IN THE COURT OF APPEALS OF IOWA

FILED
JAN 29 1986
CLERK SUPREME COURT

ABEL FRANCIS DOTY,	)	
Plaintiff,	)	Filed January 29, 1986
vs.	)	5-593 77
		85-247
JUDGE RICHARD J. VOGEL, Judge of the Eighth Judicial District of Iowa,	)	
Defendant.	)	

Appeal from the Iowa District Court for Poweshiek County - Richard J. Vogel, Judge.

Plaintiff petitioned for a writ of certiorari on an order finding him in contempt of court. **WRIT ANNULLED.**

Donald L. Carr, II, of Turner and Carr, Cedar Rapids, for plaintiff.

Richard N. Carlson, of Fairall, Fairall, Kaplan & Condon, Marshalltown, for defendant.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

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Plaintiff Abel Doty petitioned for a writ of certiorari on an order finding him in contempt of court for nonpayment of alimony and property settlement. Plaintiff contends the trial court erred in holding he willfully disobeyed a court order and claims: 1) the dissolution decree did not use language which was clear, specific, and unequivocal and he was misled as to his duties; 2) the evidence showed plaintiff did not have the financial capability to comply with the court-ordered payments; and 3) clear and satisfactory proof of plaintiff's contempt was not shown.[1]

On January 26, 1984, the parties' marriage was dissolved. The trial court entered a ruling requiring plaintiff Abel Doty to pay $400 per month alimony beginning February 1, 1984. The ruling required Abel to reimburse his ex-wife, Lois Doty, $6,800 for business indebtedness. The ruling further required that upon sale of the business the net proceeds were to be accounted for and any amount exceeding $18,000 be divided equally.

In February of 1984, Abel had arranged to sell his business for $35,000. There is evidence in the record that Abel refused to go through with the sale because he would not realize any cash from the sale and therefore he could not pay his wholesaler-creditors. There is also evidence Abel refused to go through with the sale stating he did not want his ex-wife to get any money. The evidence shows that on May 7, 1984, he sold some business assets and inventory for $9,000.00. Abel testified the money was used to pay wholesaler-creditors, federal and state income tax, a furniture and a car repair bill in compliance with the decree. Abel claims the remaining balance of $546.76 was used for other business expenses.

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[1] The burden for proof of contempt has been changed with the Iowa Supreme Court's decision in Phillips v. District Court, No. 84-1832, slip op. at 9 (Iowa Sup. Ct. Jan. 15, 1986). However, Abel in his appeal did not challenge the "clear and convincing evidence" standard. We have, however, in our review determined the evidence shows contempt beyond a reasonable doubt.

Lois claims none of this money was paid to her for alimony or other decree obligations. There is evidence Abel failed to make any alimony payments until December 1984 and February 1985, when he made payments of $50 each month.

On February 6, 1985, a contempt hearing was held. Abel claimed he was financially unable to make any greater payment during the time he was in arrears. The court found Abel in contempt for failure to pay alimony and failure to comply with other court orders. The court sentenced Abel to 30 days in jail, and Abel has subsequently filed a writ of certiorari.

Certiorari is an action at law testing the legality of an action taken by the district court. Abraham v. Beeghly, 363 N.W.2d 596, 598 (Iowa App. 1984) (citing Callenius v. Blair, 309 N.W.2d 415, 419 (Iowa 1981)). Our review is not de novo. Id.

Not every violation of a court order will sustain a finding of contempt; it must be shown that there was a willful disobedience. Abraham v. Beeghly, 363 N.W.2d at 598 (citing Lutz v. Darbyshire, 297 N.W.2d 349, 353 (Iowa 1980)). To establish the requisite willfulness, 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 an unconcern whether the contemner had the right or not." Id.

I. Dissolution Decree Language

The dissolution decree states in relevant part:

> 7. Petitioner [Lois Doty] is awarded $6,800 cash as reimbursement for payment of business indebtedness with petitioner's inheritance. This award is a lien on all property granted to respondent [Abel Doty] until paid in full.
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> 8. All non-business debts shall be paid for one-half by each party.

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> 9. Respondent shall pay to petitioner by way of alimony the sum of $400 per month commencing 2-1-84 and continuing until petitioner's death. Any unpaid support shall immediately become a lien on all of respondent's property.
>
> 10. Each party is awarded their own life insurance policies.
>
> 11. Upon sale by respondent of his business and/or business assets, respondent shall be awarded the first $18,000 in value thereof, and the net proceeds shall be accounted for and net proceeds exceeding $18,000 in value shall be divided equally between the parties. [emphasis added].

Abel argues that placing a lien on all of his property without any further specification is confusing and leads to uncertainty as to how the decree is to be performed. He contends that Iowa statutes, case law, and public policy, all indicate that he had the right to sell his business equipment in an effort to maintain his business viability.

We find the decree to be clear and unambiguous. A dissolution decree is susceptible to interpretation on the same basis as other written instruments. The determinative factor is the intent of the court as gathered from the decree and other proper evidence. Bowman v. Bennett, 250 N.W.2d 47, 50 (Iowa 1977). Effect must be given that which is both express and implied. Id.

Abel was awarded his plumbing and electric business building and all business tools, equipment and inventory, his clothing, inherited antiques, and personal effects, and his woodworking tools and lumber. We believe the "lien on all property" related to that property which could be sold to fulfill Abel's obligation to Lois. Primarily, this property would include all of his business property. Abel did in fact sell some of his business property which was clearly subject to this lien. The decree language was clear and not misleading.

II. Financial Capability and Willfulness

Abel claims he did not have the financial ability to comply with the court order. He contends his taxable income for 1984 was $2,299.00 and his disposable income was a negative figure. He argues the district court abused its discretion in finding him in contempt when clear and satisfactory proof of his willfulness was not shown.

When inability to pay is urged as a defense, the alleged contemner has the burden to produce evidence on that issue. Skinner v. Ruigh, 351 N.W.2d 182, 185 (Iowa 1984). The court then considers all of the evidence in determining whether the contemnee has proved willfulness. Id.

The district court found Abel in contempt for failure to meet alimony obligations in accordance with paragraph nine of the decree and for failure to reimburse his ex-wife for payment on business indebtedness in accordance with paragraph seven of the decree. Abel was sentenced to 30 days in jail but could be released upon payment of all delinquent alimony and payment of $2,000.00 on the reimbursement ordered in paragraph seven of the decree.

In May 1984, Abel received $9,000.00 from the sale of business equipment and inventory. He claims that he was only left with $546.76 after creditors, taxes, and the fulfillment of two of his decree obligations. At this time, Abel had $2,000.00 in delinquent alimony payments to make and did not apply any of the $546.76 to these payments. Instead, he used the money for other expenses.

Contempt was sufficiently shown if some of the default relied on was willful. Skinner v. Ruigh, 351 N.W.2d at 186. Abel's evidence on his defense of inability to pay did not satisfactorily identify all of the amounts of his other obligations or the justification for giving them priority over his alimony and

other decree obligations. The district court was warranted in finding Abel was in contempt for failing to pay his alimony and reimbursement for payment on business indebtedness.

WRIT ANNULLED.