IN THE COURT OF APPEALS OF IOWA

No. 9-241 / 98-260
Filed June 23, 1999

MERRY L. WARNELL, f/k/a MERRY L. ROUGHTON,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR MARSHALL COUNTY,

Defendant.

FILED
JUN 23 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge..

The Plaintiff seeks review of a district court contempt order. **WRIT ANNULLED.**

James Thornton of Harrison, Brennecke, Moore, Smaha, and McKibben, Marshalltown, until withdrawal, and then Chad R. Frese of the Moon Law Office, Marshalltown, for plaintiff.

Barry S. Kaplan of Fairall, Fairall, Kaplan, Hoglan & Condon, Marshalltown, for defendant.

Considered by Sackett, C.J., and Vogel, and Zimmer, JJ.

ZIMMER, J.

Merry L. Warnell seeks review of a district court order holding her in contempt of court for failing to meet her child support obligations. We annul the writ of certiorari.

On November 18, 1982, the marriage of Donald Roughton and Merry Warnell (formally known as Merry Roughton) was dissolved by court order. The dissolution decree awarded custody of their minor child, Christine Roughton, to Donald. On October 9, 1986, the district court modified the decree and ordered Merry to pay $200 per month in child support. In April 1996, Warnell was held in contempt of court for failing to pay child support and was orderd to serve ten days in county jail. The matter was reviewed by the Iowa Court of Appeals on application for writ of certiorari. The writ was annulled and the decision of the district court was affirmed. *See Warnell v. Iowa Dist. Court*, No. 96-979 (Iowa App. Sept. 24, 1997).

Roughton filed an application for rule to show cause on December 4, 1997, alleging Warnell should again be held in contempt for disobeying the $200 court-ordered child support obligations. On January 8, 1998, the district court entered an order finding Warnell in contempt of court and ordered her to serve twenty days in county jail. *See* Iowa Code § 598.23(1) (1997). The court subsequently modified its order withholding mittimus until April 1998 conditioned on Warnell's commencement of a new job and immediate resumption of child support obligation. Warnell filed a petition for writ of certiorari in February 1998. The writ was granted in March 1998.

Warnell contends the district court erred by finding she was in contempt for failing to pay child support. She claims she did not willfully disobey the court's order. She asserts that due to financial constraints and family medical problems, she was unable to pay $200 per month in child support.

I. Scope of Review and Applicable Law. The contempt proceeding herein involved arises out of an equity action. Nevertheless our review of the writ of certiorari challenging the district court's finding of contempt is at law, not de novo. *See Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 678 (Iowa 1998).

Certiorari is a procedure to test whether a lower court exceeded its proper jurisdiction or otherwise acted illegally. *See* Iowa R. Civ. P. 306; *French v. Iowa Dist. Court*, 546 N.W.2d 911, 913 (Iowa 1996). Illegality exists when the findings of the court do not have substantial evidentiary support or when the court does not apply the proper law. *See Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 138 (Iowa 1988).

In Iowa, contempt, including contempt for violations of dissolution decrees, is treated as criminal in nature and must be established by proof beyond a reasonable doubt. *See McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824 (Iowa 1996); *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986). When reviewing a contempt ruling, we must determine "whether substantial evidence exists that would 'convince a rational trier of fact that the alleged contemner is guilty of contempt beyond a reasonable doubt.'" *See Christensen v. Iowa Dist. Court*, 578 N.W.2d at 678 (quoting *Ervin v. Iowa Dist. Court*, 495 N.W.2d 742, 744–45 (Iowa 1993)). Substantial

evidence is such evidence as could convince a rational trier of fact the alleged contemnor is guilty of contempt beyond a reasonable doubt. *See Ervin v. Iowa Dist. Court*, 495 N.W.2d at 744–45.

The party alleging contempt must prove the alleged contemnor had a duty to obey a court order and that the contemnor willfully failed to perform that duty. *See In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). Once a violation of a court order has been shown, the burden shifts to the alleged contemnor to produce evidence suggesting that the violation was not willful. *See id.*; *Ervin v. Iowa Dist. Court*, 495 N.W.2d at 745; *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 835 (Iowa App. 1997). The burden to prove willfulness beyond a reasonable doubt nevertheless remains upon the person alleging contempt. *See In re Marriage of Jacobo*, 526 N.W.2d at 866.

> Willful disobedience supporting a contempt finding
>
> > requires evidence of 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 contemner had the right or not.

Amro v. Iowa Dist. Court, 429 N.W.2d at 140 (quoting *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980)). There are two ways in which the contemnor may show failure to comply with a court order was not willful: (1) the order was indefinite; or (2) the contemnor was unable to perform the act ordered despite good faith efforts to comply. *See McKinley v. Iowa Dist. Court*, 542 N.W.2d 822, 824

(Iowa 1996); *Wilson v. Fenton*, 312 N.W.2d 524, 527 (Iowa 1981); *City of Masonville v. Schmitt*, 477 N.W.2d 874, 876 (Iowa App. 1991).

The statute at issue in this contempt proceeding is Iowa Code section 598.23(1).[1] This section does not demand a trial court "hold a party in contempt even though the elements of a contempt may exist." *See In re Marriage of Swan*, 526 N.W.2d 320, 328 (Iowa 1995). In such situations, a trial court has broad discretion; it "may consider all the circumstances, not just whether a willful violation of a court order has been shown." *Id.* "'[U]nless this discretion is grossly abused, the [trial court's] decision must stand.'" *Id.* (quoting *State v. Lipcamon*, 483 N.W.2d 605, 607 (Iowa 1992)).

Consequently, contempt under section 598.23(1) requires at a minimum a finding of a willful violation of a court order beyond a reasonable doubt. However, under that section, the decision to hold a person in contempt ultimately rests within the discretion of the trial court. *See In re Marriage of Swan*, 526 N.W.2d at 328; *cf. Henley v. Iowa Dist. Court*, 533 N.W.2d 199, 203 (Iowa 1995) (rejecting contemnor's public policy challenge to the district court's exercise of discretion in holding her in contempt under Iowa Code section 236.8 after a finding of proof beyond a reasonable

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[1] Iowa Code section 598.23(1) provides:

> 1. 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 and be committed to the county jail for a period of time not to exceed thirty days for each offense.

Iowa Code § 598.23(1) (1997).

doubt she had wilfully aided and abetted in the knowing and intentional violation of a court order). So long as the contempt ruling is supported by substantial evidence and is not characterized by gross abuse of discretion, the judgment of district court must stand.

II. Merits. Warnell does not dispute the district court's finding that she disobeyed a court order to pay child support. Nor does she challenge as an abuse of discretion the district court's contempt ruling. The only issue raised on appeal is whether substantial evidence supports the district court's finding Warnell willfully disobeyed the court's order to pay child support.

Warnell argued in district court the defense of inability to pay child support. *See Rater v. Iowa Dist. Court*, 548 N.W.2d 588, 591 (Iowa App. 1996) (citing *Wilson v. Fenton*, 312 N.W.2d 524, 527 (Iowa 1981)). She essentially claims her inability to find more lucrative employment as well as her and her current husband's medical problems rendered her unable to pay child support.

We determine substantial evidence supports the district court's contempt ruling. Excepting a minor monthly $10 wage assignment entered pursuant to a Wisconsin support order ending in June 1997, almost two years passed between Warnell's final voluntary support payment and the filing of this contempt action. Warnell presently owes over $20,000 in back child support. Though Warnell has experienced some medical problems, it appears she has either been gainfully employed throughout the past two years or has received substantial unemployment compensation. Clearly, Warnell has had flow of income.

Additionally, efforts to meet her support obligations have been minimal at best. Her efforts to credit interest on the property settlement from the parties' divorce was inconsequential as such credit was already mandated by the parties' decree of marital dissolution. We also give little credence to her recent efforts to apply tax refunds to her outstanding support obligations. As noted by the district court, if Warnell had filed timely tax returns as required by law, tax refunds would already have been applied to her long-delinquent child support obligations by operation of law.

We also recognize her husband has some medical difficulties, and collectively the family does not have a significant reserve of cash assets after monthly bills are paid. However, in the end it simply does not appear to us Warnell has made a good faith effort to voluntarily provide at least some monetary support for her daughter during times she was receiving income. We recognize Warnell has many other financial obligations, but her personal finances cannot take priority over obligations to her child. *See Christensen v. Iowa Dist. Court*, 578 N.W.2d at 679; *see also McKinley v. Iowa Dist. Court*, 542 N.W.2d at 824 (stating a parent is "not free to prioritize her monthly obligations so as to prefer her own creditors over her court-ordered obligations . . .").

We find substantial evidence supports the ruling that Warnell has willfully violated beyond a reasonable doubt child support orders issued by the district court. The order of the district court holding her in contempt is therefore affirmed.

WRIT ANNULLED.

No. 98-260. [9-241] WARNELL v. IA. DISTRICT COURT

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge. **WRIT ANNULLED.** Considered by Sackett, C.J., and Vogel, and Zimmer, JJ. Opinion by Zimmer, J. (7 pages $2.80)

Warnell seeks review of a district court order holding her in contempt of court for failing to meet her child support obligations. Warnell contends the district court erred by finding she was in contempt for failing to pay child support. She claims she did not willfully disobey the court's order. She asserts that due to financial constraints and family medical problems, she was unable to pay $200 per month in child support. **OPINION HOLDS.** Substantial evidence supports the district court's contempt ruling. Almost two years passed between Warnell's final voluntary support payment and the filing of this contempt action. Warnell presently owes over $20,000 in back child support. Though Warnell has experienced some medical problems, it appears she has either been gainfully employed throughout the past two years or has received substantial unemployment compensation. Additionally, efforts to meet her support obligations have been minimal at best. We recognize her current husband has some medical difficulties, and that collectively the family does not have a significant reserve of cash assets after monthly bills are paid. However, in the end it simply does not appear to us that Warnell has made a good faith effort to voluntarily provide at least some monetary support for her daughter during times she was receiving income. We recognize Warnell has many other financial obligations, but her personal finances cannot take priority over obligations to her child.