IN THE COURT OF APPEALS OF IOWA

No. 8-095 / 97-758

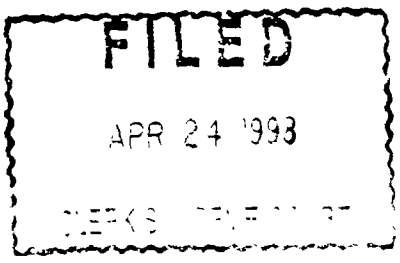
DARRIN J. LETT,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR MUSCATINE COUNTY,

Defendant.



Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge.

The district court found the plaintiff in contempt for violating the dissolution decree granting his ex-wife "reasonable and liberal visitation." **WRIT SUSTAINED.**

Theodore F. Sporer of the Sporer Law Firm, P.C., West Des Moines, for plaintiff

James W. Affeldt and Richard Q. Barrett of Elderkin & Pirnie, P.L.C., Cedar Rapids, for defendant.

Heard by Cady, C.J., and Sackett, and Huitink, JJ.

CADY, C. J.

Darrin Lett appeals the district court's finding of contempt for violation of the portion of the dissolution decree granting Connie, his former wife, "reasonable and liberal visitation." We sustain Darrin's writ of certiorari.

Darrin and Connie Lett divorced on November 13, 1996, after approximately thirteen years of marriage. The district court decree provided Darrin with primary physical care of the parties' three children subject to Connie's "reasonable and liberal visitation."[1]

Darrin and Connie agreed Connie would have visitation every other weekend. Darrin would only allow the children to go with Connie if she signed a written statement indicating she would return the children. Connie signed several statements provided by Darrin. On March 7, 1997, she refused to sign the statement and Darrin refused visitation.

Following Darrin's denial of visitation, Connie filed an application for contempt. After a hearing, the district court determined Darrin was in contempt of the decree. The district court found the language in the dissolution decree concerning visitation was not ambiguous and Darrin willfully violated the terms of the decree by interfering with Connie's rights to reasonable and liberal visitation. The court directed Darrin to spend ten days in the county jail with Mittimus withheld as long as he

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[1] On December 29, 1997, we modified the district court decree to provide Connie with primary physical care of the children.

allowed unfettered visitation every other weekend without requiring anything in writing.

On appeal Darrin maintains the district court erred by finding him in contempt of the dissolution decree. He claims the decree's ambiguity precludes a finding of contempt and substantial evidence does not exist to support a finding of a willful violation of the decree.

I. Standard of Review

Certiorari is a procedure to test whether a lower court exceeded its proper jurisdiction or otherwise acted illegally. *See* Iowa R.Civ.P. 306; *French v. Iowa Dist. Court*, 546 N.W.2d 911, 913 (Iowa 1996). When we review a ruling of contempt by certiorari, we determine whether substantial evidence supports the district court's judgment. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 834-35 (Iowa App. 1997). Our review of the district court's action is for the correction of errors at law. *See French*, 546 N.W.2d at 913.

II. Contempt

Connie has the burden of demonstrating Darrin had a duty to obey the court order and failed to perform that duty. *See In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). The burden then shifts to Darrin to show he did not willfully violate the order or decree. *Id.* The burden is one of production and not of persuasion. *See Rater v. Iowa Dist. Court*, 548 N.W.2d 588, 591 (Iowa App. 1996).

The burden of persuasion remains upon Connie to prove beyond a reasonable doubt that Darrin willfully disobeyed the court's order. *See Jacobo*, 526 N.W.2d at 866. Evidence establishes willful disobedience if it demonstrates:

> [C]onduct 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.

See Gimzo, 561 N.W.2d at 835 (quoting *Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 140 (Iowa 1988). Connie must only prove some of the violation was willful in order to establish contempt. *Id.* There are two defenses available in this action: (1) the indefiniteness of the court order; and (2) the absence of willful disobedience. *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996).

Darrin initially claims the district court order lacked definiteness. Specifically, he asserts the language "reasonable and liberal visitation" is ambiguous because it requires the parties to determine the parameters of the court order.

Because contempt is quasi-criminal in nature, the court order must provide for definite terms before a finding of contempt can be entered. *See Zimmermann v. Iowa Dist. Court*, 480 N.W.2d 70, 74 (Iowa 1992). Where liberty interests are at stake, we simply cannot "supply by interpretation constraints that are not expressed" in the court order. *See, e.g., id.* (language that did not expressly prohibit an evaluation by a doctor was sufficiently indefinite to support a finding of contempt) (quoting *Hudson v. Jenkins*, 288 N.W.2d 566, 571-72 (Iowa 1980) (in contempt proceeding involving

a lawyer, the court rejected an argument that an order delaying an appeal was implicit in an order delaying action on application for appointment of counsel to prosecute appeal; lawyer was not in contempt for prosecuting appeal notwithstanding the order delaying action on the application for appointment of counsel); *Lynch v. Uhlenhopp,* 248 Iowa 68, 75, 78 N.W. 491, 496 (Iowa 1956) (provision in dissolution decree providing child "shall be reared in the Roman Catholic Religion" lacks definiteness and does not support a finding of contempt); *cf. McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996) (decree providing the parties' home be sold immediately with "the net proceeds therefrom equitably divided" was not ambiguous where wife understood the court's intent); *Bevers v. Kilburg,* 326 N.W.2d 902, 904 (Iowa 1982) (parties' actions following decree indicated they understood decree and it was definite with respect to when the change of custody was to take place).

Our task is to determine whether the "reasonable and liberal visitation" language in a dissolution decree satisfies the requirement of definiteness for a finding of contempt. *See Zimmermann*, 480 N.W.2d at 74. Whether language in an order is subject to such indefiniteness involves interpretation of the language. *Id.*

While encouraging "reasonable and liberal visitation" between divorced parties promotes the best interests of the children in many cases, the language is not a substitute for a more definite visitation schedule for purposes of determining contempt. *See In re Marriage of Ruden,* 509 N.W.2d 494, 496 (Iowa App. 1993)

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(liberal visitation is in the best interests of the children). The problem with this language is it requires the parties to infer what is "reasonable and liberal." In light of the quasi-criminal consequences facing a party in a contempt action, we believe more specific terms are required before a contempt action can be upheld. Consequently, we sustain Darrin's writ of certiorari.

WRIT SUSTAINED.