

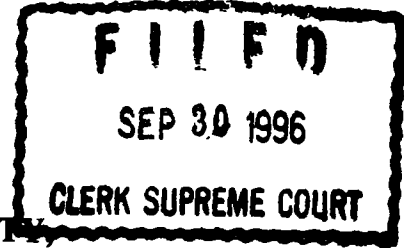
IN THE COURT OF APPEALS OF IOWA

No. 6-329 / 95-1383

STEPHEN LEDGER,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR JEFFERSON COUNTY,
Defendant.



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

Stephen Ledger has been granted a petition for writ of certiorari and a motion
for stay of the district court proceedings. **WRIT ANNULLED.**

Steven Gardner of Kiple, Kiple, Denefe, Beaver & Gardner, Ottumwa, for
appellant.

Mary Baird Krafka of Swanstrom & Krafka, Ottumwa, for appellee.

Considered en banc.

PER CURIAM

Stephen and Karin Ledger's fifteen-year marriage was dissolved in February 1992. Among other things, the dissolution decree ordered Stephen to make monthly payments of \$301.58 on a car awarded to Karin. Stephen made these payments until April 1992.

In July 1995, Karin filed an application requesting that Stephen be found in contempt for failure to continue making the car payments as ordered by the decree. Following a hearing, the court concluded Stephen's failure to make the payments was willful and found him to be in contempt of court. Stephen was sentenced to thirty days in jail. Mittimus was ordered withheld as long as Stephen abided by a payment schedule set out by the court.

Stephen's subsequent petition for writ of certiorari and motion for stay was granted by ~~this court on September 8, 1995.~~ Stephen ~~claims the evidence~~ was insufficient to find beyond a reasonable doubt that his failure to pay was willful. He argues that, for various reasons, he is broke, has no assets and owes the IRS \$70,000. He thus asserts he is simply unable to make the car payments.

Scope of Review

When a finding of contempt is challenged on appeal, review is not de novo; rather, the court examines the evidence to ensure that substantial evidence supports the judgment of contempt. *Ervin v. Iowa District Court*, 495 N.W.2d 742, 744 (Iowa 1993). Because of the quasi-criminal nature of the proceeding the finding of

contempt must be established beyond a reasonable doubt. *Phillips v. Iowa District Court*, 380 N.W.2d 706, 709 (Iowa 1986). Substantial evidence can be described as such evidence as could convince a rational trier of fact that the alleged contemner is guilty of contempt beyond a reasonable doubt. *Ervin*, 495 N.W.2d at 744-745.

Where the violation of a court order is admitted as in this case the issue becomes a question of willfulness. The burden to produce evidence on this question shifts to the alleged contemner however “. . . the underlying burden of establishing a crucial ingredient, such as willfulness, should rest with the one bringing the charge.” *Ervin*, 495 N.W.2d at 745. The proper burden is one of production and not persuasion *Skinner v. Ruigh*, 351 N.W.2d 182, 185 (Iowa 1984).

Our task then is to determine whether the record supports the trial court’s finding that the evidence shows beyond a reasonable doubt that Stephen Ledger’s violation of the court was willful. We are convinced it does.

The record is undisputed that Stephen Ledger was a successful farm operator at the time of the dissolution. He was also a qualified farm mechanic. He had a favorable farm lease that he voluntarily terminated. He had more than \$50,000 in farm equipment and three bins of corn and soybeans awarded him in the decree. He sold off all these assets. He testified he did not know what amount the sales had produced, that he had no records and that he did not know where the money went.

Mr. Ledger complied with the court order to make the car payment in January, February, March and April of 1992. He failed to pay thereafter and at the time of the

hearing on contempt in August of 1995 he was more than \$10,000 delinquent. He testified he had made no effort to renegotiate the terms of the loan with the bank. The explanation by Mr. Ledger to justify his failure to comply with the court order failed to convince the trial court. There was substantial evidence for the court to find Stephen Ledger's failure to comply with the court order was willful beyond a reasonable doubt.

We conclude the trial court acted within its authority in its finding of contempt and in the punishment imposed. We annul the writ of certiorari.

WRIT ANNULLED.

Habhab, Cady, Streit, and Vogel, JJ., concur; Sackett, C.J., and Huitink, J. dissent.

SACKETT, C.J. (dissenting)

I dissent. I find no evidence that Stephen has the ability to make the court-ordered payments. Consequently, I do not find substantial evidence the contempt is willful.

The majority relies not on findings of Stephen's ability to pay, but the fact he cannot account for some alleged \$50,000 in assets he acquired in the dissolution three years prior to the bringing of the contempt action.

I find the evidence is that Stephen owes some \$70,000 to the Internal Revenue Service and he is \$10,000 delinquent on a bank loan. While the majority cites Stephen's failure to attempt to renegotiate the terms of the loan, I do not find this a relevant issue, particularly where there is clear evidence Stephen is indebted on a substantial federal income tax obligation.

Huitink, J , joins in this dissent.