IN THE COURT OF APPEALS OF IOWA

No. 0-279 / 99-1651
Filed August 16, 2000

IN RE THE MARRIAGE OF KADIJA S. TIMBO AND ABU TIMBO

Upon the Petition of
KADIJA S. TIMBO,
Petitioner-Appellee,

And Concerning.
ABU TIMBO,
Respondent-Appellant.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

The appellant challenges the district court's finding that he failed to prove his ex-wife was in contempt for denying him visitation when she took their daughter to London for a twelve-day visit. **AFFIRMED.**

Curtis J. Klatt of Dunakey & Klatt, P.C., Waterloo, for appellant.

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro, PLC, Cedar Falls, for appellee.

Considered by Mahan, P.J., Zimmer, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

HAYDEN, S.J.

Respondent, Abu Timbo, (Abu) filed this action to cite petitioner Kadija S. Timbo (Kadija) for contempt of court. The parties' marriage was dissolved in July 1995. Kadija was awarded custody of their daughter Habie, born in June 1989. Abu was granted visitation with Habie on alternate weekends and alternate Wednesday nights.

Kadija took Habie to London, England with her on August 18, 1999, to attend a family wedding. They were gone for twelve-days, and returned on August 30. Kadija was fearful Abu would object to the trip. She notified him by letter two days before leaving. In this letter she recognized Abu would miss a weekend and a Wednesday visitation with Habie. She offered to allow him to reschedule these visits at any time after they returned. Kadija encouraged Habie to keep in contact with her father by calling him, while they were in London.

After Kadija and Habie arrived home, Abu filed this action to cite Kadija for contempt of court.

The trial court determined Kadija, by taking Habie to England interfered with Abu's weekend visitation. The court further found her non-compliance was not in willful or wanton disregard of the dissolution court's order. The trial court further determined Kadija believed it was in the best interest of Habie to meet her relatives whom she had never met before and also to travel to Europe. Also, the trial court found Kadija's manner of notifying Abu was improper.

We affirm the trial court.

I. Scope of Review

In a case where the trial court has denied the application to hold an individual in contempt, our review is not de novo. *In re Marriage of Anderson,* 451 N.W.2d 187, 191 (Iowa App. 1989). Instead, we review the record to determine if substantial evidence exists to support the trial court's finding. *In re Marriage of Wegner,* 461 N.W.2d 351, 354 (Iowa App. 1990). Iowa Code section 598.23 (1999) recites in part, "a person who willfully disobeys a court order or decree may be cited and punished for contempt. (emphasis added).

> Evidence establishes willful disobedience if it demonstrates:
>
> conduct 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 condemner had the right or not.

Gimzo v. Iowa District Court, 561 N.W.2d 833, 835 (Iowa App. 1997) (citations omitted).

II. Contempt

The trial court in this case reviewed the arguments of counsel, testimony of the witnesses and also reviewed the dissolution decree dated July 11, 1995. Our review of the dissolution decree shows the trial court found the parties' marriage had been volatile which included verbal and physical abuse. This marriage had been a male dominated household. The division of labors were dictated by Abu.

The dissolution court in it's conclusions of law, concluded Abu's lack of empathy for the equality of the female discouraged placement of the young daughter (Habie) with him.

We note both parties were born in Sierra Leon, West Africa. They had resided in Cedar Falls, Iowa for about twenty years.

We have reviewed the record also and set forth some of Kadija's testimony.

She stated during the marriage Abu controlled her. If she did not turn over her pay check to him he whipped her. She stated Abu is still bitter and he screams at her on the phone. He will not permit the child to call her when Habie is with him.

When asked why she did not call Abu about taking Habie with her to London. Her reply was:

> He -- he will never want things to be our own way. He would -- he would go all out to stop it, and that would be very painful on Habie, and me too, because I did promise her two years ago when I went to Africa and didn't take her, she cried bitterly, so I promise her that whenever I'm going abroad I'll take her.

When asked on direct examination if she had any fear of Abu, she said, "Yes, I do. I'm always afraid of him, to communicate with him, to even look at him. He just makes me scared."

When asked on direct examination if she believed she was doing anything contrary to the court order by taking Habie to London, her reply was "no."

She testified also about how Habie enjoyed being in London and seeing her uncles and aunties. They took her shopping. Also they visited Buckingham Palace and Westminster Abbey. She indicated she thought this was the happiest trip Habie has ever had. She also testified that he (Abu) is trying get Habie permanently.

Iowa Code section 598.23(1) (1999), regarding contempt proceedings, provides as follows:

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

(Emphasis added).

This statute allows the trial court some discretion; for example sections 598.23 and 598.23A provide, "may be cited and punished by the court for contempt." (Emphasis added). Under statutes such as these, a trial court is not required to hold a party in contempt even though elements of contempt exist.

Contempt proceedings are primarily punitive in nature. Therefore, it makes sense that the trial court may consider all the circumstances, not just whether a willful violation of court order has been shown, whether to impose punishment in contempt in a particular case. *In re Marriage of Swan,* 526 N.W.2d 320, 326-27 (Iowa 1995) (emphasis added). In that case the Iowa Supreme Court held the trial court had broad discretion and unless this discretion is grossly abused, the trial court's decision must stand. *Id.* at 327.

The trial court held:

> Although the Petitioner [Kadija] made a poor decision in not notifying the Respondent [Abu] in a timely manner, her effort to allow for additional visitation convinces the Court that there was no evil purpose in the decision that she made. As a result, the Court determines that the Respondent's request for a finding of contempt is overruled.

We hold the trial court did not abuse it's broad discretion in making it's decision and it's decision stands. *Swan,* 526 N.W.2d at 327.

Kadija requests $750 to apply toward her appellate attorney fees. We approve her request. Kadija is awarded $750 from Abu to apply upon her

appellate attorney fees. She shall have judgment against Abu in this amount until paid in full.

Abu's request for trial and appellate attorney fees are denied.

Costs on appeal are assessed to Abu.

AFFIRMED.