain medical bills totaling \$103.50 in willful disobedience of a court order. After a hearing, the district court found Stephen to be in contempt and sentenced him to thirty days in jail unless he paid the bills within thirty days of the order. Stephen sought review of this order through a certiorari action, which was granted by our supreme court.

II. Standard of Review. Our review is at law. *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 140 (Iowa 1988). In a certiorari action, we examine only the jurisdiction of the district court and the legality of its actions. *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996). Illegality exists when the court's factual findings lack substantial evidentiary support or when the court has not properly applied the law. See *Whitlock v. Iowa Dist. Ct.*, 497 N.W.2d 891, 893 (Iowa 1993).

III. Contempt. We must determine whether substantial evidence exists that would convince a rational trier of fact the alleged contemner is guilty of contempt beyond a reasonable doubt. *Ervin v. Iowa Dist. Ct.*, 495 N.W.2d 742, 744-45 (Iowa 1993). The party requesting the contempt finding has the burden of proving the contemner (1) had a duty to obey a court order, and (2) willfully failed to perform that duty. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). Once a violation of a court order has been shown, the burden shifts

to the alleged contemner to produce evidence suggesting the violation was not willful; however, the contemnee retains the burden to prove willfulness beyond a reasonable doubt. *In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). An individual's behavior constitutes willful disobedience if it is "intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not." *In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa Ct. App. 1993). The contemner may show a failure to obey the order was not willful by proving either the order was indefinite or the contemner was unable to perform the act ordered. *McKinley v. Iowa Dist. Ct.*, 542 N.W.2d 822, 824 (Iowa 1996).

A. *Orthodontia Bill*. Stephen asserts the district court erred by finding he willfully disobeyed the court's order to pay half of the Dunscombe Dental Clinic bill. The dissolution decree did not establish a deadline for Stephen's payment of this bill and the uncontroverted evidence in the record suggests he intends to pay it when he is able. Both Julie and Stephen testified they are having financial difficulties as a result of the divorce. Stephen testified he was unable to pay his share of this bill in view of his limited income and the amount of the other payments required of him before specific deadlines established in the decree. These payments totaled more than \$10,000 and were timely made during the interim between the entry of the decree on February 10, 1999, and the contempt hearing on August 9, 1999, for child support, insurance, and a property settlement.

We first note the district court made no express finding beyond a reasonable doubt that Stephen's failure to pay the orthodontia bill constituted willful disobedience of the decree. Absent evidence rebutting Stephen's professed inability to pay, we are unable to find substantial evidence in this record supporting such a finding. We therefore reverse the district court's order finding Stephen in contempt for failure to pay the Dunscombe Dental Clinic bill. Notwithstanding this, Stephen remains liable to pay his share of this bill if he has not already done so.

B. Medical Bills Partially Paid by Insurance. Stephen also contends the district court erred by finding him in contempt for failing to reimburse Julie for one-half of the medical expenses not fully paid by insurance.¹ As noted above, the stipulation and dissolution decree requires reimbursement by Stephen only after he receives from Julie a copy of the bill and the insurance carrier's explanation of benefits for each item of such expense. When a party fails to provide the documentation required by the dissolution decree to the party obligated to make payment upon receipt of the information, the obligor's failure to make payment will generally not be deemed willful and deliberate. See *Jacobo*, 526 N.W.2d at 868; see also *Hankenson*, 503 N.W.2d at 433. The record indicates Julie has not complied with the dissolution decree's requirement of providing Stephen with *both* the bills and an explanation of benefits forms for

¹ We note one of the bills for which Julie seeks reimbursement is for uninsured optometric services. We discuss this item of expense separately below.

those bills partially paid by insurance.² Accordingly, there is no substantial evidence in the record to support a finding Stephen willfully disobeyed the decree by failing to reimburse Julie for his share of medical bills partially paid by insurance.

C. Optometric Expense. There is no evidence in the record tending to prove the parties had insurance coverage for optometric services. Stephen therefore has no right to demand from Julie an explanation of insurance benefits form for this expense as a condition of his duty to reimburse her. However, for the reasons stated above in our discussion of the orthodontia bill, the district court's contempt order is not supported by substantial evidence of willful disobedience.

IV. Attorney Fees. Julie requests an award of attorney fees on appeal. An award of attorney fees is not a matter of right, but rests within the court's discretion and the parties' financial positions. *In re Marriage of Daniels*, 568 N.W.2d 51, 56 (Iowa Ct. App. 1997). We consider the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court's decision on appeal. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa Ct. App. 1998). Given our determination there was not substantial evidence in the record to prove beyond a reasonable doubt Stephen was in contempt, we decline to award attorney fees to Julie.

WRIT SUSTAINED.

² Our careful review of the record discloses Julie provided Stephen with *either* a bill or the insurer's explanation of benefits, but not both as required by the decree, for the expenses partially covered by insurance.