IN THE COURT OF APPEALS OF IOWA

No. 0-352 / 09-1250
Filed June 16, 2010

SHAUN VOSE,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR MARSHALL COUNTY,
Defendant.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

An alleged contemnor seeks review of a district court ruling finding him in contempt of a domestic abuse protective order, contending that his confession alone was not sufficient to support the finding of contempt. **WRIT ANNULLED.**

Merrill C. Swartz of the Swartz Law Firm, Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Jennifer Miller, County Attorney, and Suzanne Lampkin, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Doyle, JJ. Tabor, J. takes no part.

VAITHESWARAN, P.J.

Shaun Vose seeks review of a district court ruling finding him in contempt of a domestic abuse protective order.

I. Background Facts and Proceedings

The district court entered a domestic abuse protective order against Shaun Vose which restrained him from having any contact with Angela Vose. The order stated in part, "[Vose] shall not communicate with the protected party in person or through any means including third persons."

After the order was entered, Vose registered a complaint with the Marshalltown Police Department. He told a responding officer that he received a harassing text message from Angela disapproving of haircuts he gave their children. Vose showed the officer the protective order and advised him that Angela was not supposed to contact him. At the same time, Vose admitted he posted a message on his social networking homepage, which made reference to the dispute, and that he assumed Angela might have seen it. He also told the officer that he sent Angela an e-mail stating, "Go get fucked you retarded bitch." The officer arrested Vose for violation of the protective order.

The State filed an application to have Vose held in contempt. *See* Iowa Code § 664A.7(1) (2009) (stating a violation of a protective order "is punishable by summary contempt proceedings"). Following a hearing at which the officer testified to his conversation with Vose, the district court found Vose in contempt and imposed sentence.

Vose petitioned for a writ of certiorari. The district court withheld issuance of mittimus while the appeal was pending.

II. Contempt Ruling

Vose does not challenge the sufficiency of the evidence supporting the district court's fact findings. He simply argues that he cannot "be held in contempt of court when the only evidence of the contempt is an uncorroborated confession."

The rule requiring corroboration of confessions is a rule of criminal procedure. *See* Iowa R. Crim. P. 2.21(4) ("The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense."). This court has declined to apply the rules of criminal procedure to contempt proceedings. *See State v. Delap*, 466 N.W.2d 264, 269 (Iowa Ct. App. 1990) (concluding a respondent in a contempt proceeding "had no speedy indictment or speedy trial rights" under the Iowa Rules of Criminal Procedure).

Vose acknowledges the holding of *Delap* but suggests that its scope is limited to the specific criminal rules invoked there. We disagree. *Delap* unequivocally held that "the Iowa Rules of Criminal Procedure are not applicable to contempt proceedings." *Id.* at 269. *But see United States v. Bukowski*, 435 F.2d 1094, 1104 (7th Cir. 1970) (applying federal corroboration rule to a criminal contempt proceeding after stating "[e]fficient and consistent administration of justice, as well as the policies supporting the corroboration requirements itself, call for its application, at least where serious penalties are at stake and the constitutional right to jury trial attaches"). *Delap* was filed after the Iowa Supreme Court held that "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. Ct.*, 380 N.W.2d 706, 709 (Iowa 1986). Indeed, the court in *Delap* acknowledged *Phillips*'s pronouncement that contempt proceedings are criminal in nature, but noted that such proceedings are not "indictable offenses" to which the rules of criminal procedure apply. *See* Iowa R. Crim. P. 2.1(1); *Delap*, 466 N.W.2d at 268–69.

This court's holding in *Delap* is bolstered by the current statutory scheme for enforcement of protective orders. *See I*owa Code § 664A.7. Section 664A.7 provides for two enforcement tracks: (1) contempt or (2) treatment of the violation as a simple misdemeanor. *See id.* § 664A.7(5); *State v. Moeller*, 589 N.W.2d 53, 55 (Iowa 1999) (noting distinction between contempt citation and prosecution for simple misdemeanor). The State proceeded with the contempt track. Vose's argument would hold more cogency had the State instead elected to prosecute the violation as a simple misdemeanor.

Because we are faced with a contempt citation rather than a misdemeanor, the officer's recounting of Vose's admission that he violated the protective order was alone sufficient to uphold the district court's contempt finding. *See Henley v. Iowa Dist. Ct.*, 533 N.W.2d 199, 202–03 (Iowa 1995) (citing in part testimony of police officers that respondent knew of the no-contact order). Based on *Delap*, we affirm the district court's finding of contempt.

WRIT ANNULLED.