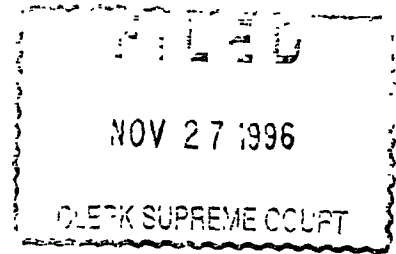


IN THE COURT OF APPEALS OF IOWA

No. 6-518 / 95-1379



LINDA L. CRAWFORD,

Plaintiff,

vs.

**IOWA DISTRICT COURT FOR
POLK COUNTY,**

Defendant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Linda Crawford petitions for writ of certiorari. **WRIT ANNULLED.**

David A. Morse of Garten & Wanek, Des Moines, for plaintiff.

Barbara O. Hoffman, Des Moines, for defendant.

Heard by Cady, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Linda Crawford challenges the legality of the district court's order citing her for contempt of court for violating the visitation provisions of a dissolution decree. We annul the writ of certiorari granted by the Supreme Court.

Linda and David Crawford were divorced in November 1994. Linda was awarded physical care of their son John, now age sixteen. David was awarded liberal visitation including every other weekend and one night per week.

David initiated these proceedings in April 1995. In his application for a rule to show cause, David alleged Linda denied him visits with John on seventeen separate occasions beginning in February 1995 through April 1995. Linda admitted David's allegations. She, however, claimed her actions were necessary to protect John from sexual abuse by David, homosexual activity, and David's use of illegal drugs.

The district court rejected Linda's justification claims and found she had willfully violated the court's visitation orders. Linda's sentencing was deferred pending completion of a home study by the Youth Law Center. After a sentencing hearing which included consideration of the home study, the district court modified the Crawford's dissolution decree by awarding John's physical care to David.

Linda argues that the district court's finding that she willfully violated the visitation provisions of the decree lacks sufficient evidentiary support. She also argues

that the district court's decision to modify physical care was a disproportionately severe disposition under these circumstances.

We apply a special standard of review in contempt cases. *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992). We examine the record, not de novo, but rather for substantial evidence to support the judgment. *Palmer College of Chiropractic v. Iowa Dist. Court*, 412 N.W.2d 617, 619 (Iowa 1987). 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. *Patterson v. Keheler*, 365 N.W.2d 22, 24 (Iowa 1985).

Proof of contempt in this context requires a showing that there was a willful violation of the court's order. See *Lipcamon*, 483 N.W.2d at 607; *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980). No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986).

Our review of the record discloses substantial evidentiary support for the district court's finding of contempt. Linda admits denying David's visitation. John and David denied Linda's allegations of sexual abuse or any other inappropriate sexual activity. David also denied using illegal drugs. The record does not reveal any credible evidence substantiating Linda's allegations. Under these circumstances, the district court could

reasonably infer Linda's failure to comply with the visitation provisions of the decree was willful. We affirm on this issue.

Linda next contends that the district court's decision to modify physical care was too extreme and contrary to John's best interest. She cites her acute rather than chronic behavior and the availability of alternative measures of sufficient remedial import. We disagree.

In dissolution proceedings, a court's contempt power is governed by Iowa Code section 598.23, which states in part:

1. If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.
2. The court may, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following . . .

- b. Modifies visitation to compensate for lost visitation time or established joint custody for the child *or transfers custody*.

Iowa Code §528.23 (1991) (emphasis added); *see also Kirk v. Iowa District Court*, 508 N.W.2d 105, 108 (Iowa App. 1995). The sentence imposed for contempt is largely within the discretion of the trial court. *Battani v. Grund*, 244 Iowa 623, 632, 56 N.W.2d 166, 172 (1952). It is only where this discretion has been grossly abused that we will interfere. *Id.*

The district court withheld sentencing Linda pending receipt of a report from the Youth Law Center regarding the implications of a custodial change. The content of the

report validated the concerns the district court earlier expressed about John's problematical relationship with Linda. Moreover, we have held that false reporting of child abuse by a primary caretaker is inconsistent with the role of a physical caretaker. *See In re Marriage of Liebich*, 547 N.W.2d 844, 848-49 (Iowa App. 1996) (sole custody properly awarded to father where mother had history of making false allegations of child abuse against father). Under these circumstances, we find no abuse of discretion and affirm on this issue.

WRIT ANNULLED.