FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MAVIS JUNE HEISHMAN,	)	
Petitioner,	)	Filed February 26, 1985
vs.	)	
THE HONORABLE JAMES D. JENKINS, JUDGE OF THE IOWA DISTRICT COURT IN AND FOR POWESHIEK COUNTY,	)	4-557 84-832
Respondent.	)	

Appeal from the Iowa District Court for Poweshiek County - James D. Jenkins, Judge.

Petitioner challenges via certiorari the ruling finding her in contempt for violation of terms of both a dissolution decree and a writ of possession. WRIT ANNULLED.

Keith D. Collins of Norgaard & Collins, P.C., Belle Plaine, for petitioner.

Michael R. Stewart of Bierman, Bierman & Stewart, P.C., Grinnell, for Maynard Keith Heishman in contempt proceeding.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

Petitioner challenges via certiorari the ruling finding her in contempt for violation of terms of both a dissolution decree and a writ of possession. She asserts: (1) that a continuance should have been granted for the purpose of enabling her to prepare a reasonable defense to an amendment filed immediately before the contempt hearing; (2) that the evidence was insufficient to establish either that she violated terms of the decree or that any such violation was willful; and (3) that as a result of her attempt to post a supersedeas bond while appealing the adverse judgment in an action for recovery of real property, the evidence was insufficient to support a finding that she was in violation of terms of the writ of possession served upon her.

Maynard and Mavis Heishman were divorced in July 1982. The dissolution decree was entered by default and Maynard was awarded the parties' 80-acre farm, including the homestead. Despite the provisions in the decree, Mavis continued to reside on the property. Maynard farmed the land and for approximately a year and a half he made no demand that his former wife move from the homestead. In November 1983, he commenced an unsuccessful forcible entry and detainer action. The following month, Maynard filed action pursuant to Iowa Code chapter 646 to recover possession of the property. The trial court sustained his motion for summary judgment and a writ of possession was served on Mavis.

Mavis has not appealed from or otherwise attacked the dissolution decree. She did, however, file notice of appeal from the judgment in the chapter 646 action. She tendered $300 to the clerk of the district court, who accepted and approved it as a supersedeas bond. No objection was made to the amount of the bond, but no stay order was entered.

Maynard filed a motion to cite the wife for contempt based on her failure to leave the property after writ of possession was served upon her. Immediately prior to the contempt hearing, he was permitted to amend the motion to add the

allegation that Mavis had violated terms of the dissolution decree. After being given five minutes to examine the amendment, Mavis' request for a continuance was denied.

The court found the petitioner in contempt on both grounds asserted by the husband. She was sentenced to a five-day jail term but was given fifteen days to purge herself of contempt. The jail term was stayed by the order of the Iowa Supreme Court granting certiorari.

When a certiorari action is brought to challenge a contempt judgment, we examine the record "to assure ourselves that proof of contempt is clear and satisfactory." State v. Cullison, 227 N.W.2d 121, 126 (Iowa 1975). While we give weight to the trial court findings, we are not bound by them. Id. Review of the record before this court convinces us that proof of contempt is clear and satisfactory.

Mavis argues that the trial court abused its discretion in failing to grant her a continuance after Maynard was allowed to amend his motion to cite for contempt. She claims that she should have been allowed a reasonable amount of time to prepare a defense to the new charge of contempt.

> The granting or denial of a motion for continuance is in the discretion of the trial court and will be interfered with on appeal only where there has been a clear abuse of that discretion, and injustice has been done thereby to the party seeking a continuance.

In re Estate of Lovell, 344 N.W.2d 576, 578 (Iowa App. 1983). We conclude that Mavis did not suffer an injustice by reason of the court's ruling. Maynard's original motion to cite for contempt was premised on an alleged violation of the writ of possession. His amendment added the additional allegation that, in failing to leave the homestead, Mavis had violated the dissolution decree as well. We agree with the trial court's conclusion that the amendment did not present anything new or different from what the petitioner was already in court to defend.

Mavis also complains that she should not be held in contempt of the 1982

dissolution decree due to the indefiniteness of the order and the absence of willful intent to violate the order.

By the very language of the divorce decree, title to the 80-acre farm and homestead was transferred to Maynard Heishman. However, petitioner claims the decree is indefinite since it does not specifically state she must leave the premises. This argument is without merit. The record contains clear and satisfactory evidence that Mavis was aware of what was meant by the order. The petitioner testified that her lawyer told her that under the decree Maynard had possession of the farm and homestead. In light of the unequivocal transfer of title in the decree and Mavis' own testimony, we find it difficult to believe that she did not know she was to leave the property. See Wilson v. Fenton, 312 N.W.2d 524, 526 (Iowa 1981).

We also conclude that there is clear and satisfactory evidence that Mavis willfully violated the decree. The terms of the dissolution decree were clear and the record indicates that Mavis understood them. Mavis claims that she lived on the premises peaceably for a year and a half with Maynard's full knowledge. She argues that her violation of the decree cannot be characterized as willful since Maynard did not tell her to leave. This position ignores the fact that the petitioner has refused to communicate with Maynard since the marriage was dissolved. Mavis had a restraining order issued against her former husband on May 15, 1981, and has not spoken with him since. When Maynard attempted to contact her, she would tell him to "go through appropriate counsel" and hang up on him. Petitioner cannot now rely on her intentional avoidance of her former husband and argue that he never told her to leave the property. Furthermore, any doubt that Maynard wanted her to leave the premises was resolved when Maynard brought a forcible entry and detainer action in November 1983.

We hold that clear and satisfactory evidence demonstrates that Mavis'

failure to comply with the decree was willful and warrants an adjudication of contempt.

Mavis' final argument is that she was protected from a contempt adjudication by her good faith efforts to comply with the supersedeas bond provisions of the Rules of Appellate Procedure.

Supersedeas bonds are governed by Iowa R. App. P. 7, 8, and 9. When a supersedeas bond is approved and a stay order is entered by the clerk of court, the bond effectively maintains status quo until the appeal is decided. Edge v. Horsha, 334 N.W.2d 741, 742 (Iowa 1983).

In the present action, Mavis attempted to stay the effectiveness of the writ of possession until the appeal of the matter was decided. She posted a $300 bond which was subsequently approved by the clerk of court. However, the clerk never entered a stay order as required by Rule 8. Furthermore, the trial court later ruled that the bond requirements had not been met because the petitioner had not made an application to the court to set the amount of the supersedeas bond.

We believe the record reflects that the petitioner made a good faith effort to comply with the Rules of Appellate Procedure. It is likely that Mavis relied on erroneous advice of counsel and believed that the stay order had been issued. However, it is apparent that the trial court took this factor into consideration in giving the petitioner fifteen days to purge herself of contempt by leaving the property. Because of this, we cannot say that Mavis' good faith effort to comply requires reversal. Mavis remained on the property after the fifteen-day period allowed by the trial court and should appropriately be found in contempt of court.

WRIT ANNULLED.