IN THE COURT OF APPEALS OF IOWA

No. 1999-571 (9-845) / 99-455
Filed February 23, 2000

IN RE THE MARRIAGE OF TRACEY LEE PETERMAN AND KAREN SUE PETERMAN

FILED
FEB 23 2000
CLERK SUPREME COURT

Upon the Petition of
TRACEY LEE PETERMAN,

Appellee,

And Concerning
KAREN SUE PETERMAN,

Appellant.

Certiorari to the Iowa District Court for Jefferson County, Dan F. Morrison, Judge.

Karen Peterman seeks review of the district court's finding that she is in contempt for denying visitation to her former husband. **WRIT SUSTAINED.**

J.W. McGrath of McGrath & McGrath, P.C., and William C. Glass, Keosauqua, for appellant.

No appearance for appellee.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

Karen Peterman seeks review of the district court's finding that she is in contempt for denying visitation to her former husband, Tracey Peterman. We sustain the writ.

Karen and Tracey divorced in Kansas in 1996. They have one son, Spencer. The decree awarded custody to Karen subject to Tracey's right to "reasonable visitation." Karen moved to Iowa. As a result, an order was entered in Kansas on September 15, 1998, specifying Tracey's visitation rights. When that order was entered, Tracey resided in Topeka, Kansas. The order contained the following pertinent provisions:

> 5. In the event [Tracey] returns to Iowa for the Thanksgiving holiday period, he shall be entitled to overnight visitation on Friday, November 27; all day Saturday, November 28; and until noon Sunday, November 29th.
>
> 6. The parties shall alternate Thanksgiving holidays by [Karen] having Thanksgiving in 1998 on even-numbered years and [Tracey] having Thanksgiving in odd-numbered years.
>
> . . .
>
> 10. In the event [Tracey] relocates to Iowa and obtains employment with a conventional five day [sic] per week work schedule, [he] shall be entitled to visitation on the first and third weekends of each month . . . .

Tracey moved from Kansas to Iowa in early November of 1998 and requested Thanksgiving visitation pursuant to the quoted provision. Karen denied the visitation, contending the September 15 order anticipated that Tracey would be living outside of Iowa and would only be entitled to the extended Thanksgiving visitation if he happened to visit Iowa during the holiday. Karen's attorney advised that she did not have to provide Thanksgiving visitation due to Tracey's relocation.

In January of 1999, Tracey filed an application to have Karen held in contempt. The district court found there was nothing in the September 15 order which indicated the visitation provisions would not apply if Tracey lived in Iowa. The court found beyond a reasonable doubt that Karen was in contempt and sentenced her to five days in jail. The district court also ordered that Karen could purge the contempt if she provided Tracey extra visitation before April 1, 1999.

Karen appeals, contending there was insufficient evidence to support the finding of contempt. She argues the provisions of the September 15 order were based on the assumption Tracey was living in Kansas and she had relied on the advice of legal counsel to deny him the extended holiday visitation. Tracey has not filed a brief or an appearance in this matter.

Karen seeks review of the district court ruling by appeal rather than certiorari as required by Iowa Code section 665.11 (1997). Pursuant to Iowa Rule of Appellate Procedure 304, we proceed to treat the appeal as though the proper form of review had been sought. *In re Marriage of Spears*, 529 N.W.2d 299, 303 (Iowa App. 1994).

I. Scope of Review. Our review is at law, not de novo. *Sulma v. Iowa Dist. Ct. for Washington County*, 574 N.W.2d 320, 321 (Iowa 1998). We look at whether the district court acted illegally or without jurisdiction. *Id.* (citation omitted); *see* Iowa R. Civ. P. 306. If it is claimed that a ruling is not supported by substantial evidence, we examine the record, not de novo, but to assure ourselves the proper proof supports the judgment. *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa App. 1994). We are not bound by the trial court's conclusions of law and may inquire

whether the trial court applied erroneous rules of law that materially affect its decision. *Id.*

II. Sufficiency of the Evidence. The question is whether substantial evidence supports the court's judgment. *McKinley v. Iowa Dist. Court for Polk County,* 542 N.W.2d 822, 824 (Iowa 1996). Contempt must be established by proof beyond a reasonable doubt. *Id.* Contempt is customarily defined as willful disobedience. *Id.* "Willful disobedience" requires

> evidence of 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 an unconcern whether the contemner had the right or not.

Id. Indefiniteness of an order is a defense to a contempt action. *Id.*

The district court concluded there was no restriction in the Kansas visitation order requiring Tracey to be living in Iowa to exercise the visitation in Thanksgiving 1998. We disagree. The Kansas court's language demonstrates it intended to distinguish an instance where Tracey returned in 1998 "to Iowa for the Thanksgiving holiday period" from "the event petitioner relocates to Iowa. . . ." Furthermore, other language in the order clearly contemplates Tracey's continued residence in Kansas. Tracey's own testimony confirms he never told the Kansas court that he was moving to Iowa before it entered the decree. Testimony at the contempt hearing indicated Tracey had already had visitation the first and third weekends of November, pursuant to paragraph 10 of the Kansas order, which governs monthly visitation in the event Tracey relocates to Iowa. On the record before us, we cannot say

substantial evidence supports a finding by proof beyond a reasonable doubt that Karen willfully violated the visitation order issued by the Kansas court.

WRIT SUSTAINED.