

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 25 1983

CLERK SUPREME COURT

ROLAND C. KLOTZ,

)

Plaintiff,

)

Filed October 25, 1983

vs.

)

**THE IOWA DISTRICT COURT FOR
CHICKASAW COUNTY,**

)

3-280
2-69263

)

Defendant.

Writ of Certiorari to Chickasaw District Court - Joseph C. Keefe, Judge.

This is an original certiorari proceeding to review a decree of defendant-judge holding plaintiff, petitioner in the underlying dissolution action, guilty of contempt. WRIT ANNULLED.

John S. Pieters of Pieters and Pieters, Waterloo, Iowa, for petitioner.

E. J. Gallagher III of Gallagher, Langlas & Gallagher, P.C., Waterloo, Iowa,
for respondent.

Considered en banc.

HAYDEN, J.

This is an original certiorari proceeding to review a decree of defendant-judge holding plaintiff, petitioner in the underlying dissolution action, guilty of contempt. We annul the writ.

The marriage of plaintiff, Roland Klotz, and Germain Klotz, was dissolved on April 14, 1979. Germain had a history of mental and emotional problems and had been hospitalized several times during the marriage. There was evidence that outside of court Roland tried to persuade Germain to accept a much lower property settlement than was eventually awarded.

Under the terms of the dissolution decree Roland was ordered to pay \$120,000 in installments, \$40 per week child support, and \$1 per month alimony. At the end of the decree the trial court added: "In addition to the foregoing, because of remarks petitioner made in the trial and earlier attempts to intimidate respondent with respect to a property settlement, petitioner is permanently enjoined from harassing respondent and her attorney." Subsequent to the entry of the decree there were frequent telephone calls and meetings between Roland and Germain initiated by both parties. Some of these were attempts by Germain to collect arrears of child support. There was evidence that on numerous occasions Roland told Germain that he could not afford the property division awarded by the court, that it was unfair to him, and that she did not deserve it. At the contempt hearing Roland admitted that he engaged in the same conduct toward Germain regarding a property settlement as he had prior to the dissolution decree.

On approximately May 20, 1979, Roland wrote out an agreement under which he would pay Germain \$35,000 in lieu of the unpaid balance of \$113,000 owing under the court order. Germain signed the agreement. Neither consulted an attorney before taking this action. Roland has not paid any of the \$35,000 to date.

On March 28, 1980, Roland wrote Germain a check for \$113,670, the amount remaining owed to her under the decree. According to a prearranged plan Germain took the check to the court clerk who entered on the records that the balance had been paid. Then Germain returned the check to Roland outside the courthouse. At the time he wrote the check Roland had about \$470 in his checking account.

On February 17, 1982, Germain filed an application for order to show cause why Roland should not be held in contempt of court for noncompliance with the divorce decree. The court below found Roland to be in contempt characterizing his actions in obtaining Germain's agreement to reduce her rights as coercion, evasion of the dissolution decree, and fraud upon the court.

Certiorari is an action at law testing the legality of the actions taken by the trial court. Iowa R. Civ. P. 306. Our review is not de novo; since a judgment of contempt is quasi criminal in nature, we examine the evidence to make sure the proof of contempt is clear and convincing. Bevers v. Kilburg, 326 N.W.2d 902, 904 (Iowa 1982).

Iowa Code section 665.2(3) (1981) authorizes the court to punish through contempt disobedience of an order issued by the court. There are two defenses in a contempt proceeding: (1) indefiniteness of the order; and (2) absence of willfulness in disobeying the order. Bevers v. Kilburg, 326 N.W.2d at 904. Roland claims that he did not willfully disobey the court decree.

The dissolution decree specified the amount of property that Roland was to transfer to Germain and enjoined him from harassing her. Implied in Roland's argument is that his actions did not constitute harassment within the meaning of the decree.

The supreme court has held that a court decree is subject to interpretation on the same basis as other written instruments. We look to the intent of the court based upon all parts of the order and the circumstances under which it was issued.

Dairyland, Inc. v. Jenison, 207 N.W.2d 753, 754 (Iowa 1973). The court has applied this rule in cases where the decree forms the basis for a contempt citation. Sound Storm Enterprises, Inc. v. Keefe, 209 N.W.2d 560, 566 (Iowa 1973).

In the present case the decree specifically states that the injunction was due to Roland's earlier attempts to force Germain to accept a lower property division. The circumstances necessitating this order include Germain's instability, her emotional dependence on Roland, and her inability to deal with financial matters. In this situation the decree was specific enough to give notice of what conduct was prohibited. Roland's numerous statements that he could not afford the payments and that Germain did not deserve them constituted harassment within the clear meaning of the decree. Roland admitted engaging in the same conduct towards Germain with respect to agreeing on a property settlement after the decree as he had prior to it. Obviously the decree sought to prevent him from doing so.

There is no question but that Roland willfully disobeyed the decree. We agree with the trial court's observation that Roland did everything he could to evade the provisions of the dissolution decree. His action in fraudulently arranging for the judgment to be cleared on the court records indicates that he knew he should comply with the court order. However, he deliberately chose to disobey it and he has been duly found to be in contempt of court.

WRIT ANNULLED.