FILED
MAY 30 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD I. BAXTER,

Plaintiff,

vs.

THE IOWA DISTRICT COURT FOR CASS COUNTY, IOWA,

Defendant.

Filed May 30, 1980

0-115
2-63544

Certiorari to Cass District Court - Leo F. Connolly, Judge.

Plaintiff seeks by way of an original certiorari action a determination that the district court acted illegally in punishing him for contempt for disobeying an injunction restraining him from allowing his livestock to trespass upon adjacent lands. WRIT ANNULLED.

Michael A. Sciortino of Walter & Sciortino, Council Bluffs, Iowa, for plaintiff.

Ronald W. Feilmeyer of Cambridge, Feilmeyer, Landsness, Rutherford & Chase, Atlantic, Iowa, for defendant.

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

PER CURIAM

Plaintiff seeks by way of an original certiorari action a determination that the district court acted illegally in punishing him for contempt for disobeying an injunction restraining him from allowing his livestock to trespass upon adjacent land. We annul the writ.

I. Proof of contempt must be clear, satisfactory and convincing. American Security Benevolent Association v. District Court, 259 Iowa 983, 994, 147 N.W.2d 55, 59 (1966). In injunction cases, if there is evidence in the record to show that defendant intentionally and purposefully violated the injunction, he can properly be adjudged guilty of contempt. Orkin Exterminating Co. v. Burnett, 160 N.W.2d 427, 431 (Iowa 1968). In reviewing the evidence in contempt matters, the appellate court gives weight to the trial court's findings, but is not bound by them. Id. at 431.

In applying these principles to the present case, we find the evidence sustains the judgment of the trial court. On October 9, 1968, plaintiff was enjoined from allowing his livestock to trespass on certain adjacent land. The record reflects that the issues adjudicated at that time concerned plaintiff's failure to comply with the fencing statutes and his failure to take actions to restrain his livestock. Plaintiff makes no claim that the terms of the injunction are overbroad or that he failed to understand the type of conduct proscribed. To this extent, this case varies from Hudson v. Jenkins, 288 N.W.2d 566 (Iowa 1980) and similar cases.

The evidence presented shows that plaintiff was found guilty of contempt in 1969 for violating the same injunction. At that time he received a suspended jail sentence on condition that he restrain his stock. On April 20, 1979, the present show cause application was filed asserting a continuing violation of the injunction. Giving the evidence its most favorable light toward the plaintiff, it establishes in the present show cause proceeding, that plaintiff knew his stock was running unrestrained in violation of the injunction and that he took no affirmative action to correct this situation.[1] We find that this evidence is sufficient to support the trial court's order by clear, satisfactory and convincing evidence.

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[1] In this regard we find that plaintiff's efforts to retrieve his stock in no way served to purge his contempt. The nature of his obligation under the injunction was to take affirmative steps to keep them from escaping, to restrain them and to comply with the fencing statutes.

We also reject plaintiff's contention that the trial court's sentence was excessive. The sentence imposed was within the discretion accorded to trial courts in such matters;[2] particularly so in view of the previous finding of contempt on plaintiff's part.

II. We next consider and reject plaintiff's efforts to collaterally attack or modify the original October 9, 1968 decree by arguments raised for the first time in this court. On the record before us, the court issuing such decree appears to have had jurisdiction of both the parties and the subject matter. See, e.g. In re Marriage of Welsher, 274 N.W.2d 369, 371-72 (Iowa 1979). See also Kembler v. Schaefer, 161 Iowa 659, 143 N.W. 505 (1913); Keil v. Wright, 135 Iowa 383, 112 N.W. 633 (1907). There is no indication that the decree is void. If it is plaintiff's contention that it is voidable or should be modified, he must take proper action in the district court. We will not consider matters raised for the first time on appeal. In re Marriage of Welsher, 274 N.W.2d at 371-72.

The writ of certiorari is annulled.

WRIT ANNULLED.

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[2] Newby v. District Court, 259 Iowa 1330, 147 N.W.2d 886 (1967); Battani v. Grund, 244 Iowa 623, 56 N.W.2d 166 (1960).