

IN THE COURT OF APPEALS OF IOWA

No. 8-203 / 97-0904

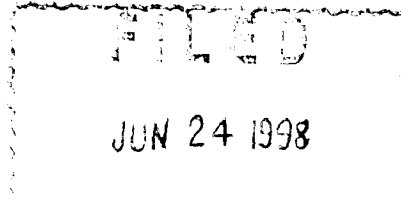
DEBORAH ROSE ZEHR,

Plaintiff,

vs.

**IOWA DISTRICT COURT
FOR POLK COUNTY,**

Defendant.



Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

In this certiorari action, plaintiff contends the district court was without jurisdiction to hold her in contempt for not returning items to her former husband and in ordering her to reimburse him for their value. **WRIT AFFIRMED.**

Kathy Goudy, Des Moines for plaintiff.

Andrew B. Howie and Roger J. Hudson of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., Des Moines, for defendant.

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

SACKETT, P.J.

In this certiorari action, plaintiff Deborah Rose Zehr contends the district court was without jurisdiction to hold her in contempt for not returning items to Harvey Zehr, her former husband, and in ordering her to reimburse him for their value. We affirm the writ.

Deborah and Harvey were divorced in July 1996. The dissolution decree awarded Harvey what had been the family home. Deborah was ordered to vacate it by August 30, 1996. Deborah was to receive all furniture and other personalty then in the family home with the exception of the dishwasher, stove, refrigerator, draperies, firearms, trains, John Deere mower, electric chain saw, gas-powered weed trimmer, Harvey's clothing, a computer desk, and Harvey's souvenirs and memorabilia.

In January 1997, Harvey filed an application to have Deborah held in contempt for failing to turn over items of personal property awarded to him under the terms of the decree. Harvey alleged Deborah failed to give him parts of his train collection. He also contended she did not turn over to him the following items: bedroom curtains; shower curtain; bathroom faucets (two new unattached sets); door latch/dead bolt; dehumidifier; circular saw; 12 volt compressor; Wagner power painter; leaf rake; hammer; and .38 revolver and ammo.

A hearing was held. The trial court in oral and written findings determined Harvey had not met his burden showing Deborah should be held in contempt for failing to turn over the train pieces and the bedroom curtains. The court found the evidence showed beyond a reasonable doubt Deborah violated the dissolution decree by disposing of all the other items. The court sentenced her to two days in jail with mittimus to be withheld if she paid Harvey \$810 and \$190 in attorney fees by November 10, 1997. Harvey had valued the property the court found disposed of at \$810.

Deborah filed this petition for writ of certiorari raising as her sole issue the claim the district court was without jurisdiction to order her to pay Harvey for items which were not awarded to him in the decree.

Deborah concedes the .38 revolver was awarded to Harvey, along with the rest of the firearms, but claims the revolver disappeared. In response, Harvey argues while the items other than the revolver may not have been specifically listed in the decree, it was implied they were to be awarded to him since he was specifically awarded the family home and other related house and yard-type items. He requests an award of reasonable appellate attorney fees.

There is no statutory right to appeal from an order to punish for contempt of court, but the proceedings may, in proper cases, be reviewed by certiorari. *Chidester v. Needles*, 353 N.W.2d 849, 851 (Iowa 1984); Iowa Code § 665.11 (1997). The

review is usually limited to issues of jurisdiction or legality of the trial court's ruling. *Chidester*, 353 N.W.2d at 851.

Certiorari is an action at law and our review is not de novo. *Bervers v. Kilburg*, 326 N.W.2d 902, 904 (Iowa 1982). When it is claimed that an adjudication of contempt is not supported by substantial evidence, we examine the evidence, not de novo, but to assure ourselves that proper proof supports the judgment. *Lane v. Oxberger*, 224 N.W.2d 245, 247 (Iowa 1974). No person may be punished for contempt unless the finding of contempt is established by proof beyond a reasonable doubt. *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986).

An order or an injunction must be clear, definite, and unambiguous before it may provide a basis for contempt. *Copic v. Iowa Dist. Court*, 356 N.W.2d 223, 226 (Iowa 1984); *Lynch v. Uhlenhopp*, 248 Iowa 68, 72, 78 N.W.2d 491, 494 (1956). The contempt proceeding is so near in its nature to criminal prosecutions that the well-known rule which commands that one cannot be convicted of a crime unless the statute is clear and definite so he may know what he can and what he cannot do, is at least analogous. *Lynch*, 248 Iowa at 72, 78 N.W.2d at 494. The Iowa court has traditionally adhered to this specificity rule. *See also Hudson v. Jenkins*, 288 N.W.2d 566, 572 (Iowa 1980).

Yet without departing from its specificity rule, the Iowa Supreme Court has refused to apply it when the party's actions were calculated to subvert the court's

instruction. *Copic*, 356 N.W.2d at 226; *see also Orkin Exterminating Co. v. Burnett*, 160 N.W.2d 427, 432 (Iowa 1968) (where the court held the evidence disclosed a conscious effort to evade the effect of the injunction). In *Orkin*, the court was to say:

In deciding whether a defendant is in contempt of court for violating an injunctive order, we take into consideration *the spirit as well as the letter of the injunction to determine if its intent has been honestly and fairly obeyed*. No artful attempt to evade it will be allowed to succeed, if the act in fact constitutes a substantial violation of the injunction.

Orkin, 160 N.W.2d at 431 (emphasis added).

The court has rejected claims of vagueness in *Wilson v. Fenton*, 312 N.W.2d 524 (Iowa 1981), in part because the evidence showed those found in contempt understood what was required of them. *Id.* at 526.

Even applying the reasoning of *Orkin*, there was not sufficient specificity in the decree to advise Deborah the items in question should be delivered to Harvey. There was not substantial evidence to prove beyond a reasonable doubt Deborah violated provisions of the decree. We affirm the writ.

WRIT AFFIRMED.