

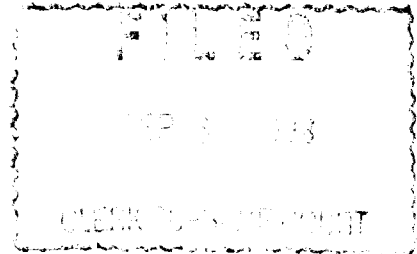
IN THE COURT OF APPEALS OF IOWA

No. 8-476 / 97-1678
Filed September 30, 1998

BILLY GENE FUNK,
Plaintiff,

vs.

**IOWA DISTRICT COURT FOR
WOODBURY COUNTY,**
Defendant.



Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

The supreme court has granted plaintiff's petition for writ of certiorari from a
district court order finding him in contempt for failure to pay child support and
sentencing him to thirty days in jail. **AFFIRMED AND WRIT ANNULLED.**

Douglas L. Roehrich, Sioux City, for plaintiff.

Rebecca A. Nelson of Rawlings, Nieland, Probasco, Killinger, Ellwanger,
Jacobs & Mohrhauser, Sioux City, for defendant.

Considered by Cady, C.J., and Streit and Vogel, JJ.

STREIT, J.

By writ of certiorari Billy Funk challenges the trial court's contempt finding. Because there is proof Billy wilfully violated a court child support order, we affirm.

I. Background Facts & Proceedings.

Billy and Sandra Funk were divorced in 1983. Sandra was awarded primary physical care of the couple's only child, Amanda. Billy was ordered to pay child support of \$15 per week. Billy was unemployed at the time.

Billy began working for the U.S. Postal Service in 1992. His take-home pay was approximately \$1913 per month. Sandra petitioned for modification of child support and his obligation was increased to \$280 per month. He was also ordered to provide medical insurance for Amanda. In May 1992, Sandra filed another petition for modification and the district court increased Billy's child support obligation to \$430 per month.

Billy was terminated from the postal service in February 1996, for filing a fraudulent workers' compensation claim. Billy continued to receive \$391 per month in veteran's benefits. By June 1996, Billy was \$6607 delinquent in child support payments. The district court entered an order for mandatory income withholding in the amount of \$430 per month.

Billy did not make any child support payments or maintain health insurance for Amanda. Sandra filed an application for a finding of contempt on April 21, 1997, for Billy's failure to pay child support. The court found Billy in contempt and

sentenced him to thirty days in jail. On September 15, 1997, Billy filed a petition for writ of certiorari, which was granted by the supreme court.

II. Standard of Review.

Our review is at law, not de novo. *Madyun v. Iowa Dist. Ct.*, 544 N.W.2d 441, 443 (Iowa 1996). The question is whether the district court acted illegally or without jurisdiction. *See id.*; Iowa R. Civ. P. 306. Certiorari is a procedure to test whether a lower court exceeded its proper jurisdiction or otherwise acted illegally. *See Iowa R. Civ. P. 306; French v. Iowa Dist. Court*, 546 N.W.2d 911, 913 (Iowa 1996). When we review a ruling of contempt by certiorari, we determine whether substantial evidence supports the district court's judgment. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 834-35 (Iowa App. 1997). Substantial evidence sufficient to support such a finding exists when the evidence could convince a rational trier the person is guilty of contempt beyond a reasonable doubt. *Id.* at 835.

III. Sufficiency of Evidence to Support Contempt.

It is Sandra's burden to prove Billy had a duty to obey the court order and failed to perform the duty. *See In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995). If Sandra meets her burden, the burden shifts to Billy to show he did not wilfully violate the order or decree. *Id.* The burden of persuasion remains upon Sandra to prove beyond a reasonable doubt Billy wilfully disobeyed the court's order. *See Jacobo*, 526 N.W.2d at 866.

Evidence establishes wilful disobedience if it demonstrates:

[C]onduct 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.

See Gimzo, 561 N.W.2d at 835 (quoting *Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 140 (Iowa 1988)). Sandra must only prove some of the violation was wilful in order to establish contempt. *Id.*

The failure to pay each installment of child support as it becomes due can constitute a separate contempt for each missed payment which may be punished in a single proceeding. *See Johnson v. Iowa Dist. Ct.*, 385 N.W.2d 562, 564 (Iowa 1986). In this case, Billy was cited for a single act of contempt for his failure to pay his aggregate child support obligation. *Id.*

Sandra established a prima facie case of contempt by showing Billy had a duty to pay child support and failed to perform that duty. Billy asserts as a defense his violation is not wilful disobedience because of his inability to pay child support. *McKinley v. Iowa Dist. Ct.*, 542 N.W.2d 822, 824 (Iowa 1996). He contends his inability is due to the fact he lost his job and cannot find other work. *See Wilson v. Fenton*, 312 N.W.2d 524, 527 (Iowa 1981) (inability to comply bears on the issue of wilfulness and allows alleged contemnor to avoid adjudication of contempt by proving a good faith effort was made to comply).

Billy has not met his burden of proving his failure to obey the court order was not wilful. To the contrary, the record indicates Billy's failure to pay child support wilful beyond a reasonable doubt. The record shows some of Billy's arrearage was

accrued during the time he was employed by the U.S. Postal Service. By June 1996, he was \$6607 in arrears. He was not terminated from the postal service until February of 1996. These facts make evident Billy was in arrears before he lost his job. A current inability to pay does not prevent punishment for past failures to pay. *Lamb v. Eads*, 346 N.W.2d 830, 833 (Iowa 1984). Further, contempt may be found if some of the default relied upon was willful. *See Skinner v. Ruigh*, 351 N.W.2d 182, 186 (Iowa 1984).

There is no evidence Billy was incapable of working. Billy argued he could not find employment because when prospective employers checked his reference with the postal service they found he had filed a fraudulent workers' compensation claim and refused to hire him. Even if this were true, Billy cannot benefit from his wrong doing. When the inability to follow a court order is due to a wrongful act of the party himself, the contempt is not excused. *Society of the Divine Word v. Martin*, 38 N.W.2d 619, 621 (Iowa 1949). The record indicates, however, Billy has been at least temporarily employed after his discharge from the postal service. In addition, he has received monthly veteran's benefits and has other income from which he could have met part of his child support obligation, including an inheritance and savings and investment accounts. Consequently, there is ample evidence to support the finding of contempt beyond a reasonable doubt. We affirm the district court's contempt finding and annul the writ of certiorari.

AFFIRMED AND WRIT ANNULLED.