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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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| **STATE OF IOWA**, ex rel. **MARGARET EMILY PEPPLES**, Petitioner-Appellee, | ) | Filed November 29, 1982 |
| vs. | ) | 2-292 / 2-67141 162 |
| **JEROME (GERALD) EUGENE FINNEGAN**, Respondent-Appellant. | ) | |

Appeal from Boone District Court, M. D. Seiser, Judge.

Respondent-father appeals from trial court's order finding him in contempt for failure to pay court-ordered child support payments. WRIT DENIED.

Jerry L. Jones, Ames, for respondent-appellant.

Jim P. Robbins, Boone County Attorney, for petitioner-appellee.

Heard en banc.

Respondent-father, Jerome Finnegan, appeals from the judgment finding him in contempt for failure to make court-ordered payments. On appeal, he asserts that there was insufficient evidence to show that his failure to pay was willful. We deny the writ of certiorari.

On December 30, 1980, a court order was filed adjudicating Finnegan as the father of twin sons born to the petitioner, Margaret Pepples, on April 28, 1975. On February 25, 1981, the court ordered Finnegan to pay to Margaret the sum of $1365.00 for medical expenses and to make child-support payments at the rate of $150 per month retroactive to January 1, 1981.

On March 2, 1981, Finnegan commenced an action in the nature of a collateral attack on the judgment by reason of the court's alleged lack of jurisdiction.

On May 27, 1981, Finnegan was ordered by the court to show cause, and on June 29, 1981, following a hearing, the court found him in contempt of court.

At the hearing, Finnegan admitted that he had not made child support payments as ordered, but asserted that this was not willful since under his own interpretation of Iowa Rule of Civil Procedure 215.1, further proceedings were required before the final determination of his obligation to pay child support could be made. After finding that Finnegan had never offered to escrow the funds or made any effort to pay the support, and that he had intentionally refused to pay while he had the ability to do so, the court found him in contempt.

Finnegan has not filed a motion, under Iowa Rule of Civil Procedure 179(b), requesting a modification of the court's findings of fact.

On review of a contempt order, weight must be given to the trial court's findings. State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975). Only if there is no substantial support for the findings of the trial court, may we conclude that the court has acted illegally. Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974).

On direct examination, Finnegan admitted that he knew that he had child support obligations. On cross-examination, he testified that he had not been advised by counsel not to make the child support payments. There was nothing in the record indicating that he had made any effort to ascertain what his legal duty was insofar as those payments were concerned. Nor did he attempt to purge himself by stating that he would begin making payments. Under these facts, we are driven to the conclusion that he was acting in disregard of the rights of the children he was legally obligated to support, that he was acting contrary to a known duty, and that he evinced a lack of concern as to what his legal duty was.

In Lane, supra, the court held that willful disobedience of a court order was a necessary condition for a conviction for contempt. To establish that such disobedience was willful, it is necessary to show that the conduct in question was "intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not." Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980), citing Huston v. Huston, 255 Iowa 543, 548, 122 N.W.2d 892, 896 (1963). It is clear that Finnegan's conduct conforms precisely to this definition of willful disobedience of a court order.

Finnegan contends that his collateral attack under rule 215.1 constituted an excuse for his failure to comply with the court's order. Citing Orkin Extermination Company, Inc. v. Burnett, 160 N.W.2d 427 (Iowa 1968), he argues that although the trial court's determination is given weight, that determination is not binding upon the appellate court. He argues that under Werkmeister v. Kroneberger, 262

N.W.2d 295 (Iowa 1978), the decree for violation of which he was found to be in contempt of court was void for lack of jurisdiction, concluding that he therefore could not have been found in contempt by reason of noncompliance with it. He concludes that only by "clear and satisfactory evidence" could his conduct be characterized as contumacious. Critelli v. Tidrick, 244 Iowa 462, 472, 56 N.W.2d 159, 165 (1953); Clark v. District Court, 255 Iowa 1005, 125 N.W.2d 264 (1963).

"Generally, findings of fact are not reviewable on certiorari, but when a judgment of contempt is challenged, the rule is that we examine the evidence, not de novo, but to assure ourselves that proof of contempt is clear and satisfactory. This is an exception to our ordinary review on certiorari." Lane, supra. However, on review of a decision tried by a court without a jury, we will indulge every presumption in favor of findings made by the trial court as the basis of its decision. This presumption extends to the trial court's findings of ultimate fact, secondary facts, and inferences drawn therefrom. "In the absence of specific findings, every finding of fact necessary to support the decision appealed from will be presumed to have been made." 5 Am. Jur. 2d Appeal & Error § 840 (1962); Gaar, Scott & Company v. Nichols, 115 Iowa 223, 226, 88 N.W. 382, 383 (1901); Vogel v. Wadsworth, 48 Iowa 28 (1878). "[W]e are bound to presume any findings of facts supported by the record which would warrant the judgment." Smiley v. McIntosh, 129 Iowa 337, 342, 105 N.W. 577, 578 (1906). Under Iowa Rule of Civil Procedure 179(b), Finnegan was entitled to request a finding relative to his contention concerning rule 215.1. His failure to do so waives any argument he might have made based upon the trial court's omission of formal findings and conclusions of law concerning the 215.1 argument. In re Colman's Estate, 238 Iowa 768, 28 N.W.2d 500 (1947).

Where voidness is predicated on alleged lack of jurisdiction over the subject matter, parties, or authority of the court to render the decree, collateral attack will lie. Otherwise, violation of the writ, and not its validity, is at issue. Van

Matter v. Iowa District Court, no. 345-65470, slip op. at 3 (Iowa Oct. 27, 1982). However, Finnegan does not argue the merits of this issue here, except by his brief reference to Werkmeister. We are not in a position, with the record before us, to determine the merits of the 215.1 claim, which is still being litigated elsewhere.

Finnegan argues, in effect, that a mere claim of lack of jurisdiction under 215.1 is sufficient to justify ignoring an otherwise valid court order. If this were correct, anyone who thought he had a valid challenge to a court's authority could defy the court's orders with impunity. Such a state of affairs would clearly be intolerable, for the authority of the courts would become practically meaningless.

We therefore conclude that the trial court appropriately rejected Finnegan's defense that he could not have been in contempt when he deliberately violated the court's orders while pursuing the merits of the 215.1 claim in another action.

WRIT DENIED.