FILED
MAR 31 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WAYNE GRIDLEY,	)	
Plaintiff,	)	Filed March 31, 1980
vs.	)	
JAMES E. HUGHES, as Judge of the District Court of Iowa in and for Union County,	)	358 2-63137
Defendant.	)	

Certiorari to Union District Court - James E. Hughes, Judge.

Plaintiff brings original action in certiorari challenging trial court's judgment dismissing his application for citation of contempt against ex-wife. Reversed and remanded with directions.

Arnold O. Kenyon II of Kenyon & Kenyon, Creston, for plaintiff-appellant.

Paul Boysen, Jr. of Camp, Harsh & Boysen, Creston, for defendant-appellee.

Heard by Oxberger, C.J., Donielson, Snell, Carter and Johnson, JJ.

JOHNSON, J.

Plaintiff, Wayne Gridley, brings original action in certiorari challenging trial court's judgment dismissing his application for citation of contempt against his ex-wife, Evelyn Gridley. He alleges trial court erred in failing to find Evelyn Gridley intentionally violated child custody provisions of dissolution decree. We reverse and remand with directions.

On July 5, 1972, a decree was entered dissolving the marriage of Wayne and Evelyn Gridley. Plaintiff was awarded custody of the parties' two daughters: Susan, born June 13, 1963; Carol, born November 17, 1965. Evelyn consistently enjoyed visitation privileges with her daughters.

From entry of the dissolution decree until October 1978, the custody and visitation provisions of the decree were adhered to by both parties. At that time, however, Carol, while visiting Evelyn, decided she wished to reside with Evelyn and refused to return to plaintiff's home. Shortly thereafter, also while visiting Evelyn, Susan came to a similar decision. Both girls' resolutions were made over plaintiff's protest.

Although the determinations to reside with Evelyn were made by the girls, Evelyn supported their decisions and did nothing to encourage the girls to leave and reside with plaintiff as the decree provided. Nor did Evelyn seek modification of the custody provisions of the decree.

Due to these actions, plaintiff filed an application for citation of contempt against Evelyn on December 6, 1978. Hearing was held January 26, 1979, before defendant in this action, Honorable James E. Hughes, Judge of the Iowa District Court for Union County. Defendant dismissed the application finding the evidence presented by plaintiff insufficient to show Evelyn's violation of the decree was willful, intentional, and contemptuous. Plaintiff consequently filed this original petition for writ of certiorari on February 15, 1979, challenging the legality of trial court's action. Upon review, the supreme court determined plaintiff's proper remedy is an appeal as a matter of right and perfected this action as such on March 27, 1979. Iowa R. App. P. 304.

I. Scope of Review. The proper remedy for review of a lower tribunal's finding of contempt is a petition for writ of certiorari. In re Marriage of Welsher, 274 N.W.2d 369, 371 (Iowa 1979). Where, however, no finding of contempt has been entered by the

lower court, the parties may appeal directly. Id. Because a contempt action is quasi-criminal in nature, our review is at law, not de novo. State v. District Court in and for Polk County, 231 N.W.2d 1, 5 (Iowa 1975). We, therefore, will review the fact findings of the lower tribunal only to ascertain whether they are sustained by competent and substantial evidence. State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975).

II. Review of Trial Court's Findings. Plaintiff alleges defendant-judge acted illegally in dismissing his application for citation of contempt. Plaintiff argues Evelyn's actions were clearly willful and she should have been cited for contempt of the custody provisions of the dissolution decree.

The purpose of contempt proceedings is to compel obedience to and respect for a trial court's order. McDonald v. McDonald, 170 N.W.2d 246, 248 (Iowa 1969). It is well settled only willful disobedience of a court order will justify a finding of contempt. Lane v. Oxberger, 224 N.W.2d 246, 251 (Iowa 1974); Johnstone v. Johnstone, 226 Iowa 503, 508, 284 N.W. 379, 382 (1939). To be considered a willful violation constituting contempt, the action must be intentional, contrary to a known duty, or deliberate, in disregard of the rights of others as established by a court order. Huston v. Huston, 255 Iowa 543, 548-49, 122 N.W.2d 892, 896 (1963).

Applying these standards to trial court's findings of fact, we conclude they are not supported by competent and substantial evidence. Plaintiff was awarded custody of the two girls. Although the girls allegedly independently determined they would prefer to reside with Evelyn, she was aware trial court had ordered otherwise. Instead of refusing to let the girls live with her, Evelyn, in known violation of the decree, supported their decisions. By her actions, Evelyn not only violated the terms of the decree herself, but also encouraged her daughters to frustrate a court order. Evelyn's actions demonstrate she intentionally disregarded plaintiff's rights as established by the custody provisions of the dissolution decree. This intent is evidenced by her knowledge of plaintiff's protests to the girls moving in with her.

Under these circumstances, the only reasonable conclusion is Evelyn willfully violated the custody provisions of the decree. To allow her to avoid punishment for her actions under the guise the girls made their decisions independently would frustrate the

terms and intent of the order so as to make the provisions a mockery. Evelyn clearly contributed to the situation and did nothing to effect a correction. Trial court should not have dismissed plaintiff's application for citation of contempt against Evelyn.

Trial court's judgment is reversed and we remand this case for further proceedings consistent with this opinion. All costs of this appeal shall be assessed against Evelyn Gridley.

REVERSED AND REMANDED WITH DIRECTIONS.