

IN THE COURT OF APPEALS OF IOWA

FILED

SEP 28 1988

CLERK SUPREME COURT

NATHANIEL GRADY,

)

Plaintiff,

)

vs.

)

IOWA DISTRICT COURT FOR
POLK COUNTY,

)

8-336
87-355

)

Defendant.

115

Appeal from the Iowa District Court for Polk County
(No. 14937), James P. Denato, Judge.

Plaintiff challenges by way of certiorari the ruling by
the district court holding him in contempt for failure to
obey a court order **WRIT SUSTAINED.**

Richard A. Bartolomei, Des Moines, for plaintiff.

Leslie Babich of Babich, Bennett & Nickerson, Des
Moines, for defendant.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM**116**

The trial court found the plaintiff appellant in contempt for failing to obey an order of court. The plaintiff appellant was sentenced to five days in the Polk County Jail. Plaintiff challenges by way of certiorari the order of court finding him in contempt.

In a contempt proceeding for violation of an order in a domestic relations case, the burden of proof is beyond a reasonable doubt, that is, the allegedly contumacious acts must be established by proof beyond a reasonable doubt. Phillips v. Iowa District Court for Johnson County, 380 N.W.2d 706 (Iowa 1986). The Iowa Supreme Court in Lamb v. Eads, 346 N.W.2d 830, 832 (Iowa 1984), explained the burden of proof:

The general rule holds that an applicant for a contempt citation establishes a prima facie case by proving the duty which is on the contemner and the contemner's failure to perform the duty. The contemner then has the burden of showing he could not perform the duty, if he relies on that ground. [citations] The principle that places the burden on the contemner to show that his default was not willful necessarily means that upon the contemner's failure to make the requisite showing the default may be found to be willful.

Id.

The contemner's burden is a burden of production on the defense of inability to perform the duty rather than a burden of persuasion. [citation] The burden of persuasion on the willfulness issue does not shift from the contemnee. Moreover, even if the contemnee makes a prima facie case and the contemner introduces no evidence, the court must still weight the contemnee's evidence to determine whether the elements of the offense have been established by the requisite proof.

Skinner v. Ruigh, 351 N.W.2d 182, 185 (Iowa 1984) (citing Lamb v. Eads, 346 N.W.2d at 832).

When we examine the record, we do not find substantial evidence of contempt beyond a reasonable doubt. We, therefore, sustain the writ.

Since we sustain the writ, we need not address the issue of whether the plaintiff was denied a fair hearing because of the alleged limitations placed upon him by the trial court in his cross-examination of witnesses.

WRIT SUSTAINED.