



IN THE COURT OF APPEALS OF IOWA

THOMAS C. FRITZSCHE,)
Petitioner,)
vs)
IOWA DISTRICT COURT FOR SCOTT)
COUNTY,)
Respondent.)

Filed November 30, 1987

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7-320
86-324

Appeal from the Iowa District Court for Scott County (Equity #35822),
Max R. Werling, Judge.

Petitioner brings this certiorari proceeding to challenge the judgment
and sentence for contempt entered against him in the district court. **WRIT**
ANNULLED.

Thomas C. Fritzsche, Bettendorf, pro se.

Thomas J. Miller, Attorney General, and Thomas D. McGrane and David
L. Dorff, Assistant Attorneys General, for respondent Max R. Werling.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

The petitioner brings this certiorari proceeding to challenge the judgment and sentence for contempt entered against him in the district court. We annul the writ.

Petitioner Thomas C. Fritzsche was temporarily enjoined for entering the marital residence where Karyn Fritzsche lived during proceedings dissolving their marriage. Thomas was also enjoined from bothering, harassing, molesting, harming, or coming into physical contact with Karyn or the children. Also, Thomas and Karyn were not to discuss the pending dissolution in front of the children. On January 4, 1986, Thomas was let into the marital residence where he questioned Karyn's decision to set the dissolution for trial. Later that day, he broke the door to the marital residence when Karyn ended visitation early.

The district court found Thomas to be in contempt for breaking the door. He was sentenced to ten days in the county jail, suspended upon the condition that Thomas pick up the children from the street curb, cease discussing any aspect of the dissolution with the children, or discuss any matter with Karyn unless her lawyer was present. Thomas then filed a petition for writ of certiorari.

A writ of certiorari may be sought when "an inferior tribunal, board or officer, exercising judicial functions, is alleged to have exceeded its, or his proper jurisdiction or otherwise acted illegally." Iowa R. Civ. P. 306. Certiorari is an action at law, not in equity; consequently, our review is not de novo. Johnson v Iowa District Court for Mahaska County, 385 N.W.2d 562, 564 (Iowa 1986). On a petition for certiorari, the petitioner has the burden to show that the district court exceeded its jurisdiction or otherwise acted illegally. Gibb v. Hansen, 286 N.W.2d 180, 184 (Iowa 1979). Although findings of fact are generally not reviewable on certiorari, we examine the evidence to ensure the burden of proof

of contempt has been met when a judgment of contempt has been challenged. See Bever v. Kilberg, 326 N.W.2d 902, 904 (Iowa 1982).

Iowa Code section 598.23(1) (1985) provides that if a person against whom a decreed order has been entered willfully disobeys that order, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of not to exceed thirty days for each offense. No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. Phillips v. Iowa District Court for Johnson County, 380 N.W.2d 706, 709 (Iowa 1986). However, an absence of willfulness in disobeying a court order is a defense available in a contempt proceeding. Bever, 326 N.W.2d at 904. Contempt is sufficiently shown if some of the default was willful. Skinner v. Ruigh, 351 N.W.2d 182, 186 (Iowa 1984). Willful noncompliance was defined in Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980), as conduct which 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.

Thomas asserts there are six issues presented for review in this matter. He claims: 1) his act of pushing in the door to the marital residence, during a time when he was privileged to pick up his children for visitation, was not a contemptuous violation of a court order; 2) the allegedly-contemptuous conduct was not proved beyond a reasonable doubt; 3) the district court judge illegally considered factual matters known personally to himself, outside the context of this action; 4) the district court judge judged petitioner's subjective conduct by an illegally strict standard merely because he was a licensed Iowa attorney; 5) the relevant provisions of the court order are inherently overbroad and ambiguous such that enforcement by the drastic remedy of contempt is barred; and

6) the district court judge's judgment of contempt is illegal in embodying purgative conditions to the suspension of sentence, wholly unrelated to the conduct sought to be punished.

We do not think it necessary to address all of Thomas's arguments. We find that Thomas has not met his burden to show that the trial court exceeded its jurisdiction or acted illegally. We further find by proof beyond a reasonable doubt that Thomas willfully disobeyed a prior court order.

The trial court by previous order enjoined petitioner from certain conduct described as follows:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner is granted exclusive use and occupancy of the marital residence with the minor children and Respondent shall be enjoined from entering the same until further order of the Court except for child visitation.

* * *

From bothering, molesting, harassing, harming or coming into physical contact with the Petitioner or the minor children until further order of the Court.

* * *

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner and Respondent shall not discuss the pending dissolution between them in front of the minor children pending further order of this Court.

The trial transcript, consisting of testimony from both parties plus a police sergeant, and Thomas's affidavit reveal that Thomas intentionally and contemptuously violated the trial court's orders by 1) harassing Karyn concerning the fact her attorney had filed a certificate of readiness for trial in this matter; 2) forcing his way into Karyn's residence by breaking down the door and destroying the frame; 3) refusing to vacate Karyn's premises until the police arrived; and 4) discussing the pending dissolution with the children.

We annul the writ and affirm the trial court's finding Thomas to be in contempt of court

WRIT ANNULLED.