

IN THE COURT OF APPEALS OF IOWA

No. 7-227 / 96-0955

JUN 26 1997

**IN RE THE MARRIAGE OF TIMOTHY DALE ROBERTS
AND MELISSA MARIE MOSLEY-ROBERTS**

000425

**Upon the Petition of
TIMOTHY DALE ROBERTS,**

Appellant,

**And Concerning
MELISSA MARIE MOSLEY-ROBERTS,**

Appellee.

Appeal from the Iowa District Court for Des Moines County, David B.
Hendrickson, Judge.

Timothy appeals the district court's order denying his application to show cause why Melissa should not be held in contempt for violating certain provisions of the parties' dissolution decree. **AFFIRMED.**

Timothy Dale Roberts, Burlington, pro se.

Lori L. Klockau, Iowa City, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

HUITINK, P.J.

This is an appeal by a husband claiming the district court should have found his former wife in contempt for failing to comply with certain provisions of the parties' dissolution decree. We affirm.

A dissolution decree was issued for Timothy Roberts and Melissa Mosley-Roberts on January 6, 1995. The decree provided Melissa would have primary physical care of the parties' three children. The decree provided:

Petitioner and Respondent shall give priority in allowing the other parent to provide child care whenever necessary before using alternative child care, if the other parent is available.

The decree also provided:

The Petitioner and Respondent shall each be awarded one-half of all of the parties' family pictures, one-half of all of the parties' Christmas decorations, one-half of all of the parties' V.C.R. tapes, one-half of the parties' scrapbooks, and one-half of the parties' cookbooks.

On appeal, we modified Timothy's child support obligation and affirmed all other provisions of the parties' dissolution decree. *In re Marriage of Roberts*, 545 N.W.2d 340, 345 (Iowa App. 1996).

On April 3, 1996, Timothy filed an application for order to show cause, claiming Melissa should be found in contempt of court for failing to comply with the provisions of the dissolution decree outlined above. He claimed she utilized others to babysit the children before she contacted him. He also claimed she did not include

him in decisions regarding the children. In addition, he claimed she had not provided him with one-half of the parties' pictures and scrapbooks. The district court determined Melissa had not willfully violated the terms of the decree. Timothy now appeals.

When a trial court refuses to hold a party in contempt in a dissolution proceeding, the appellate review is not de novo. *In re Marriage of Anderson*, 451 N.W.2d 187, 191 (Iowa App. 1989). The decision of the trial court will not be lightly reversed. *In re Marriage of Hankinson*, 503 N.W.2d 431, 433 (Iowa App. 1993).

Contempt must be established by proof beyond a reasonable doubt. *McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996). Proof of contempt in violating a court order requires a showing that there was a willful violation. *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa App. 1994).

We find Timothy failed to establish by proof beyond a reasonable doubt that Melissa willfully violated the terms of the parties' dissolution decree. The evidence showed Melissa was attempting to comply with the decree. We find there was substantial evidence to support the district court's decision that Melissa was not in contempt.

Melissa seeks attorney fees for this appeal. We determine Timothy should pay \$1000 for her appellate attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Timothy.

AFFIRMED.