FILED
JUN 29 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-536 / 92-210

ALAN D. SANDUSKY
Plaintiff,

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vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,
Defendant.

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell, Judge.

Petitioner filed a petition for writ of certiorari, claiming the district court lacked jurisdiction to find him in contempt for failure to pay child support. **WRIT ANNULLED.**

R. Scott Rhinehart of Richard Rhinehart & Associates, Sioux City, for plaintiff.

Bonnie J. Campbell, Attorney General, John M. Parmeter, Special Assistant Attorney General, Robert R. Huibregtse, Assistant Attorney General, and John C. Baker, Assistant County Attorney, for defendant.

Considered by Sackett, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J. 000214

Alan D. Sandusky and Barbara K. Sandusky were divorced in Arizona in 1983. Barbara was awarded custody of the couple's two minor children. The dissolution decree was modified in June 1986. Alan's child support obligation was then set at $100 per month per child.

Sometime after the modification order Alan moved to Sioux City, Iowa, and Barbara moved to South Sioux City, Nebraska. Through the Iowa Child Support Recovery Unit, in March 1991 Barbara registered the Arizona child support order in Iowa pursuant to the Uniform Support of Dependents Law, Iowa Code chapter 252A.

Notice of the action was sent by certified mail to Alan at his last known address in Sioux City. Alan was aware there was a certified mailing at the post office for him, but he refused delivery.

An application for rule to show cause was filed by the Child Support Recovery Unit in Woodbury County on October 24, 1991. The application alleged Alan was in default in his child support in the amount of $14,313. A Child Support Recovery Officer filed an affidavit to support the application. The district court issued a rule to show cause.

Alan received notice of the action by personal service on November 4, 1991. He filed a financial affidavit with the court in order to obtain appointed counsel.

A hearing in the case was held on December 31, 1991. Alan and his counsel appeared for the hearing. Alan argued that he did not receive notice of the foreign judgment, as required by section 252A.6(4). He also argued that an order to show cause should properly be prepared by the clerk of court, and this procedure had not been followed.

The district court issued its judgment on January 3, 1992. The court denied Alan's motion to dismiss for lack of service and jurisdiction. The court found Alan was employable due to the fact he was educated, had good communication skills, and was generally healthy. Additionally, Alan was aware of his child support obligation, and had worked short periods of time without making any payments. The court then concluded Alan was in contempt of court and ordered him to be imprisoned in the county jail for a period of fourteen days if he did not keep current in his child support in the future.

Alan appealed. He subsequently filed an application to consider the appeal as a petition for issuance of writ of certiorari. On April 9, 1992, the supreme court granted the application. The case was subsequently transferred to us for consideration.

Our scope of review in this certiorari action is at law and not de novo. Zimmermann v. Iowa District Court, 480 N.W.2d 70, 74 (Iowa 1992). The factual findings of the district court are binding upon us if supported by substantial evidence. Id. The court's legal conclusions,

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however, are not. Id. Proof of contempt must be established beyond a reasonable doubt. Id.

Alan contends the district court lacked jurisdiction to enter a finding of contempt against him because the procedures required by section 665.7 were not followed. Section 665.7 provides, "the offender must be served personally with a rule to show cause against the punishment."

Alan states that three documents are necessary to invoke the court's jurisdiction in a contempt action. First, the Child Support Recovery Unit should file an application claiming contempt and attach an affidavit. Second, the court may issue an order instructing the clerk of court to prepare and issue a rule to show cause. Third, the clerk should prepare and issue a rule to show cause to be personally served upon the contemner. Alan also states that the rule of show cause should have advised him of the opportunity to make a written explanation of his conduct, as permitted by section 665.7.

In this case, the Child Support Recovery Unit did file an application claiming contempt with an attached affidavit. The court, however, did not direct the clerk of court to issue a rule to show cause, but issued such a rule itself. Alan contends he was not actually served with a rule to show cause, but with a document which should be considered an order to prepare a rule to show cause because it was issued by the district court, not the clerk. Alan

contends that because the clerk of court did not issue a rule to show cause in this case, the court had no jurisdiction to proceed with the case.

Section 665.7 does not specify who is to issue a rule to show cause. Also, our case law states only that a contemner must receive personal service of the rule to show cause. See Sharkey v. Iowa District Court, 461 N.W.2d 320, 323 (Iowa 1990); Beauchamp v. Iowa District Court, 328 N.W.2d 527, 528 (Iowa 1983); and Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980).

We note that Alan is not now alleging that he did not receive notice of the action. He also does not allege that the procedure used here violates any rules of civil procedure. We conclude Alan has not shown the district court lacked jurisdiction to find him in contempt.

Also, Alan contends that he should have been advised that section 665.7 provides that an offender may, at his option, make a written explanation of his conduct under oath. A similar argument was raised in Gibb v. Hansen, 286 N.W.2d 180, 185 (Iowa 1979). The court there found the language of the statute placed the burden upon the contemner to request to make such a written explanation. Id.

We conclude Alan has failed to show the district court exceeded its jurisdiction or otherwise acted illegally. We annul the writ of certiorari.

WRIT ANNULLED.

Habhab, J., concurs; Sackett, P.J., specially concurs without opinion.