IN THE COURT OF APPEALS OF IOWA

No. 1-301 / 00-1574
Filed August 15, 2001

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CLERK SUPREME COURT

IN RE THE MARRIAGE OF JOHN CLIFFORD BUNTING

AND JENNIFER DIANE HARTLEY-BUNTING

Upon the Petition of
JOHN CLIFFORD BUNTING,
Petitioner-Appellant,

And Concerning
JENNIFER DIANE HARTLEY-BUNTING,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

The petitioner appeals a district court order denying his request for an injunction against the respondent to restrain her from entering his property. **REVERSED AND REMANDED.**

Morris L. Eckhart, Vinton, for appellant.

John C. Wagner and Jeffrey S. Ritchie of John C. Wagner Law Offices, P.C., Amana, for appellee.

Considered by Huitink, P.J., and Miller and Hecht, JJ.

HECHT, J.

John Clifford Bunting appeals from a district court order denying, without hearing, his petition for temporary and permanent injunctive relief against his former wife, Jennifer Diane Hartley-Bunting. We reverse and remand.

I. Background Facts and Proceedings. The marriage of John and Jennifer was dissolved on September 18, 1997. The decree granted the parties joint custody of their minor child, Jacob, and placed his physical care with Jennifer. John was ordered to pay the sum of $5000 to Jennifer for her attorney's fee. The district court's resolution of the physical care issue was subsequently affirmed by this court in an unpublished opinion. *In re Marriage of Bunting*, No. 97-1819 (Iowa Ct. App. Aug. 28, 1998). We awarded Jennifer the additional sum of $1500 for her attorney's fee on appeal.

Although John partially satisfied the judgment by paying $550, Jennifer filed an application in August of 2000 requesting John be held in contempt for failure to fully pay the judgment for attorney fees. Jennifer also filed a petition for modification alleging a substantial change of circumstances warranting an increase in child support payments owed by John. John filed an answer and a counterclaim for modification asking the court, *inter alia*, to order counseling for the parties and to modify visitation in the event Jennifer moved more than 100 miles from Cedar Rapids. Later in the same month, John filed a separate action seeking an injunction to restrain Jennifer from coming on his property. He claimed Jennifer had caused damage valued at $1600 to a vehicle parked at his residence in September of 1997, and she also caused disturbances on his

property by coming there without his permission in early July of 2000. John's petition expressed his willingness to be restrained by injunction from entering upon Jennifer's property, and advocated the identification of a public and neutral location for the exchange of Jacob for visitation.

Jennifer filed no answer or affidavits in response to John's verified petition for injunctive relief. On September 13, 2000, the district court denied, without hearing, John's prayer for injunctive relief. No findings of fact or conclusions of law were included in the district court's order. John contends the district court abused its discretion by (1) giving insufficient weight to his petition and supporting affidavits; (2) failing to apply the comparative injury doctrine; and (3) failing to prescribe notice for and hold a hearing on his petition for injunctive relief. Jennifer requests an award of attorney fees in connection with this appeal.

II. Standard of Review. We review the district court's ruling denying injunctive relief de novo. Iowa R. App. P. 4; *Matlock v. Weets*, 531 N.W.2d 118, 121 (Iowa 1995). The issuance or refusal to issue a temporary injunction rests largely in the sound discretion of the trial court, and we will not ordinarily interfere with such ruling unless there is an abuse of discretion or a violation of some principle of equity. *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 96 (Iowa 1985).

III. The Merits. Injunctive relief is an extraordinary remedy, to be granted with caution and only when clearly required. *Incorporated City of Denison v. Clabaugh*, 306 N.W.2d 748, 755 (Iowa 1981). The Iowa Rules of Civil Procedure

assure the extraordinariness of the remedy by restricting the district court's discretion to issue ex parte temporary injunctions. *See* Iowa R. Civ. P. 326.

> The court may in any case require notice to the party sought to be enjoined and must provide for notice and hearing in those cases identified in Iowa Rule of Civil Procedure 326. Injunctive relief will not be granted in the absence of a factual basis for its issuance.

Kleman, 373 N.W.2d at 95.

The court's power to deny injunctive relief is also limited. "The general rule is that denial of a temporary injunction, or its dissolution if granted, does not deprive plaintiff of the right to a trial on the merits of his petition seeking a permanent injunction. . . ." *Iowa City v. Muscatine Dev. Co.*, 258 Iowa 1024, 1033, 141 N.W.2d 585, 591 (1966). Even if a party's prayer for temporary injunctive relief is not supported by the evidence, a full hearing is required to adjudicate the merits of a request for a permanent injunction. *Board of Educ. of Kimballton Indep. Sch. Dist., v. Board of Educ. of Audubon County*, 260 Iowa 840, 845, 151 N.W.2d 465, 468 (1967).

In the case now before the court, appellant sought both temporary and permanent injunctions. We conclude the district court erred by denying the prayer for relief without holding a hearing. Although our review in this equity matter is de novo, "we have no more evidence as to the merits than the trial court had when it [denied the request for injunctive relief.]" *Id.* Accordingly, we reverse the district court's ruling and remand the case for trial on the merits. Costs of the appeal are to be divided equally.

REVERSED AND REMANDED.