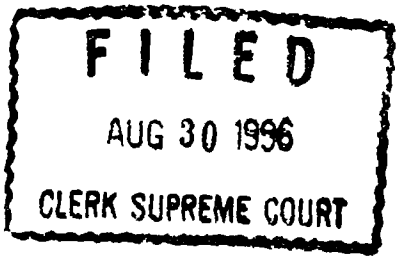
IN THE COURT OF APPEALS OF IOWA

No. 6-531 / 95-1816



STEPHEN RUSSELL CHANDLER,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR WAPELLO COUNTY,

Defendant.

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge.

Stephen Chandler filed a petition for writ of certiorari c
court acted illegally in finding him in contempt for violating the visitation provisions of the parties' dissolution decree. **WRIT ANNULLED.**

R.T. Starken of Alexander & Starken, Ottumwa, for plaintiff.

Patrick F. Curran of Vinyard & Curran, Ottumwa, for defendant.

Considered by Habhab, P.J., Huitink, and Vogel, JJ.

PER CURIAM

Plaintiff filed a petition for writ of certiorari claiming the district court acted illegally in finding him in contempt of court for violating the visitation provisions of the parties' dissolution decree. We annul the writ of certiorari by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

A dissolution of marriage decree was entered for Michelle and Steven Chandler on April 3, 1991. Michelle was granted primary physical care of the parties' two children, and Steven was awarded specific visitation rights. On January 3, 1993, Steven was found to be in contempt of court due to failure to return the children after visitation as required by the dissolution decree.

On September 6, 1995, Michelle filed a new motion for rule to show cause, claiming Steven had failed to timely return the children after visitation on five occasions. In an affidavit, Steven admitted he had not returned the children in the evening on these occasions, but kept them until the next morning. The district court found Steven to be in contempt. He then filed a petition for writ of certiorari, which was granted by the supreme court.

Steven contends the district court acted illegally by finding him in contempt because the evidence did not show beyond a reasonable doubt his conduct was in violation of the dissolution decree. Steven argues the dissolution decree did not prohibit him from exercising additional visitation. He believes the visitation rights specified in a decree should be seen as the minimum contacts allowed with the

children, and not the maximum. He stated the extra visitation was in the children's best interests.

We review to ensure that the allegedly contumacious actions have been established by proof beyond a reasonable doubt. *Kirk v. Iowa Dist. Court,* 508 N.W.2d 105, 107 (Iowa App. 1993). The two defenses available in a contempt proceeding are: (1) absence of willfulness is disobeying the order; and (2) indefiniteness or uncertainty of the order. *In re Marriage of Jacobo,* 526 N.W.2d 859, 866 (Iowa 1995).

While we agree a visitation schedule sets forth the minimum amount of visitation allowed to a non-custodial parent, any visitation in additional to that in the schedule would have to be agreed upon by both parties. Michelle testified she had not agreed to give Steven additional visitation on the dates in question. We conclude there is sufficient evidence to show Steven willfully disobeyed the terms of the dissolution decree.

Michelle seeks attorney fees for this appeal. We determine Steven should pay $500 for her appellate attorney fees.

We annul the writ of certiorari. Costs of this appeal are assessed to Steven.

AFFIRMED.