

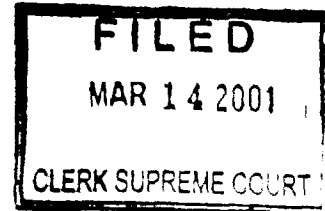
IN THE COURT OF APPEALS OF IOWA

No. 1-064 / 99-1744
Filed March 14, 2001

DENISE BLAKE,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR SCOTT COUNTY,
Defendant.



Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

In this certiorari action, plaintiff seeks review of a court order finding her in contempt for failing to comply with the provisions of a visitation order. **WRIT ANNULLED.**

Thomas J. McCann, Des Moines, for plaintiff.

James L. Tappa of Spector, Tappa & Nathan, Rock Island, Illinois, for defendant below Brent Wall.

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

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ZIMMER, J.

Denise Blake was granted certiorari review from a district court finding of contempt based on failure to comply with the provisions of a visitation order. On review, Blake contends the court erred in finding her in contempt because her actions were not a willful and intentional violation of the court's order. We affirm the district court and annul the writ.

I. Background Facts and Proceedings. Denise Blake and Brent Wall were never married. They have one child together, Dustin, who was six and one-half years old at the time of the contempt hearing on this matter. Wall had not had any contact with Dustin since his birth, but filed for visitation with him on September 2, 1998. In May of 1999 the district court entered an order that embodied an agreement Wall and Blake had reached. The order provided that the first visitation would take place at the offices of therapist Mark Cowan no later than June 12, 1999. Accordingly, Wall made an appointment with Cowan for June 9. Although Dustin was at Cowan's office on June 9, Blake denied Wall visitation because she felt it was not in Dustin's best interests. She claimed that Wall should have met with Cowan himself before exercising visitation. However, this was not a provision of the order.

The order further provided for visitation on alternate Saturdays starting no later than June 26, 1999. Blake did not make Dustin available for visitation by that date. She also refused Wall visitation on July 4, as was required by the order. Likewise, she did not make Dustin available for alternate weekend visitation, which was to begin no later than August 7, 1999.

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On July 28 Wall filed an application for citation of contempt. Following a hearing the court concluded that Blake had violated the court order and granted the application. The court ordered, among other things, that she be sentenced to twenty days in the county jail, with eighteen days suspended. Blake sought review of this order through a certiorari action. The supreme court granted the petition on January 12, 2000. She contends the court erred in finding her in contempt in that her actions were not a willful and intentional violation of the court's order.

II. Scope of Review. Certiorari is an action at law to test the legality of an action taken by a court acting in a judicial capacity. *Petersen v. Harrison County Bd. of Sup'rs.*, 580 N.W.2d 790, 793 (Iowa 1998). Illegality exists when a court's findings do not have substantial evidentiary support. *Whitlock v. Iowa Dist. Court*, 497 N.W.2d 891, 893 (Iowa 1993). Our review is for correction of errors at law. *Polk County Sheriff v. Iowa Dist. Court*, 594 N.W.2d 421, 423 (Iowa 1999).

III. Sufficiency of the Evidence. A finding of contempt must be established by proof beyond a reasonable doubt. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 835 (Iowa Ct. App. 1997). Therefore, substantial evidence adequate to support such a finding is evidence that could convince a rational trier of fact Blake is guilty of contempt beyond a reasonable doubt. *Id.* Wall has the burden of proving Blake 1) had a duty to obey the court order, and 2) willfully failed to perform that duty. *Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 678 (Iowa 1998). The burden then shifts to Blake to produce evidence that the violation was not willful. *Id.* However, the burden to prove willfulness beyond a reasonable doubt always rests with Wall. *Id.*

Evidence establishes willful disobedience if it demonstrates: 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 unconcern whether the contemnor had the right or not.

Gizmo, 561 N.W.2d at 835 (citation omitted). Blake may show that her failure to comply with the order was not willful if the order was indefinite or she was unable to perform the act ordered. *Christensen*, 578 N.W.2d at 678.

Blake alleges there is insufficient evidence to prove beyond a reasonable doubt that her actions were willful. She does not dispute her failure to follow the requirements of the court order, but rather contends there was a specific visitation plan set forth by both parties to which Wall had not adhered. Specifically, she claims Wall was to meet with Dr. Cowan by himself, then Dustin was to meet with Cowan by himself, and finally both parties were to meet with Cowan. She claims Wall did not follow this plan and therefore she was not required to make Dustin available to him. Blake further asserts her actions after Wall's meeting with Cowan illustrate her intent to comply with the court order, but that Wall failed to take the actions necessary to implement the visitation. She thereby argues her actions were not contemptuous.

Both Wall and Blake negotiated a visitation plan for their son, Dustin. This plan was outlined in the court's order entered May 28, 1999. Before the order was entered, both parties had a chance to review it. Blake testified she understood the order and did not have any objections to it or questions about its interpretation. The court's order simply states, "the first visitation shall be held at the offices of Mark D. Cowan at 2700 Grand Avenues, Des Moines, Iowa." It does not make reference to any three-part meeting required before visitations were to take place. Because the

language of the order is clear and unambiguous, Blake cannot contend she did not understand it and did not intend to violate it. *See Phillips v. Iowa Dist. Court*, 252 Iowa 140, 144, 106 N.W.2d 68, 70 (Iowa 1960). Furthermore, any three-part meeting could have taken place when Wall presented himself at Cowan's office on June 9. Both Blake and Dustin were present at the office during that meeting, but Blake flatly refused to allow any visitation to take place on that day. She further took no steps to implement visitation on June 10, 11 or 12. Contrary to Blake's claims, she also did not attempt to facilitate any visitations after June 12. Instead, she refused to return Wall's calls and hung up on him on July 4 when he asked about seeing his son. We find this conduct was willful and in disregard of Wall's rights as set forth in the court's order. Accordingly, there is substantial evidence by which a rational trier of fact could find Blake guilty of contempt beyond a reasonable doubt.

WRIT ANNULLED.

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