FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

182

PATRICIA D. COPIC,

Plaintiff,

vs.

THE HONORABLE LOUIS A. LAVORATO,
Judge, Fifth Judicial District of Iowa,

Defendant.

Filed April 24, 1984

4-36
69353

Appeal from the Iowa District Court for Polk County - Louis A. Lavorato, Judge.

Plaintiff, the noncustodial parent, was granted a writ of certiorari to challenge the court's finding that she is in contempt for failure to comply with the court's order regarding travel arrangements for visitation by her child. WRIT ANNULLED.

Kermit Dunahoo, Des Moines, for plaintiff.

Richard D. Hermann of Dick Hermann Law Office, Ankeny, for Dennis L. Copic, who was the respondent in the underlying action.

Heard by Donielson, P.J., and Snell and Schlegel, JJ.

Plaintiff, the noncustodial parent, was granted a writ of certiorari to challenge the court's finding that she is in contempt for failure to comply with the court's order regarding travel arrangements for visitation by her child. On appeal, she asserts that the court order which she allegedly violated did not, strictly interpreted, order her to return the child to Des Moines by any specific date, and did not require her to use airline tickets sent her by her husband for use in returning the child to Des Moines. She asserts there was thus no showing that she willfully violated the explicit terms of the order. We agree with the trial court and therefore annul the writ.

The marriage of Patricia (plaintiff) and Dennis Copic was dissolved in 1980. We granted a limited remand to allow the district court to work out visitation plans for 1982. Plaintiff resides in Hawaii and Dennis in Des Moines. The trial court designed a plan whereby the child could visit his mother in Hawaii for the summer, plaintiff to pay costs. In an order dated June 2, 1982, the court stated: "Petitioner shall be responsible for paying all costs of returning the said child to Respondent no later than August 18, 1982, at Respondent's home in Des Moines." The court also set up an arrangement requiring plaintiff to purchase plane tickets and deposit them with Dennis' attorney for use by Dennis if she should fail to return the child. The parties later agreed, without the knowledge of the court, that Dennis' attorney would cash in these tickets and buy new ones to allow plaintiff and the child to travel from Hawaii to Minneapolis where Dennis would resume custody. These tickets were sent to plaintiff in Hawaii. She did not use them, and eventually turned them over to her Hawaii attorney.

Dennis filed an application for rule to show cause why plaintiff should not be cited for contempt; the court issued the rule, and found plaintiff in contempt for failing to return the child. She was given ten days to purge herself of contempt by returning him to Des Moines. Dennis went to Hawaii himself and retrieved the

child, evidently within the ten days. However, Dennis applied for a new contempt order, based on plaintiff's retention of the tickets. The court found plaintiff in contempt because she "kept those tickets in an attempt to frustrate this Court's order to prevent the respondent [Dennis] from having transportation to Hawaii . . . ." She was sentenced to confinement for ten days in the Polk County Jail. The supreme court, per Uhlenhopp, J., granted a writ of certiorari and a stay of execution on the sentence.

In reviewing a finding of contempt by means of certiorari, we are guided by the following principles:

> Certiorari is an action at law to test the legality of the action taken by a trial court or tribunal; our review is not de novo. Generally, findings of fact are not reviewable on certiorari, but when a judgment of contempt, which is quasi criminal in nature, is challenged, we examine the evidence to ensure that proof of contempt is clear, satisfactory and convincing.
>
> The defenses available in a contempt proceeding are (1) indefiniteness or uncertainty of the order, and (2) absence of willfulness in disobeying the order. (citations omitted).

Bevers v. Kilburg, In and For Linn County, 326 N.W.2d 902, 904 (Iowa 1982). Plaintiff claims that there was no basis for finding her in contempt since she complied with the court order by purchasing plane tickets for Dennis to use if the child was not returned to him and giving those tickets to Dennis' attorney.

We disagree because plaintiff clearly and willfully refused to return the child by August 18, 1982, as required by the order of June 2. Plaintiff alleges that that order did not specifically require that she return the child by August 18. The precise language of the order held plaintiff "responsible for paying all costs of returning the said child to Respondent no later than August 18, 1982 . . . ." Plaintiff cannot seriously contend that this order did not contemplate that she was required to return the child. The explicit requirement that she pay the costs of returning the child would be rendered completely meaningless if we adopted her hypertechnical construction of the language.

In any event, plaintiff's argument that that part of the order was ambiguous or vague is belied by her own conduct and testimony. See Bevers, 326 N.W.2d at 904. On June 2, plaintiff told the trial court that she was aware of her obligation to return the child to Dennis by August 18. At the hearing on the instant application, she acknowledged that she was in contempt of court for failing to do so. She further admitted that she did not send back to Dennis the new plane tickets for the expressed purpose of denying Dennis the means to go to Hawaii at her expense to regain custody of the child—all this in contravention of the clear intent of the June 2 order that plaintiff would have to bear the cost of Dennis regaining custody if she did not send the child back by August 18.

Plaintiff was fully aware of her obligations under the June 2 order. The language of that order "was sufficiently clear, specific and unequivocal and . . . the parties were not misled as to their rights and duties." Bevers, 326 N.W.2d at 904. The trial court was therefore justified in finding plaintiff in contempt.

WRIT ANNULLED.

All judges concur except Snell, J., who specially concurs.

SNELL, J. (specially concurring)

I agree with the result which the majority reaches in this case.

There were two contempt orders in this case. The first one, entered October 6, held plaintiff in contempt for willfully failing to return the child by August 18. She was sentenced to jail for thirty days, but was given ten days to purge herself of this sentence by returning the child to Dennis within that time. Before the ten-day term had elapsed, however, Dennis took it upon himself to retrieve the child at his own expense. I believe this action effectively purged plaintiff of the October 6 contempt sentence.

On October 15, Dennis again filed an application for rule to show cause why plaintiff should not be held in contempt. On November 3, the court found that, under the original decree, plaintiff was to have provided Dennis's attorney with tickets enabling Dennis to retrieve the child, should plaintiff fail to comply with the orders of that original decree. The court further found that plaintiff received those tickets and "upon deciding not to return the child, failed and neglected to return the tickets in frustration of this Court's order." Although there was no order requiring her to return the tickets to Dennis's attorney, as this contempt order implies, I believe plaintiff was aware of the meaning of the original order requiring her to bear the costs of either the child's return or of Dennis's expenses to retrieve the child. She obtained the tickets which she had provided for Dennis and failed to use or return them by August 18. She further failed to use or return them later, thus frustrating and violating the provisions of the original dissolution decree by her actions. The November 3 contempt order was properly entered.