IN THE COURT OF APPEALS OF IOWA

No. 0-780 / 99-1777
Filed February 7, 2001

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CLERK SUPREME COURT

JOSHUA CLARK STANTON,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant,

Appeal from the Iowa District Court for Polk County, Karen Romano, Judge.

Joshua Stanton was granted certiorari review from a district court's finding that he willfully and intentionally violated a no contact order. **WRIT ANNULLED.**

Brent Rosenberg of the Rosenberg Law Firm, Des Moines, for plaintiff.

Thomas J. Miller, Attorney General, Denise Timmins, Assistant Attorney General, John P. Sarcone, County Attorney, Romonda Belcher, Assistant County Attorney, and Christina Keenan, Student Legal Intern, for defendant.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

ZIMMER, J.

Joshua Stanton was granted certiorari review from a district court finding of contempt based on a violation of a no contact order. On review, Stanton contends the no contact order did not preclude him from being at 1311 East Seventeenth Street in Des Moines because that was not the victim's residence. He also contends the evidence does not support a finding he willfully disobeyed the no contact order.

I. Background Facts and Proceedings. On August 10, 1999, a no contact order was issued based on a criminal complaint filed against Stanton for domestic abuse with intent to inflict serious injury. The complaint accused Stanton of choking Yolanda Young at 1311 East Seventeenth Street in Des Moines on July 13, 1999. Young told the police that Stanton threatened to kill her during the assault. Young and Stanton previously lived together and are the parents of a daughter, Sequoia.

The no contact order stated that Stanton was not to have contact of any nature with Yolanda Young and "shall not be in the immediate vicinity of [her] residence, 1311 E. 17th, DM or wherever [she] may reside." Although Young had lived at the address listed in the no contact order off and on, it is undisputed that it was not her address at the time of the alleged assault or at the time of the alleged violation of the no contact order by Stanton on September 27, 1999. The address was chosen because it was the location of the alleged assault and because the victim did not want Stanton to know her actual address because of concerns for her safety. Young's sister resides at the address listed in the no contact order.

On September 15, 1999, Stanton was formally charged by trial information with domestic abuse assault with intent to inflict serious injury and harassment in the first degree as a result of his assault on Young. The no contact order entered August 10th expired on September 21, 1999. However, on that same day an identical order was entered to remain in effect through November 8, 1999. Stanton personally received and signed the new order. The order specifically informed Stanton that only the court could release him from restrictions contained in the order.

On September 27, 1999, Stanton went to 1311 East Seventeenth Street to see his daughter and encountered Yolanda Young. Stanton claims that, although he was aware of the no contact order, he believed he could be at the Seventeenth Street address because Young did not live there. Stanton claims to have left promptly upon finding the victim present. Young testified Stanton asked several times to see his daughter and remained in her presence for approximately five minutes before leaving. Young called the police to report a violation of the no contact order as soon Stanton left.

At a contempt hearing held October 28, 1999, the district court found a willful and intentional violation of the no contact order and sentenced Stanton to seven days in the Polk County Jail. Stanton filed a Petition for Writ of Certiorari pursuant to Iowa Code section 665.11 (1999), which the Iowa Supreme Court granted.

II. No Contact Order Prohibition. Stanton first argues the district court improperly ruled that the no contact order prohibited him from being in the immediate vicinity of the Seventeenth Street residence. Stanton preserved this

issue through his motion to dismiss. Therefore, we review his petition for writ of certiorari for errors at law. *Bell v. Iowa Dist. Court*, 494 N.W.2d 729, 730 (Iowa Ct. App. 1992). The ruling of the district court will stand as long as there is substantial support for its findings. *Id.*

Stanton's argument that he was not prohibited from entering the home on Seventeenth Street stems from the use of the word "or" in the phrase "shall not be in the immediate vicinity of [her] residence, 1311 E. 17th, DM *or* wherever [she] may reside." (Emphasis added). Stanton claims the word "or" denotes the no contact order only serves to protect the victim in her actual place of residence, whether it is the address on Seventeenth Street or elsewhere. He reasons the no contact order described a specific address and further provides for the possibility of an alternative address if the specific address is not where the protected party resides. Because the victim did not reside at Seventeenth Street at the time of the alleged violation, he believes he was not prohibited from being in that vicinity. We disagree.

While the usual meaning of the word "or" is the expression of a disjunctive participle, which marks an alternative, the courts have not always found that to be the case. *Lahn v. Incorporated Town of Primghar*, 225 Iowa 686, 689-90, 281 N.W. 214, 216 (1938).

> It has accordingly been held by courts generally that although the word "or" may express a disjunctive meaning rather than a conjunctive one, it may nevertheless be used in a conjunctive sense, and hence the word "or" may be construed to mean "and."

Id. at 690, 281 N.W. at 216. The Iowa Supreme Court first noted the necessity of such interpretation in order to comport with "the spirit of the law" in 1860. *State*

v. Myers, 10 Iowa 448, 449 (Iowa 1860). This is true even in the interpretation of criminal statutes, "where a strict construction usually prevails." *Lahn*, 225 Iowa at 691, 281 N.W. at 217.

We conclude the above reasoning supports the trial court's conclusion that Stanton was restricted from being at 1311 East Seventeenth Street and any other address at which Young may have been residing.

Our review of the record reveals additional support for the trial court's ruling. The obvious purpose of a no contact order is to protect the victim of domestic abuse from harm or harassment. The State admits that Young did not reside at the Seventeenth Street address when the no contact order was entered. However, it does not follow that inclusion of the Seventeenth Street address in the order was arbitrary as contended by Stanton. The Seventeenth Street address was listed on the no contact order because that is where Stanton assaulted Young and Young was afraid Stanton would torment her if he knew where she was living. The use of the conjunctive "or" in the no contact order allowed Young to provide an alternative address to prevent someone who had threatened her with harm from knowing her exact address. It also provided her with a measure of protection while at her sister's home and any other location where she maintained a residence.

We find substantial support for the district court's finding Stanton was prohibited from entering the residence at Seventeenth Street. Accordingly, we affirm on this issue.

III. Sufficiency of the Evidence. Stanton also argues the evidence is insufficient as a matter of law to show he willfully disobeyed the no contact order.

While the State argues Stanton failed to preserve error on this issue, we find his motion to dismiss sufficiently addressed this issue. His motion argued he believed the victim was living on the south side and that he left immediately upon finding her at the Seventeenth Street residence. Stanton then argued the no contact order applied only to the victim's current residence and not the Seventeenth Street address. We conclude error was preserved.

It is clear that in order to be convicted of contempt, Stanton must be shown to have willfully violated the no contact order. *State v. Lipcamon,* 483 N.W.2d 605, 607 (Iowa 1992). In order for a violation to be found willful, there must be

> evidence of conduct that 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 unconcern whether the contemner had the right or not.

Id. In reviewing whether the evidence supports a willful violation, "we examine the evidence, not de novo, but to assure ourselves that proper proof supports the judgment." *Id.* at 607.

The trial court found Stanton violated the no contact order by going to the Seventeenth Street address. Although Stanton believed the victim to be residing elsewhere, the record shows he was not certain of where she was residing. The trial court further noted Stanton could have asked for a clarification, exemption, or modification of the no contact order when it was originally issued in August or when it was renewed in September. He did not. Instead he signed it and indicated he received a copy of it. As the no contact order states, "Only the Court may release the Defendant from restrictions contained in this order." Stanton did not merely go to the prohibited address. Once there, he spoke to

Young. According to her testimony, Stanton asked several times to see his daughter and then remained in Young's presence for about five minutes before leaving.

Stanton cites to *Bell v. Iowa District* Court and *State v. Lipcamon* to support his position that the evidence was insufficient to find he willfully disobeyed the no contact order. However, both *Bell* and *Lipcamon* are easily distinguishable from the present case.

In *Bell v. Iowa District Court*, this court found there was insufficient evidence to support a willful violation of a no contact order where the victim had executed an affidavit to the county attorney requesting the no contact order be lifted and the defendant believed the order had been lifted based on conversations with the victim's mother and the defendant's attorney. *Bell*, 494 N.W.2d at 730. No such circumstances existed in Stanton's case where the victim never made any request to lift the no contact order and, in fact, contacted the police to report its violation immediately after Stanton came in contact with her on September 27th.

Likewise, in *State v. Lipcamon*, the Iowa Supreme Court declined to hold the defendant willfully violated the no contact order where the victim acquiesced to the defendant's minimal contacts. *Lipcamon*, 483 N.W.2d at 607. In addition, the court took into consideration the parties' unique situations, including their living arrangements, their mental and physical condition, the defendant's need for medications that were delivered to the victim's home and her lack of transportation. In Stanton's case, Young never assented to Stanton's contact

with her and there were no unique circumstances that would warrant such contact.

We conclude there was sufficient evidence to support the trial court's conclusion by proof beyond a reasonable doubt that the defendant willfully violated the court's no contact order.

WRIT ANNULLED.