

FILED

DEC 21 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-521 / 88-1578

**IN RE THE MARRIAGE OF PATRICIA A. GARVIS and
GARY J. GARVIS**

Upon the Petition of
PATRICIA A. GARVIS,

168

Petitioner-Appellee,

And Concerning
GARY J. GARVIS,

Respondent-Appellant.

Appeal from the Iowa District Court for Hardin County,
Allan L. Goode, Judge.

Gary appeals from a district court order finding Patricia in contempt, ordering Patricia confined for thirty days but suspending enforcement of the confinement pending her compliance with visitation requirements, and rejecting Gary's desire to award him custody of the parties' children. **AFFIRMED.**

Ray Sullins, Des Moines, for appellant.

David R. Gault, Legal Services Corporation of Iowa,
Waterloo, for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden,
JJ.

SCHLEGEL, J.

Gary appeals a district court order finding Patricia in contempt, ordering Patricia confined for thirty days, but suspending enforcement of the confinement pending her compliance with visitation requirements, and rejecting Gary's desire to award him custody of the children. We annul the writ of certiorari.

The marriage of Patricia Garvis and Gary Garvis was dissolved by decree in August 1980. Patricia was given custody of the parties' three minor children. Gary was given visitation. In August 1983, the district court, pursuant to the parties' stipulation, modified the decree concerning the schedule of visitation.

In December 1984, Gary filed an application for contempt and a separate application to modify the custody provisions of the decree based on Patricia's violations of the custody provisions of the decree. In January 1985, Patricia resisted and also filed an application to modify. The district court found Patricia in contempt and awarded Gary additional visitation. In August 1985, the district court, *inter alia*, rejected Gary's modification petition seeking joint custody of the children. This decision was affirmed by this court in June 1987. In re Marriage of Garvis, 411 N.W.2d 703 (Iowa App. 1987).

In May 1987, Gary filed an application for rule to show cause why petitioner, Patricia, should not be held in

contempt. Gary alleged that Patricia has continued to deny and interfere with his rights to visit his three children since September 1985. Gary also alleged that Patricia has shown contempt for the district court's previous orders in this case.

Following several delays, this case was heard by the district court in August 1988. Following the hearing, the district court appointed an attorney to represent the interests of the minor children and to file reports to the court.

In September 1988, the district court entered its order finding Patricia in contempt. The district court ordered Patricia confined for thirty days providing that mittimus shall not issue pending Patricia's full compliance with the visitation provisions of the dissolution. However, the district court refused to place the children in Gary's custody pursuant to Iowa Code section 598.23(2)(b) determining that it would not be in the children's best interests. Gary has appealed this refusal to change custody.

The finding of contempt is before us for review by writ of certiorari. 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. Bevers v. Kilburg, In and For Linn County, 326 N.W.2d 902, 904 (Iowa 1982). An action for contempt of court is treated in the nature of a

criminal proceeding. Amro v. Iowa District Court for Story County, 429 N.W.2d 135, 140 (Iowa 1988). No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. Id. Contempt is sufficiently shown if some of the default was willful. Id.

The finding of contempt in this action has been shown by proof beyond a reasonable doubt. The decree provided for visitation by Gary, and Patricia did everything in her power to prevent it. The trial court was correct in its finding of contempt.

This is not a proper forum for the request for a modification of custody. Our scope of review is limited to testing the legality of contempt order and we cannot make any other adjustments merely because the parties are before us. We annul the writ of certiorari.

AFFIRMED.