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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-609 / 89-419

IN RE THE MARRIAGE OF CARLA WEBER AND MARK WEBER

Upon the Petition of
CARLA WEBER,

268

Appellant,

And Concerning
MARK WEBER,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge.

The wife appeals a district court order requiring her to sign the necessary tax form to waive her dependent exemption in order to purge herself of contempt. **AFFIRMED AND REMANDED.**

Paul T. Shinkle of Gottschalk & Shinkle, Cedar Falls, for appellant.

Melvin H. Wolf, Waterloo, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

SCHLEGEL, P.J.

Rehearing having been granted in this matter, the opinion filed on January 25, 1990, is vacated and the following is substituted therefore:

Carla appeals a district court order finding her in contempt for failing to sign the federal income tax form necessary to permit Mark to claim the parties' oldest child as a dependent. No punishment was imposed and Carla was given the opportunity to purge this contempt by signing the form.

The marriage of Carla and Mark Weber was dissolved by decree filed July 8, 1985. The decree provided, in part, that "[t]he petitioner (Carla) shall take the youngest child as dependent on State and Federal Income Tax Returns and the Respondent (Mark) shall take the eldest child as a dependent on State and Federal Income Returns."

On May 8, 1986, a decree of modification was entered concerning Mark's visitation with the children.

Pursuant to the 1984 Tax Reform Act, the custodial parent had to waive the dependent exemption for the child by signing IRS Form 8332 in order for the noncustodial parent to claim the dependent exemption. Carla signed the necessary forms for the 1986 and 1987 tax years, but not for the 1988 tax year.

On February 17, 1989, Mark filed an affidavit showing contempt concerning Carla's failure to sign the necessary

tax form. Following a hearing, the district court found Carla in contempt, did not impose punishment, and permitted Carla to purge the contempt by signing the tax form. Carla has filed this appeal.

Contempt orders are not reviewable by appeal but by certiorari. Allen v. Lindeman, 164 N.W.2d 346, 350 (Iowa 1969). We have disregarded the distinction in the interest of justice, holding that in proper cases an appeal would be treated as an application for writ of certiorari. Id.

Carla raises three main issues. The first is whether she is required by section 152(e) of the Internal Revenue Code to sign Form 8332. She relies on the failure of the dissolution decree to require her to sign the form necessary to give the dependency exemption to Mark. The decree did not require her to sign the form. However, the decree did specifically grant Mark the dependency exemption of the eldest child.

It is apparent that Carla was aware she would have to sign the form because she signed the necessary forms for the two tax years prior to this action. In addition, a dissolution decree cannot cover every possible voluntary action by the parties. If the decree orders child support by paid by one party, that party cannot refuse to sign the check merely because the decree did not order her to. The decree clearly encompassed the performance by each party of any actions necessary to implement its provisions. The

trial court was correct in ordering Carla to sign Form 8332.

Carla also contends that the trial court did not have the authority to order her to sign the form. She argues section 598.23 of the Iowa Code allows only specific alternatives to a jail term and the requirement that she sign the form was not such an alternative. The court's contempt power is certainly broad enough to include an alternative that will allow a person to stay out of jail. One of the purposes of contempt is to compel obedience to an order of the court. Callenius v. Blair, 309 N.W.2d 415, 419 (Iowa 1981). It is therefore proper for the court to provide for purgation of contempt by imposing conditions designed to procure compliance with the court order. Id. In McDonald v. McDonald, 170 N.W.2d 246 (Iowa 1969), the trial court ordered the husband to pay child support but did not hold him in contempt. Even though the defendant was not cited for contempt, the Court in McDonald held that the trial court still had the power to order payment of the child support. In McDonald, as in our case, the trial court interpreted the decree and fixed the obligations of the parties. Id. at 248. The purpose of the contempt proceedings was to compel obedience to and respect for the order of the court. Id. The trial court had the power to order Carla to sign the form.

Finally, Carla contends the trial court held her in contempt, but did not find that her failure to sign was willful. It is not clear whether the trial court held Carla's actions were willful. The court did seem to shy away from labeling her actions willful. However, we conclude that Carla's failure to sign the form was willful and subject to a citation for contempt. In any event, under the McDonald case, the trial court would not have to find Carla in contempt to order her to pay. Therefore, we remand to the trial court to impose such punishment as is necessary to insure compliance with its order.

AFFIRMED AND REMANDED.