

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 31 1986

CLERK SUPREME COURT

WILLIAM LEE BALES,

)

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Petitioner,

)

Filed March 31, 1986

vs.

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6-39

85-995

**HONORABLE JUDGE J. REILLY,
JUDGE OF THE IOWA DISTRICT
COURT FOR DAVIS COUNTY,**

)

)

Respondent.

)

Appeal from the Iowa District Court for Davis County (No. DM2-194) -
J. Reilly, Judge.

Petitioner petitioned for a writ of certiorari on an order finding him in
contempt of court. **WRIT ANNULLED.**

John N. Moreland, McKay and Moreland, Ottumwa, for plaintiff.

C. K. Pettit, Bloomfield, for defendant.

Considered by Donielson, P.J., and Snell, and Sackett, JJ.

Petitioner William Bales has petitioned for a writ of certiorari on an order finding him in contempt of court for nonpayment of alimony. William claims the evidence does not support a finding of contempt.

On September 16, 1983, the parties' marriage was dissolved, and a decree was entered ordering William to pay Sandra Bales alimony of \$100.00 per week for a period of ten years. At that time William was grossing \$500 a week.

On December 2, 1983, Sandra Bales filed an application for contempt alleging that \$1,200 in alimony had accrued and William had only paid \$300. On December 23, 1983, an order was entered continuing the matter until May 4, 1984. A wage assignment was executed on December 28, 1983, authorizing a withholding of \$100 per week from William's wages. In August of 1984, Sandra filed an application for further hearing alleging William was not complying with the December agreement. At a contempt hearing in September of 1984, William agreed to pay \$200 per week until he caught up with past arrears.

In October of 1984, William filed an application for modification of the decree claiming he had been unemployed since January 1984 and only received workers' compensation of \$506 every two weeks. He claimed the decree should be modified to eliminate the alimony. The district court denied the modification on January 24, 1985. William appealed from that ruling but did not post a supersedeas bond. We upheld the denial of modification in In re Marriage of Bales, 380 N.W.2d 754 (Iowa App. 1985).

Between October 16, 1984 and March 4, 1985, William made ten payments in the amount of \$200 each. No payments have been made since March 4, 1985. On March 25, 1985, a general execution was issued and levied on Williams' real estate. On the day which the sheriff's sale was to be conducted, William filed for bankruptcy which stayed the sale.

In June of 1985, Sandra filed an application for contempt and rule to show cause. After a hearing, the district court found William had been receiving regular workers' compensation payments of \$506.12 every two weeks until May 1985. In June 1985, he entered into a settlement of his workers' compensation and is to receive \$30,000 after payment of attorney's fees. The district court found:

Attorney John Moreland by way of professional statement stated that he is holding the sum of \$30,000 for the Respondent in his trust account until such time as the appeal of the refusal of this Court to modify the decree is processed through the Iowa Supreme Court.

The district court concluded Sandra had proven beyond a reasonable doubt that William is guilty of willful contempt and stated:

The Court notes that the Respondent argues that the proceeds of the workmen's compensation claim are not subject to payment of alimony. This matter is now being considered by the Iowa Supreme Court. However, the Respondent has not posted a supersedeas bond which would stay the proceedings in the District Court. The Court specifically finds that the Respondent has an obligation to pay alimony in the sum of \$100 per week, and the Court finds that of the accrued amount of \$9,100 which had accrued in alimony payments as of June 7, 1985 that the Respondent had only made payment of the sum of \$4,450. The Court further finds that he has had the ability to make the payments and that he has shown a long history of willful refusal and willful contempt of the lawful orders of this Court in failing to make said payments.

The court sentenced William to 90 days¹ in jail on July 8, 1985, allowing William until July 25, 1985 to purge himself by making full arrearage payments. In addition, William was required to pay all accrued court costs and \$300 for Sandra's attorney fees. William failed to do so and has subsequently filed a petition for a writ of certiorari.

¹ In his reply brief, William for the first time raises the issue that the district court exceeded its statutory authority in sentencing him to 90 days. That issue is not properly before us and will not be addressed.

Certiorari is an action at law testing the legality of an action taken by the district court. Abraham v. Beeghly, 363 N.W.2d 596, 598 (Iowa App. 1984). Not every violation of a court order will sustain a finding of contempt; it must be shown that there was a willful disobedience. Id. To establish the requisite willfulness, there must be "evidence of conduct that is 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." Id. We examine the evidence to ensure that proof of contempt is beyond a reasonable doubt. Phillips v. District Court, No. 84-1832, slip op. at 9 (Iowa Sup. Ct. Jan. 15, 1986).

William argues his actions were not willful. He claims he had no income other than his workers' compensation and therefore is unable to pay. In contradiction of this, he then states that upon resolution of his pending appeal on the modification he would bring the alimony payments current.

We fail to see how William can claim his actions are not willful. Obviously, he chooses not to pay his alimony from his workers' compensation benefits because he feels workers' compensation should not be considered an income resource. The district court held otherwise in the modification proceeding. Since William failed to post a supersedeas bond, the decision of the district court has been fully enforceable since January 24, 1985. The alimony was due and owing and William chose not to pay it because he did not agree with the district court's decision.

We find the district court correctly held William had the resources and was in willful violation he chose not to pay his alimony with these resources. In examination of the evidence, we find there was proof of contempt beyond a reasonable doubt.

Sandra has requested reasonable attorney fees on appeal pursuant to Iowa Code section 598.24. We award \$500 in attorney fees to Sandra.

WRIT ANNULLED.