

IN THE COURT OF APPEALS OF IOWA

No. 7-296 / 96-0992

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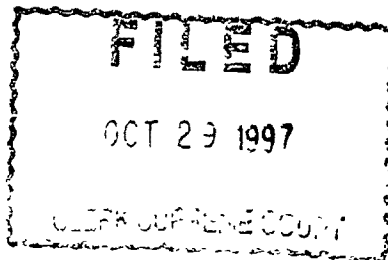
LAWRENCE F. COLLUM

Petitioner-Appellant,

vs.

WANDA SHULTS,

Respondent-Appellee.



Appeal from the Iowa District Court for Poweshiek County, James P. Rielly,
Judge.

Lawrence Collum appeals from a district court ruling which denied his
application for contempt. **AFFIRMED.**

Lee M. Walker of Walker, Knopf & Billingsley, Newton, for appellant.

Donald L. Schild, Grinnell, for appellee.

Considered by Cady, C.J., and Sackett and Mahan, JJ.

SACKETT, J.

Appellant Lawrence F. Collum appeals from the district court's denial of his application asking the court to find appellee Wanda Shults, the mother of his grandson Shawn, in contempt for denying him visitation with Shawn. In December 1995, a district court ordered Collum visitation with Shawn, then six years old. Collum exercised visitation in December 1995 and January 1996. In February 1996, Shawn did not want to go with Collum. Wanda did not force Shawn to go on the visit. She took Shawn to a counselor.

In February 1996, Collum filed an application asking the court find Wanda in contempt for failure to comply with the order granting him visitation. Wanda offered to allow Collum more frequent supervised visitation so Shawn could get to know his grandfather better. Collum refused. Shawn did not attend visitation in March 1996, but in April 1996 visits resumed.

The district court found Wanda did not willfully disobey the court's order. The court pointed out that it was not for Shawn to decide whether or not he wanted to go on visitation. The court concluded, however, that Wanda acted appropriately by taking Shawn to counseling, which resulted in a more favorable visitation situation. Collum has appealed the district court decision.

Collum contends the district court erred in failing to find Wanda in contempt for violating the order granting him visitation. He asserts she should have forced Shawn to go to visitation in February and March 1996.

When an application for contempt is denied, a direct appeal is permitted. *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992). Our review is not de novo, but is on assigned errors only. *In re Marriage of Ruden*, 509 N.W.2d 494, 496 (Iowa App. 1993). Contempt must be established beyond a reasonable doubt. *Id.* Only willful disobedience of a court order will justify a conviction for contempt. *Id.*

Evidence of whether Wanda willfully disobeyed the court order is controverted. The fact Shawn indicated he did not want to go with his grandfather is not a sufficient reason for Wanda to deny visitation. Wanda did seek counseling for Shawn and offered to give Collum more frequent supervised visitation. The visitation had only recently been ordered and Wanda contended it was in Shawn's best interest to take the action she did. The trial court who heard the witnesses is in a better position than are we to gauge Wanda's true motive. We find no valid reason to reverse his decision.

Wanda seeks attorney fees for this appeal. As did the trial court, we determine each party should pay their own attorney fees.

We affirm the decision of the district court. Costs of this appeal are assessed to Lawrence.

AFFIRMED.