

IN THE COURT OF APPEALS OF IOWA

No. 0-279 / 09-1027

Filed June 30, 2010

SCOTT MEDHAUG,

Plaintiff,

vs.

IOWA DISTRICT COURT FOR

BLACK HAWK COUNTY,

Defendant.

Certiorari to the Iowa District Court for Black Hawk County, Richard D. Stochl (contempt finding) and Bruce B. Zager (sentencing), Judges.

An alleged contemnor seeks review of a district court ruling finding him in contempt of a dissolution decree, contending the district court's finding that he willfully refused to pay his child support obligation is not supported by the record.

WRIT ANNULLED.

Benjamin Hayek of Hayek, Brown, Moreland & Smith, L.L.P., Iowa City, for appellant.

Robert Hearity, Waterloo, for appellee, Iowa District Court for Black Hawk County.

Thomas J. Miller, Attorney General, and Patricia R. Hemphill, Tamara Lorenz, and Wayne Bergman, Assistant Attorneys General, for appellee, Iowa Child Support Recovery Unit.

Heard by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

A district court found Scott Medhaug in contempt of a dissolution decree for nonpayment of child support. On appeal, Medhaug contends the district court's finding that he willfully refused to pay his support obligation is not supported by the record.

I. Background Proceedings

As part of a dissolution decree entered in 2003, Scott Medhaug was ordered to pay child support of \$400 per month. Four years later, the Child Support Recovery Unit (CSRU) filed suit against Medhaug on the ground that he was \$5707.84 in arrears. Following a hearing, the district court found a delinquency of \$8907.84, found that Medhaug willfully failed to pay the support, and held him in contempt. At a hearing to determine the punishment, CSRU sought a sixty-day jail term. The district court imposed that term but suspended thirty days. Medhaug completed the thirty-day jail term pending appeal.

II. Mootness

As a preliminary matter, we question whether Medhaug's appeal is moot, an issue that CSRU has not raised but that we may raise on our own motion. *See Albia Light & Ry. Co. v. Gold Goose Coal & Mining Co.*, 176 N.W. 722, 723 (Iowa 1920) ("It is our duty on our own motion to refrain from determining moot questions.").

In general an action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. A case is moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.

State v. Wilson, 234 N.W.2d 140, 141 (Iowa 1975).

In his briefs and at oral arguments, Medhaug's attorney conceded that Medhaug served the thirty-day, unsuspended jail term. He also conceded that Medhaug was only challenging the propriety of the contempt finding and not the propriety of the punishment. Finally, he conceded the contempt finding would have no legal ramifications in other proceedings. These concessions raise serious doubts concerning whether there is a justiciable controversy. See *id.* Moreover, there is no indication that the district court's resolution of this controversy is a matter of public interest justifying an exception to the mootness doctrine. See *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 679 (Iowa 1998).

Having said that, the punishment imposed by the district court included a suspended jail term of thirty days. While Medhaug points to no scenario that would require him to serve the suspended term, CSRU suggests that the district court could re-invoke the suspended punishment if Medhaug continues to ignore his child support delinquency. In light of this assertion, we conclude the appeal is not moot. See *In re Marriage of Eilers*, 526 N.W.2d 566, 570 (Iowa Ct. App. 1994) (modifying the district court's order discharging previously-imposed suspended sentences and stating, "We believe the suspended sentences should continue in effect and Joyce should remain subject to incarceration if she fails to comply fully and in good faith with Dwayne's visitation rights").¹ Accordingly, we will proceed to the merits of the district court's contempt finding.

¹ Though not raised by either party, we also have serious reservations about the propriety of a sixty-day jail term. This contempt action arises from the claimed violation of a dissolution decree. As a result, CSRU conceded that we must look to the provision governing contempts in dissolution actions. See Iowa Code § 598.23(1) (2007); see also *Ickowitz v. Iowa Dist. Ct.*, 452 N.W.2d 446, 449 (Iowa 1990) (noting "the maximum punishment" for contempts arising from dissolution decrees "is now fixed by section 598.23(1) rather than section 665.4"). That provision provides for jail terms "for a period

III. Contempt Finding

The Iowa Supreme Court has recently articulated the standard of review in cases such as this:

On writ of certiorari, this court's review is at law, and "we may examine only the jurisdiction of the district court and the legality of its actions." The district court acts illegally when the court's factual findings lack substantial evidentiary support.

Reis v. Iowa Dist. Ct., ___ N.W.2d ___, ___ (Iowa 2010) (quoting *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998)).

Medhaug contends that substantial evidence does not support the district court's finding that he willfully disobeyed the order establishing his child support obligation. See Iowa Code § 598.23(1) ("If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense."). His primary argument is based on a ruling in another proceeding. Medhaug maintains that he applied for social security disability benefits and that he was

of time not to exceed thirty days for each offense." Iowa Code § 598.23(1). Based on this provision, a jail term of sixty days would be warranted only if two offenses were established.

Although CSRU alleged in its petition that Medhaug "repeatedly" did not comply with the decree and failed to make payments on "multiple occasions," CSRU did not identify "each offense" that would have warranted additional thirty-day jail terms. Indeed, at the time of punishment, CSRU categorically stated a sixty-day jail term should apply without specifying the authority for this term or the argument, now advanced, that the sixty-day recommendation was based on Medhaug's commission of two offenses. For this reason, we believe that only one thirty-day jail term was warranted. However, Medhaug did not challenge the propriety of this punishment. Accordingly, that issue is not before us.

We recognize that illegal sentences may be challenged at any time. See *State v. Woody*, 613 N.W.2d 215, 217 (Iowa 2000). However, the Iowa Supreme Court has stated that a contempt punishment is not the same as a criminal sentence. See *State v. Mott*, 731 N.W.2d 392, 394 (Iowa 2007). For this reason, the exception to the error preservation doctrine for illegal criminal sentences does not apply.

accordingly incapable of earning wages to pay child support, as predicate to receipt of these benefits is a showing that an applicant is incapable of substantial gainful employment. See *Moore v. Astrue*, 572 F.3d 520, 523 (8th Cir. 2009). This argument is not viable for several reasons. First, although a federal district court concluded Medhaug was entitled to social security disability benefits, that decision was reversed on appeal. See *Medhaug v. Astrue*, 578 F.3d 805, 817 (8th Cir. 2009). Second, the federal district court opinion was not admitted into this record. Finally, Medhaug provided no authority to support the proposition that a federal district court ruling in a separate and unrelated proceeding requires reversal here. For these reasons, we decline to reverse the contempt finding based on the social security disability proceeding.

We turn to the evidence in this record. Medhaug maintained that a back injury and “severe depression” prevented him from earning wages that could be used to pay child support. The district court found Medhaug not credible on the question of whether he could work. We defer to this credibility finding, given the court’s ability to observe witness demeanor and hear witness testimony. See *McKinley v. Iowa Dist. Ct.*, 542 N.W.2d 822, 825 (Iowa 1996) (“We are obliged to give great deference to the trial court on issues of witness credibility.”).

The court’s credibility finding is bolstered by Medhaug’s testimony that he held various jobs in the past. Specifically, his prior ownership of a computer business, his prior employment as an instructor at a technology institute, and the ongoing assistance he provided his landlord with manual chores lend support to the credibility finding.

Although Medhaug also testified that his physical limitations forced him to quit these jobs or resulted in his termination, the record reflects that he declined to pursue training that would have qualified him for more sedentary positions. Additionally, Medhaug's previous pursuit of a master's degree in information technology suggests that he had the ability to engage in less physically-demanding work.

We recognize that Medhaug presented medical evidence supporting his position, including letters from his treating physician opining that "it is almost impossible for him to hold a full time job" and that "[h]e is also limited in many of the available part-time jobs as well." However, it is well established that the district court, as fact-finder, is free to reject evidence it finds unconvincing. See *Johnson v. Knoxville Cmty. Sch. Dist.*, 570 N.W.2d 633, 640 (Iowa 1997).

We conclude the district court's finding that Medhaug willfully violated the dissolution decree by failing to pay child support is supported by substantial evidence.² We annul the writ of certiorari.

WRIT ANNULLED.

² Medhaug also maintains that the district court "failed to issue written findings of fact" and separately state "its conclusions of law." Although the court's findings were brief, they were not absent. For this reason, we decline to reverse the ruling on this basis.