

FILED

AUG 29 1985

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF MORRIS S. RISA AND SUSAN P. RISA

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Upon the Petition of)

MORRIS S. RISA,)

Petitioner-Appellee,)

Filed August 29, 1985

And Concerning)

SUSAN P. RISA,)

5-257
84-357

Respondent-Appellant.)

Appeal from the Iowa District Court for Webster County - Louis F. Beisser,
Judge.

Respondent wife appeals a trial court ruling which declined to find
petitioner husband in contempt for failure to make timely child support payments
and petitioner husband's application to decrease the amount of child support
payments due. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for respondent-appellant.

Allan L. Goode and Maurice C. Breen of Price, Goode, Breen & Breen, Fort
Dodge, for petitioner-appellee.

Considered by Donielson, P.J., and Snell and Hayden, JJ.

DONIELSON, P.J.

Respondent wife appeals a trial court ruling which declined to find petitioner husband in contempt for failure to make timely child support payments and petitioner husband's application to decrease the amount of child support payments due. We affirm.

The parties' marriage was dissolved in 1979. The dissolution decree placed the parties' one child in Susan's custody and directed Morris to pay child support of \$250 per month.

In 1983 Susan filed the present application asking that Morris be held in contempt of court for child support arrearages. Morris responded by filing a petition to modify the 1979 dissolution decree by reducing the child support obligation.

The trial court declined to hold Morris in contempt. The court found that Morris' delays in paying child support had not been willful but had been caused by the vicissitudes of his business as a self-employed building contractor. The court noted that Morris' business was heavily affected by the current recession and that Morris was having trouble paying his business debts quickly enough to maintain his business credit.

At the same time, the court granted Morris' application to modify the dissolution decree; the court reduced Morris' child support obligation from \$250 per month to \$150 per month.

Susan has appealed from the trial court's ruling. She challenges both the trial court's reduction in child support and the trial court's refusal to find Morris in contempt. In addition, she contends the trial court erred by failing to award her statutory attorney fees. (Iowa Code section 598.24 permits costs and attorney's fees to be taxed against a party who is found in contempt for failure to obey a dissolution decree.) Finally, Susan seeks attorney's fees for the prosecution of this appeal.

I.

Although our review is not de novo, this court examines the evidence to ensure that proof of the contempt is clear and satisfactory. Skinner v. Ruigh, 351 N.W.2d 182, 185-86 (Iowa 1984); citing Callenius v. Blair, 309 N.W.2d 415, 419 (Iowa 1981). Contempt orders are governed by Iowa Code section 598.23(1), which provides in relevant part:

If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt

The respondent claims petitioner violated section 598.23(1) by failing to make timely support payments from December 15, 1983 through January 11, 1984. The trial court held that while child support payments were not made in equal installments, petitioner did pay the complete amount due. Extenuating circumstances based on petitioner's occupation in the construction business which resulted in periodic cash flow problems influenced the trial court not to find petitioner in contempt. We agree with the trial court that clear and satisfactory evidence did not exist to find the petitioner had willfully disobeyed court orders so as to warrant a finding of contempt.

II.

Iowa Code section 598.24 allows a party the costs of the contempt proceeding, including reasonable attorney fees, if the other party is found to be in contempt. Because Morris was not held in contempt, section 598.24 is inapplicable. Respondent's request for attorney's fees is accordingly denied.

III.

A child support obligation can be modified pursuant to section 598.21(8), The Code, when "there is a substantial change in circumstances." The court is instructed to "consider each parent's earning capacity, economic circumstances and cost of living." § 598.24, The Code (1985). Respondent claims that petitioner,

in essence, was able to pay \$250 per month but regularly fell behind in payments. Respondent suggests petitioner only pays the full amount of support due when contempt proceedings are pending. We disagree.

Petitioner is in the cyclical business of construction of farm buildings and suffered a loss of gross income ranging from \$106,063 in 1979 to \$61,602 in 1983. Moreover, petitioner sustained a net operating loss in 1983. Petitioner is currently employed on a full-time basis which provides him with a regular cash flow and should enable him to make timely monthly support payments of \$150. We can find no error in the trial court's decision to reduce the amount of petitioner's support obligation.

IV.

Respondent further seeks attorney's fees for prosecution of this appeal. Pursuant to section 598.24, as mentioned in Division II, we find this statute is inapplicable because petitioner was not held in contempt. The decision of the trial court is affirmed.

AFFIRMED.