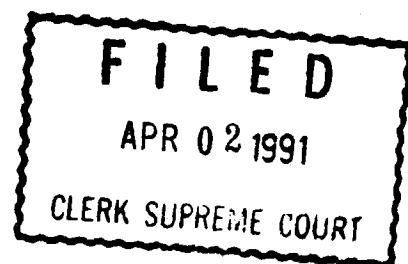


IN THE COURT OF APPEALS OF IOWA

No. 0-494 / 89-1758



LARRY R. WHITHAM,

Plaintiff,

413

vs.

IOWA DISTRICT COURT FOR STORY COUNTY,

Defendant.

Appeal from the Iowa District Court for Story County,
Louis F. Beisser, Judge.

Plaintiff challenges the trial court's finding that he was in contempt of court for violating a restraining order and failure to comply with a request for discovery by certiorari. **WRIT ANNULLED.**

Kenneth L. Butters of Dreher, Wilson, Simpson, Jensen, Sellers, Butters, Adams & Kaiser, P.C., for plaintiff.

Bonnie J. Campbell, Attorney General; and Kathy Mace Skinner, Assistant Attorney General, for defendant.

Considered by Oxberger, C.J., and Schlegel and Habhab, JJ.

HABHAB, J.

The contempt citation, which plaintiff now challenges, stems from an injunction entered in a dissolution proceeding. The district court, on August 9, 1989, issued its writ of injunction restraining the plaintiff from all contact and communication with his estranged wife Patricia except as may be necessary to arrange for visitation with the parties' two minor children, or by express prior consent of Patricia. The terms and provisions of the injunction are not in dispute.

On September 12, Patricia filed application for rule to show cause why plaintiff should not be held in contempt for failing to respond to prior discovery requests as ordered and for violating the terms of the injunction. After hearing, the district court found plaintiff in contempt on both grounds and imposed a seven-day jail sentence. The supreme court granted certiorari.

In challenging the legality of the district court's order, the plaintiff maintains that he is being punished for an act which he did prior to the date the restraining order was filed. He asks that the contempt action be set aside. Plaintiff further prays that the court find that the two days he has already served in jail is sufficient punishment for his failure to respond in a timely fashion to discovery requests. An action for contempt is in the nature of a criminal proceeding. Amro v. Iowa Dist. Court for Story County, 429 N.W.2d 135, 140 (Iowa 1988). No

person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. In re Marriage of Anderson, 451 N.W.2d 187, 191 (Iowa App. 1989). Pursuant to Iowa Code section 598.23(1) (1989), contempt consists of willful disobedience to a court order or decree. A finding of willful disobedience requires evidence of conduct which is intentional and deliberate or is contrary to a known duty. Id. We interfere with a sentence only when there has been an abuse of discretion by the court. Clark v. District Court, 295 Iowa 1005, 1012, 125 N.W.2d 264, 268 (1963).

The writ of injunction, dated August 9, 1989, provided that Whitham was "restrained from assaulting, accosting, threatening or harassing [Patricia] at her home or at her place of business, or from communicating with her in any manner whatsoever except as may be necessary to arrange for visitation with the parties' two children * * *" (emphasis added). The record reveals Whitham, after the issuance of the writ, violated the spirit of the decree on numerous occasions. He admitted he called Patricia on a number of occasions to talk about subjects unrelated to child visitation. He also admitted going to Patricia's apartment without invitation, ostensibly for the purpose of discussing child visitation.¹

1. Whitham was called as a witness by his attorney. He admitted on direct examination that he pushed Patricia to the floor. His testimony does not reveal when this incident occurred. He now claims it took place prior to the issuance of the injunction. Because this testimony is

The injunction is clear and unambiguous that Whitham is to have no contact with Patricia whatsoever, yet he admitted he did contact Patricia on numerous occasions to discuss things other than visitation. The trial court was presented all the evidence from both parties. The court clearly had substantial evidence to support a finding beyond a reasonable doubt that Whitham willfully violated the decree. We affirm the trial court on this ground.

Whitham also contends the trial court erred in finding him in contempt for failing to timely comply with discovery. Whitham argues he did not immediately respond to the requests for interrogatories because Patricia had led him to believe she wanted a reconciliation, and would hold off on the divorce proceedings. Patricia testified that she never intimated she wanted a reconciliation, and only once agreed to even think about it after Whitham repeatedly bothered her.

The record shows Patricia filed and served her requests for interrogatories on Whitham on April 7, 1989. No response was filed by Whitham. On August 9, 1989, Patricia filed a motion to compel discovery, along with an accompanying letter between counsel for the parties dated July 13, 1989, stating that Patricia wanted the divorce to

disputed, we give it weight only as to the reason for the issuance of the writ.

proceed as quickly as possible, and demanded the request for interrogatories be complied with.

In his response to the motion to compel, Whitham admitted he had not timely filed his response to interrogatories, but was justified in being tardy because Patricia had led him to believe she wanted reconciliation. Patricia subsequently filed a motion to show cause based on Whitham's failure to respond. Whitham ultimately answered the motion to compel by providing his answers to the interrogatories only one week prior to the hearing on the show cause order. The trial court determined Whitham's tardiness was willful, and found him in contempt.

We have recognized that a trial court's selection of choice of sanctions are within the its discretion, and as to that choice, the issue on appeal is whether that discretion has been abused. Schwarzenbach v. Schwarzenbach, 446 N.W.2d 475, 478 (Iowa App. 1989). Iowa Rule of Civil Procedure 134(b) provides a wide range of sanctions for a party's failure to comply with court discovery orders. Rule 134 (b), subsection (D) provides that the court may treat the failure to obey a court order as a contempt of court. We have recognized that although the most severe penalties may not be imposed merely as a penalty, our courts are free to consider the general deterrent effect their orders may have on the instant case, provided the party on whom the penalty is imposed is at fault. Schwarzenbach, 446 N.W.2d at 479, citing National

Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976) (per curiam). The power of a court to impose sanctions for failure to abide by its orders is essential to the efficient discharge of judicial functions. Lutz v. Darbyshire, 297 N.W.2d 349, 352 (Iowa 1980).

We are convinced upon examination of the record the trial court did not abuse its discretion in selecting contempt as a sanction. We are further convinced that there is substantial evidence in the record to support the trial court's finding that Whitham is in contempt of court beyond a reasonable doubt for failure to comply with discovery orders. We find no abuse of discretion in the penalties imposed by the court.

WRIT ANNULLED.