

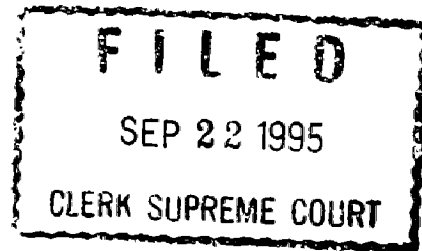
IN THE COURT OF APPEALS OF IOWA

No. 5-146 / 94-567

**IN RE THE MARRIAGE OF ANTHONY JOSEPH STRAMONDO
AND JAN RENE SHAW-STRAMONDO**

**Upon the Petition of
ANTHONY JOSEPH STRAMONDO,**
Petitioner-Appellee,

**And Concerning
JAN RENE SHAW-STRAMONDO,**
Respondent-Appellant.



Appeal from the Iowa District Court for Jefferson County, Daniel Morrison,
Judge.

Jan Shaw appeals from the district court ruling interpreting the parties' dissolution decree and denying her application for a contempt citation against Anthony Stramondo for his failure to make payments due under the decree.

AFFIRMED.

Michael J. Carroll of the James Law Firm, P.C., Des Moines, for appellant.

Thomas M. Walter of Johnson, Hester & Walter, Ottumwa, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab, JJ.

HABHAB, J.

Anthony Stramondo and Jan Shaw-Stramondo (now known as Jan Shaw) were divorced on December 31, 1992. At the time of the dissolution decree, Anthony was principal shareholder and president of Laser's Edge, Inc., a company which sold supplies to the laser printer industry. Jan owned a film production company called Real Magic Productions. The parties also owned stock in Office Automation Systems, Inc. (also known as Octus), a company which Anthony founded in 1983. Although no longer employed by this company, Anthony was on the board of directors.

The dissolution decree was based on the parties' stipulated agreement. The decree awarded each party his or her own business. The decree also provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each party shall be awarded one-half of the Petitioner's approximately 263,000 shares of OCTus or one-half of any shares issued in replacement thereof by reason of said corporation's going public and/or a reverse stock split thereof. Each party shall do all such acts necessary immediately to affect transfer to the Respondent for those shares awarded to her hereunder.

The decree ordered Anthony to pay Jan \$3,500 for her share of the refund from 1990 taxes. Additionally, the decree entered judgment against Anthony for \$12,000 in past-due temporary support.

On February 10, 1994, Jan filed an application to have Anthony found in contempt. She claimed Anthony had failed to pay her \$15,500 as required by the dissolution decree. She also claimed Anthony had misrepresented the amount of

Octus stock he owned at the time of the dissolution. She stated Anthony actually owned 268,000 shares and asked to be awarded one-half of the additional 5,000 shares.

Anthony filed an application for determination of remaining issues. He stated \$20,000 had been removed from his home, possibly by Jan, and he should be entitled to an offset in the amounts he owed Jan. He also claimed the 5,000 shares of stock in question belonged to his brother.

The district court entered a ruling on pending matters on March 7, 1994. The court found Anthony had substantial financial problems since the entry of the dissolution decree. The court concluded he was not in contempt because his failure to make payments due under the decree had not been willful. The court did order that Anthony's share of the parties' income tax refunds should be applied to the debt of \$15,500. The court determined Anthony had failed to show Jan was responsible for the disappearance of the \$20,000. Additionally, the court concluded Jan knew at the time of the dissolution decree that Anthony was holding 5,000 shares of Octus stock which he claimed belonged to his brother. The court found Jan was not entitled to a portion of the 5,000 shares. Jan appealed.

I. Jan contends the district court should have interpreted the dissolution decree to award her one-half of the 5,000 shares of Octus stock. She points out the dissolution decree provided she was to receive one-half of the "approximately 263,000 shares of OCTus." She states that at the time of the dissolution, she did not

know how many shares Anthony held, and therefore, the word "approximately" was added to the stipulation. She states that because Anthony actually had 268,000 shares at the time of the decree, she is entitled to one-half of this amount. Jan has already received her portion of the 263,000 shares.

Our scope of review in this issue concerning the interpretation of the dissolution decree is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had an opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Brown*, 487 N.W.2d 331, 332 (Iowa 1992).

Anthony's answers to interrogatories, which were prepared for the dissolution action, show he stated he owned 268,000 shares of stock in Office Automation Systems. At the contempt hearing, his attorney read into the record a portion of his dissolution deposition which showed he was questioned extensively about the 5,000 shares he claimed belonged to his brother.

We conclude Jan knew at the time of the dissolution that Anthony held 5,000 shares of stock for his brother, and that this fact was taken into consideration in the parties' stipulation. We agree with the district court that Jan has already received all of the Octus stock she is entitled to receive under the terms of the dissolution decree.

II. Jan contends the district court should have found Anthony in contempt of court. She believes he was awarded sufficient assets in the dissolution decree to allow him to pay her \$15,500. She claims the court improperly relied on facts outside

the record in making its decision. The court stated it was familiar with Anthony's financial problems. She asks that Anthony be ordered to pay interest on the debt.

We may review a district court's dismissal of an application for contempt or its refusal to find a party in contempt upon a direct appeal by the aggrieved party. *City of Masonville v. Schmitt*, 477 N.W.2d 874, 876 (Iowa App. 1991). We examine the evidence, not de novo, but to determine if the district court's decision is supported by substantial evidence. *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992).

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*, 380 N.W.2d 706, 709 (Iowa 1986). Only willful disobedience of a court order will justify a conviction for contempt. *In re Marriage of Schradle*, 462 N.W.2d 705, 709 (Iowa App. 1990). Willful disobedience requires evidence of 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 person had the right or not. *Bell v. Iowa District Court*, 494 N.W.2d 729, 730 (Iowa App. 1992).

Even if we exclude the evidence Jan felt was outside the record, we find there is substantial evidence in the record to support the district court's conclusion that Anthony's failure to pay Jan \$15,500 was not willful. Anthony testified he did not have the money to pay to her. There was evidence that Laser's Edge was having financial troubles. In the order on pending matters, the court determined certain real

estate which had been owned by the parties could be made available to pay creditors of Laser's Edge.

We also question whether the evidence relied upon by the court was outside the record. The court stated it was aware of Anthony's financial problems. But, as noted above, evidence of these problems was in the record. We conclude there was sufficient evidence in the record to support the court's conclusion.

We affirm the decision of the district court. Costs of this appeal are assessed to Jan.

AFFIRMED.