

IN THE COURT OF APPEALS OF IOWA

FILED

AUG 24 1988

CLERK SUPREME COURT

MORRIS S. RISA,)
Plaintiff,)
v.)
IOWA DISTRICT COURT FOR)
CALHOUN COUNTY,)
Defendant.)

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8-276
87-1037

Appeal from the Iowa District Court for Calhoun County
(No. DM 646) - R. K. Richardson, Judge.

Plaintiff contends the district court acted illegally
when it found that his failure to pay debts pursuant to
dissolution decree was willful beyond a reasonable doubt.

WRIT ANNULLED.

Maurice C. Breen, of Price, Breen & Breen, Ft. Dodge,
for the plaintiff.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ. Habhab, J., takes no part.

SACKETT, J.

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This is a petition for writ of certiorari claiming the trial court should not have found Plaintiff Morris S. Risa in contempt for failure to pay debts he was ordered to pay in a dissolution decree.

The marriage of Diana Risa (Widlick) and Plaintiff Morris Risa was dissolved in 1986. The decree provided the parties' home was to be sold and proceeds equally divided. Morris also was to reimburse Diane for about \$350 in medical bills, return certain personal property, and pay a \$700 bill to Sears. When the home was sold Diane was to give Morris \$300.

Diane filed an application to have Morris found in contempt for failing to reimburse Diane for the bills. The trial court, on February 1, 1987, determined Morris' failure to reimburse Diane was willful. He was found in contempt. An order was then entered giving Morris until April 1, 1987 to purge himself of contempt.

Diane filed a second Application for Contempt. After hearing the court again found Morris in contempt and ordered him to jail for seven days. Morris filed a motion for a stay which was overruled. Morris petitioned for a Writ of Certiorari which issued. He has filed a petition for Writ of Certiorari challenging the court's order.

This is an action at law. Webb v. Iowa Dist. Court for Johnson County, 416 N.W.2d 95, 97 (Iowa App. 1987); Lane v. Oxberger, 224 N.W.2d 245, 247 (Iowa 1974). The sole issue

is whether there is substantial evidence to support the trial court's findings Risa had the ability to pay the debts the decree ordered him to pay.

Inability to pay is a defense. Bevers v. Kilburg, 326 N.W.2d 902, 904 (Iowa 1982). The \$350 in medical bills and \$700 to Sears Morris was ordered to pay in the decree had not been paid at the time of the contempt hearings. A prima facie case was proved by showing Morris' failure to pay the bills he was ordered to pay. Lamb v. Eads, 346 N.W.2d 830, 832 (Iowa 1984). Morris then has the burden of showing he could not pay the bills. Id.; Wilson v. Fenton, 312 N.W.2d 524, 527 (Iowa 1981). No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt. Phillips v. Iowa Dist. Court for Johnson County, 380 N.W.2d 706, 709 (Iowa 1986); Johnson v. Iowa Dist. Court for Mahaska County, 385 N.W.2d 562, 564 (Iowa 1986).

Morris showed he had no available cash and had been turned down for an additional loan by the bank where he regularly did business. There was evidence Morris had a substantial equity in his undivided one-half interest in the home the parties owned during the marriage. The trial court found Morris had not shown he did not have the ability to pay the debts. There is substantial evidence to support these findings.

WRIT ANNULLED.