

IN THE COURT OF APPEALS OF IOWA

FILED

APR 27 1982

CLERK SUPREME COURT

MARY KATHRYN BAILEY,

)

Petitioner-Appellant,

)

vs.

)

Filed April 27, 1982

4

ROBERT THOMAS STRAIN,

)

Respondent-Appellee.

)

2-100

2-66744

Appeal from Linn District Court - Clinton Shaeffer, Judge.

Petitioner-wife appeals from the district court order refusing to hold respondent-husband in contempt for failure to make court-ordered child support payments. VACATED AND REMANDED.

Dennis Currell of Irvine, Currell & Gillespie, Cedar Rapids, Iowa, for petitioner-appellant.

Robert L. Huffer, Story City, Iowa, for respondent-appellee.

Submitted to Oxberger, C.J., Carter and Johnson, JJ.

Petitioner-wife appeals from the district court order refusing to hold respondent-husband in contempt for failure to make court-ordered child support payments. On appeal she asserts that the trial court applied an improper standard for determining whether respondent was in contempt.

Petitioner applied to have respondent held in contempt for his failure to make court-ordered child support. The court found that respondent was not in contempt because at the time of the hearing he was unable to make payment due to unemployment. In reviewing the record of the contempt proceedings, including the remarks made by the trial court in open court, we agree with petitioner's assertion that an improper standard was employed in determining whether respondent was in contempt for failure to pay the required amount of child support. As recognized in Harkins v. Harkins, 256 Iowa 207, 211-13, 127 N.W.2d 87, 90-91 (1964), respondent is entitled to maintain his own existence and need not commit all earnings or assets to payment of child support. But by the same token, if he is not making a reasonable effort to comply with the child support obligations of the decree to the extent that he is able to do so, he is guilty of contempt.

In the present case the trial court appears to have placed too much emphasis on respondent's financial status at the time of the last contempt hearing and did not focus on his failure to pay in the past when he was gainfully employed. Some indication is found in the record that the trial court believed the respondent's contempt, if any, for failure to make support payments in the past had already been adjudicated at previous contempt hearings. We do not read the record as so indicating. Past contempt proceedings were continued without any final adjudication having been rendered. As a result, we believe the latest order to show cause brought before the court the issue of contempt based upon respondent's payment records throughout the entire history of the Iowa Uniform

Support action, including the years 1979, 1980, and 1981. We therefore vacate the trial court's order and remand the case for reconsideration on the existing record of the issue of contempt for the entire period which we have indicated above. The standard for determination of contempt shall be consistent with the holding in Harkins v. Harkins.

VACATED AND REMANDED.