

IN THE COURT OF APPEALS OF IOWA

No. 4-295 / 93-1472

STATE OF IOWA, ex rel. THERESA ANNE BANSE,
n/k/a THERESA ANNE BURROW,

Appellant,

vs.

TIMOTHY PAUL BANSE,

Appellee.

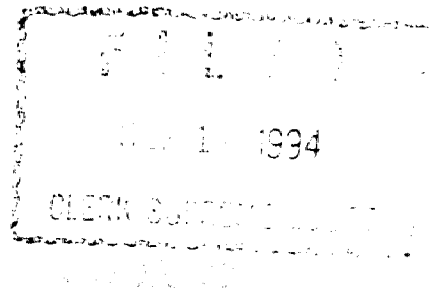
Appeal from the Iowa District Court for Clinton County,
Bobbi M. Alpers, Judge.

The State appeals a ruling refusing to find Timothy
Banse in contempt for failure to pay child support.
REVERSED AND REMANDED.

Bonnie J. Campbell, Attorney General, John M. Parmeter,
Special Assistant Attorney General, Michael J. Parker,
Assistant Attorney General, and Gregory Hilton, Assistant
County Attorney, for appellant.

Timothy Paul Banse, pro se, appellee.

Considered by Donielson, C.J., and Hayden and Huitink,
JJ.



HAYDEN, J.

Theresa and Timothy Banse had a son, Christopher, during their marriage. A decree of dissolution was filed on June 8, 1976, and Timothy was ordered to pay \$35 per week in child support. From January 12, 1976, (temporary support ordered) through July 31, 1993, a child support obligation of \$31,985 accrued. During that same time frame Timothy paid \$3,103.79. He was \$28,881.21 in arrears.

On behalf of Theresa Banse (now Burrow) the State filed an application to show cause why Timothy should not be found in contempt for failure to pay child support. Timothy responded with several defenses (improper jurisdiction, laches, son no longer a minor, decree vague, and inability to pay).

At the hearing Timothy testified since 1982 he had been a self-employed writer. He earned \$500 for each of the monthly articles he wrote for a boating magazine, \$32.50 for each of the weekly articles he wrote for a newspaper, \$250 for each of the ten articles he wrote for another magazine, and \$200 to \$300 for "occasional" other articles. He testified he had another child support obligation for a daughter from a subsequent marriage and, since 1987, he had paid about \$2425 per year on that obligation of \$2600 per year. However, his daughter was currently living with him.

The district court rejected most of Timothy's defenses. However, the court concluded Timothy did not

have the ability to pay his child support obligation for Christopher and denied the State's contempt application. The State appeals.

We first examine the State's right to appeal. When an application for contempt is dismissed, a direct appeal is permitted. Patterson v. Keleher, 365 N.W.2d 22, 24 (Iowa 1985); State v. District Court, 231 N.W.2d 1, 4 (Iowa 1975) (citations omitted); In re Guardianship & Conservatorship of Cerven, 334 N.W.2d 337, 339 (Iowa App. 1983).

In order to hold a person in contempt for failure to pay child support, that failure to pay must be willful. Iowa Code § 598.23(1) (1993); Skinner v. Ruigh, 351 N.W.2d 182, 185 (Iowa 1984). A finding of willful disobedience requires evidence of conduct which is intentional and deliberate or is contrary to a known duty. In re Marriage of Anderson, 451 N.W.2d 187, 191 (Iowa App. 1989) (citation omitted).

The district court should have found Timothy in contempt. The State established, beyond a reasonable doubt, Timothy was willfully failing to meet his support obligation for Christopher.

At the same time Timothy was shirking his obligation toward Christopher, he was meeting his support obligation for another child. Timothy's claim of poverty is belied by his substantial compliance with a support order for another of his children. Timothy's decision to meet only one of his child support obligations at the expense of the other

was willful and in wanton disregard for his obligations toward Christopher. Parents are expected to support all their children, not pick and choose among them.

Under these facts, the district court could have concluded only Timothy was in willful violation of the dissolution decree. The district court thus erred in not finding Timothy in contempt. Timothy is in contempt of court.

We remand to the trial court for a hearing on sentencing. We do not retain jurisdiction. Judgment of the trial court is reversed.

REVERSED AND REMANDED.