

IN THE COURT OF APPEALS OF IOWA

MAY 31 1979

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CAPITAL CASE COURT

CLAY JOHNSON,

)

Plaintiff,

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Filed May 31, 1979

vs.

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HON. HAROLD L. MARTIN,
AS JUDGE OF THE IOWA DISTRICT
COURT FOR POTTAWATTAMIE
COUNTY,

)

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2-61735

)

)

Defendant.

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On writ of certiorari from Pottawattamie District Court - Harold L. Martin,
Judge.

Plaintiff-husband asserts that trial court's imposition of 30 days imprisonment for
contempt due to alleged willful failure to pay child support with 15 days mandatory
imprisonment before opportunity to purge himself is illegal and in excess of trial court's
jurisdiction. WRIT ANNULLED.

Charles L. Smith of Telpner & Smith, Council Bluffs, Iowa, for plaintiff-appellant.

No appearance filed for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

This is an original certiorari action in which plaintiff, Clay Johnson, asserts that the district court judge for Pottawattamie County acted illegally and in excess of the court's jurisdiction by finding plaintiff in contempt for alleged willful failure to pay child support and sentencing him to 30 days imprisonment with 15 days mandatory imprisonment before opportunity to purge himself. We find trial court acted legally and within its jurisdiction. The writ of certiorari is annulled.

Plaintiff and his wife, now Joyce Johnson Smith, were granted a divorce in 1967, with temporary custody of two minor children, Mark and Michelle, awarded to plaintiff. In February, 1969, the custody award was reviewed; Joyce received permanent custody of the children and Clay was ordered to pay support of \$10.00 per week per child. In August, 1969, the court granted Joyce the right to permanently remove the children to California subject to reasonable visitation rights in Clay. In 1978 Clay filed an application for modification of the 1969 decree seeking custody of both children; he later amended the application to request custody only of Mark. Joyce subsequently filed an application to show cause alleging in a single count 1) that Clay had violated provisions of the 1969 decree by removing Mark from her custody and control and secreting him in violation of court orders and 2) that Clay was nine years delinquent in child support payments. The district court continued the question of modification of custody but transferred temporary custody of Mark to Clay. On the application to show cause for failure to pay child support, the court found Clay in contempt due to willful nonpayment of past-due child support obligations in the amount of \$8,000. Subsequently the court sentenced Clay to 30 days in jail with opportunity to purge himself by paying one-third of the balance due and \$100 per month support only after serving 15 days of the sentence. Plaintiff sought review of this action by writ of certiorari.

I. Certiorari is the proper review for a contempt order. In re Marriage of Welsher, 274 N.W.2d 369, 371 (Iowa 1979); McDonald v. McDonald, 170 N.W.2d 246, 247 (Iowa 1969). It is an action at law to review the legality of action and jurisdiction of the lower tribunal; we review the evidence only to determine if the court's order is supported by clear and satisfactory proof. Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974); Harkins v. Harkins, 256 Iowa 207, 211, 127 N.W.2d 87, 89 (Iowa 1964). It is not a de novo review. We find this standard was met in this case.

II. In 1969 Clay Johnson was directed to pay \$10 per child per month support. During examination on the application to show cause he testified he was aware of this obligation and failed to meet it because of alleged interference with his visitation rights; he also stated that he was aware support payments and visitation privileges are separate issues. By the ex-wife's allegation of plaintiff's failure to pay child support and plaintiff's admission of such failure a prima facie case for contempt is made out. Barkins v. Barkins, 256 Iowa at 211, 127 N.W.2d at 90. Contempt proceedings are justified when willful disobedience to a court's order is shown. § 598.23, The Code 1977. Willful means doing an act "intentionally or deliberately . . . in disregard of the rights of others or contrary to a known duty." See Huston v. Huston, 255 Iowa 543, 548, 122 N.W.2d 892, 896 (1963). Once this test has been met, as it has here, the court is justified in imposing a penalty for contempt.

Section 598.23, The Code 1977, permits the court to order imprisonment for up to 30 days or alternatively to impose a levy against income in contempt proceedings. The district court did not exceed these limitations. Therefore, although this court might have imposed different penalties than those imposed by defendant judge, we do not find that he acted illegally or exceeded his jurisdiction.

The writ of certiorari is annulled.

ORDER ENTERED TO ANNUL WRIT.