FILED
JAN 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE THE MARRIAGE OF PAMELA WHITE AND JOHNNY WHITE

Upon the Petition of)
PAMELA WHITE,)
Petitioner-Appellant,)
And Concerning)
JOHNNY WHITE,)
Respondent-Appellee.)

Filed January 30, 1981

0-425
3-65253

Appeal from Union District Court - M. C. Herrick, Judge.

Petitioner wife appeals from trial court's ruling that respondent husband is not in contempt for disobeying the parties' dissolution decree regarding her visitation rights. AFFIRMED.

Arnold O. Kenyon, II, of Kenyon & Kenyon, Creston, for petitioner-appellant.

Ronald Bonnett of Wilson, Bonnett & Christensen, Lenox, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Petitioner wife appeals from trial court's ruling that respondent husband is not in contempt for disobeying the parties' dissolution decree regarding her visitation rights. She argues that the trial court erred in not finding respondent in contempt for imposing conditions on her visitation rights which are not contained in the decree. We affirm.

The marriage of Pamela and Johnny White was dissolved on February 29, 1980. Pursuant to the decree, Johnny was awarded custody of the two children and Pamela was to have visitation privileges at various specified times. The decree did not state where visitation was to take place. On May 7, Pamela filed an application for a contempt citation against Johnny for depriving her of her visitation privileges on two specific occasions. After a hearing on May 16, the trial court held that Johnny was not in contempt.

In Huston v. Huston, 255 Iowa 543, 549, 122 N.W.2d 892, 896 (1963), the court said "[c]ontempt proceedings are quasi-criminal and are commonly treated as criminal in nature even when they arise in civil actions. (citations) While proof of the act constituting the contempt need not be beyond a reasonable doubt, clear and satisfactory proof is required."

We do not think Pamela has provided the necessary clear and satisfactory proof of Johnny's contempt. He has expressed willingness to allow Pamela her visitation rights except at her house when Eldon Ray, her second cousin and live-in boyfriend, is also there. Johnny testified that he believed Eldon Ray's presence was upsetting to his five-year-old daughter based upon manifestations of distress which appeared when she returned home. In asking that Eldon not be present when Pamela visits the children, Johnny asserts that he is only looking out for what he believes to be the best interests of the children.

Section 598.23, The Code, which states in part as follows:

> If any party against whom any temporary order or final decree has been entered shall willfully disobey the same, . . . he may be cited and punished by the court for contempt. (Emphasis added).

The predecessor statute, section 598.15, The Code 1962, contained this same language. The word "willfully" in that prior statute was defined in Huston, 255 Iowa at 548, 122 N.W.2d at 896, as follows:

> not only 'intentionally or deliberately done, but with a bad or evil purpose, as in violation of law, or wantonly and in disregard of the rights of others, or knowingly and of stubborn purpose, or contrary to a known duty, or without authority, and careless whether he have the right or not.'

Quoting Parker v. Parker, 102 Iowa 500, 506, 71 N.W. 421, 422 (1897).

Judged by these standards, we agree the evidence supports the trial court's conclusion that Johnny was not in contempt because he was acting in good faith. Such good faith, however, cannot survive subsequent knowledge gained by him as a result of court action. Our review of the record leads to the conclusion that Johnny's fears for the well-being of his children based upon the presence of Eldon Ray find slight support if any, when judged by purely objective standards. Accordingly, we affirm the judgment of the trial court, with the caveat that in so doing we place Johnny on notice that absent some additional reasons not presently made to appear, the mere fact of Eldon Ray's presence does not, under the existing decree, constitute a basis for denial of Pamela's right to exercise visitation with her children in her home. Such determination in no way precludes the right of either party to seek further specificity of visitation rights in the trial court.

AFFIRMED.