

IN THE COURT OF APPEALS OF IOWA

No. 8-014 / 97-0154

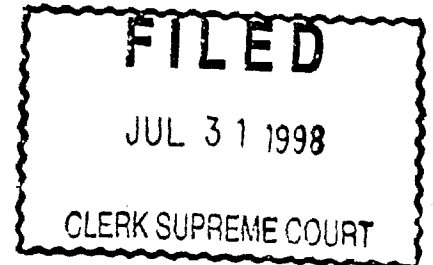
**IN RE MARRIAGE OF MARI CATHERINE CARNS
AND CLARK ALVIN CARNS**

**Upon the Petition of
MARI CATHERINE CARNS,**

Petitioner-Appellant,

**And Concerning
CLARK ALVIN CARNS,**

Respondent-Appellee.



Appeal from the Iowa District Court for Adair County, James W. Brown,
Judge.

Petitioner appeals from the modification of the dissolution decree and
challenges a finding of contempt. **MODIFICATION AFFIRMED; WRIT
SUSTAINED.**

Bruce H. Stoltze of Brick, Gentry, Bowers, Swartz, Stoltze, Schuling & Levis,
P.C., Des Moines, for appellant.

Clark Carns, Fontanelle, pro se.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

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SACKETT, P.J.

Petitioner-appellant Mari Catherine Carns appeals from an order modifying the support and visitation provisions of the 1995 decree dissolving her marriage to respondent-appellee Clark Alvin Carns. Mari also challenges an order finding her in contempt, contending the trial court should not have found her in contempt because that issue was not properly before the court. Mari further advances there was not evidence to find she was in contempt and the punishment levied was not fair. We affirm the order modifying support and visitation. We treat Mari's challenge to the contempt action as a petition for writ of certiorari¹ and sustain the writ.

Mari and Clark have a son, Nathan, born in 1989. The dissolution decree awarded primary physical care of Nathan to Mari. Clark was granted specific and bi-weekly visitation in addition to summers and holidays. Both parties resided in Iowa during the marriage and at the time of the dissolution.

In January of 1996, Mari moved to Florida. Clark, who had exercised visitation and maintained a close relationship with his son, filed a petition to modify the decree to obtain physical care of Nathan or to modify the visitation and make provision for transportation between Florida and Iowa. Clark later modified this petition to ask that his child support obligation be decreased.² Clark also filed a rule

¹ See Iowa R. App. P. 304.

² A minimal decrease of \$12 per month was agreed to and this is not challenged.

to show cause asking Mari be held in contempt of court for her withholding of visitation.

The trial court was asked to address three issues, which it did. It ordered the transportation costs be divided equally. It reduced Clark's child support obligation by one-half for the three summer months, as Nathan would be with Clark for a period beginning seven days after school ends until seven days before school starts. It also found Mari in contempt and ordered she pay \$300 in attorney fees.

We review de novo Mari's challenge to the modification orders. Iowa R. App. P. 4. Mari first challenges the trial court decision to order the transportation costs be bore equally. Mari contends Clark should be responsible for all transportation costs.

Mari elected to leave Iowa, the state of residence of the parties at the time of the dissolution as well as the residence during the marriage. In doing so, she has made it difficult for Clark to maintain a relationship with Nathan. In order for Clark to be with his son, it is necessary Nathan be transported from Florida. Clark is being required to assume additional expenses for transportation. The assessment of one-half the transportation costs to Mari is fair and equitable and will not be disturbed on appeal. We affirm on this issue.

Mari's second complaint is the trial court should not have reduced Clark's child support obligation during the three summer months Nathan resides exclusively with Clark. The trial court, while recognizing child support is not generally reduced during

visitation, found Clark would provide all care for Nathan during a substantial part of the three summer months because of the geographical situation Mari has created. As a result, the trial court reduced by one-half Clark's child support obligation for that three-month period.

We recognize, as did the trial court, expenses of maintaining a home remain though a child may be on an extended visitation with the noncustodial parent. *See In re Marriage of Fleener*, 247 N.W.2d 219, 221 (Iowa 1976); *In re Marriage of Glass*, 213 N.W.2d 668, 670-71 (Iowa 1973). Yet, other expenses, particularly food, are less when the child is not in the household. These are expenses the noncustodial parent must bear without assistance from the custodial parent during visitation periods.

Here, the trial court took Mari's continuing expenses into account by reducing, rather than suspending, support payments. *See In re Marriage of Schlenker*, 300 N.W.2d 164, 167 (Iowa 1981). The circumstances here provide it equitable Clark only pay one-half of the child support obligation during the three summer months Nathan is living with him in Iowa. *See In re Marriage of Toedter*, 473 N.W.2d 233, 235 (Iowa App. 1991). While Mari complains about the transportation expense she is forced to assume, we remind her she is the one who elected to leave the state, resulting in Clark being required to pay transportation expenses. What the trial court did is similar to what we structured in *In re Marriage of McElroy*, 475 N.W.2d 221, 224-25 (Iowa App. 1991). We affirm on this issue.

Mari further contends the trial court should not have found her in contempt because the proper statutory provisions were not followed, it is not supported by evidence, and the punishment is inequitable.

A contempt proceeding is, by its very nature and effect, the equivalent of a criminal proceeding exacting punishment. *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986). Due process may only be satisfied in a proceeding that is criminal in nature if the conduct which results in punishment is established by proof beyond a reasonable doubt. *Id.* The reasonable doubt standard was as necessary here as it would be to establish the elements of a crime warranting imposition of a fine or incarceration in a criminal case. *Id.* No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. *Id.*

When a contempt order is sought in a domestic relations action, Iowa Code chapter 665 provides the procedural framework for the contempt action while section 598.23 defines the potential sanctions. *Skinner v. Ruigh*, 351 N.W.2d 182, 184 (Iowa 1984); *see, e.g., Opperman v. Sullivan*, 330 N.W.2d 796, 797 (Iowa 1983); *Bever v. Kilburg*, 326 N.W.2d 902, 903-04 (Iowa 1982).

Mari contends the provisions of Iowa Code section 665.7 were not met as no rule to show cause was issued or personally served on her. Personal service of a rule to show cause must be given according to section 665.7 and must be made in

accordance with one of the alternatives in Iowa Rule of Civil Procedure 56.1(a)-(m). *Arthur v. Iowa Dist. Court*, 553 N.W.2d 325, 327 (Iowa 1996); *Beauchamp v. Iowa Dist. Court*, 328 N.W.2d 527, 528 (Iowa 1983). There was no compliance with the procedural requirements of Iowa Code section 665.7. Consequently, the finding Mari was in contempt was not properly made. We sustain the writ.

Costs on appeal are taxed one-half to each party. We award no attorney fees.

MODIFICATION AFFIRMED; WRIT SUSTAINED.