

**IN THE COURT OF APPEALS OF IOWA**

No. 0-439 / 09-1904  
Filed July 28, 2010

**IN RE THE MARRIAGE OF MICHAEL  
SCOTT BOOMGARDEN AND JULIE A. BOOMGARDEN**

**Upon the Petition of  
MICHAEL SCOTT BOOMGARDEN,**  
Petitioner-Appellee,

**And Concerning  
JULIE A. BOOMGARDEN,  
n/k/a JULIE A. MAURER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Butler County, Bryan J. McKinley,  
Judge.

Julie (Boomgarden) Mauer appeals the district court's grant of a directed  
verdict in favor of her former husband, Michael Boomgarden. **AFFIRMED.**

D. Raymond Walton, Waterloo, for appellant.

Bruce Toenjes of Nelson & Toenjes, Shell Rock, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

**VOGEL, P.J.**

Julie (Boomgarden) Mauer appeals the district court's grant of a directed verdict in favor of her former husband, Michael Boomgarden, on Julie's contempt action.

We review a district court's ruling on a motion for directed verdict for corrections of errors at law. *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 202 (Iowa 1994). A defendant's motion for directed verdict should be denied if there is substantial evidence to support the plaintiff's claim. *Hasselmann v. Hasselmann*, 596 N.W.2d 541, 545 (Iowa 1999).

The parties were married in 1990, and two daughters were born to the marriage: Bobbi in 1992, and Nikki in 1995. In October 2007, Michael and Julie separated, and Michael filed a petition in the district court seeking a dissolution of the marriage. The girls have been in the care of Michael since that time. In April 2008, the district court entered an order pertaining to certain temporary matters, including stipulated visitation and counseling terms. In September 2008, Julie applied to the court for a rule to show cause, asserting Michael had willfully disobeyed the April order by either not assisting with or refusing to comply with the terms of visitation. A decree of dissolution of marriage was filed on October 6, 2008, granting joint legal custody, with Michael receiving physical care of the girls, and Julie receiving "liberal visitation," backed by a minimal visitation schedule.

The decree noted years of ongoing discord between Michael and Julie and the "increasing antagonism" between Julie and Bobbi. Additional findings detailed Julie's emotional struggles, which negatively impacted her parenting

ability. On that same date, Julie's application for rule to show cause was set for an October 20 hearing. On October 15, Julie amended her application to assert additional grounds upon which to find Michael in contempt. Upon the parties' agreement, the court continued the rule to show cause hearing, but very specifically set forth parameters for the parties to accomplish the visitation goals.

After a series of amendments to the original application, along with correspondence between the attorneys for the parties, the contempt hearing was pushed back to August 7, 2009. After Julie put on her evidence, Michael moved the court for a directed verdict, asserting Julie had failed to prove that his conduct was willful and wanton such that he should be held in contempt of court. The district court agreed with Michael. After summarizing various parts of the evidence, the court granted Michael's motion for a directed verdict and dismissed Julie's application for rule to show cause, finding

substantial evidence was given regarding the serious dysfunctional relationship between mother and daughters, including the counselor for the girls, as well as the counselor for the mother. Neither counselor indicated that Michael is responsible for the relationship issues between mother and daughters.

This Court concludes from the evidence that the dysfunctional relationship between daughters and mother is so profound that professional help is imperative. Based upon the evidence received, the Court does not find that substantial evidence exists, nor has Julie proven beyond a reasonable doubt that Michael's actions or conduct have risen to a level where Michael has committed willful disobedience of any court order. . . . In addition, the respondent's evidence has failed to prove all grounds raised by a reasonable doubt.

On appeal Julie argues that the court erred in not finding Michael in contempt. To find Michael guilty of contempt, a district court must have found beyond a reasonable doubt that Michael willfully violated a court order or decree.

Iowa Code § 598.23 (2009); *In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa Ct. App. 1993) (explaining that to establish contempt, proof is required beyond a reasonable doubt that a violation of court order was willful). The burden was on Julie to prove Michael had a duty to obey a court order and willfully failed to perform that duty. See *Wurpts v. Iowa Dist. Ct.*, 687 N.W.2d 286, 290 (Iowa Ct. App. 2004). The burden would then shift to Michael to produce evidence that suggests he did not willfully violate the order or decree. See *id.* Yet, the burden of persuasion would remain on Julie to prove beyond a reasonable doubt that Michael willfully acted in violation of a court order. See *id.* Willful disobedience is shown by,

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 contemnor had the right or not.

*Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980).

Julie cites to case law that would support a contempt finding when the custodial parent does not take measures to affirmatively enforce visitation. Parents can be held in contempt for interfering with visitation rights of a noncustodial parent or failing to return children after visitation. *Sulma v. Iowa Dist. Ct.*, 574 N.W.2d 320, 322 (Iowa 1998) (finding custodial father in contempt for refusing mother visitation); *Wells v. Wells*, 168 N.W.2d 54, 64 (Iowa 1969) (upholding finding of contempt against mother for failing to return her son after a visit); *Rausch v. Rausch*, 314 N.W.2d 172, 174 (Iowa Ct. App. 1981) (holding custodial mother in contempt for not honoring visitation rights of father).

What Julie fails to acknowledge is the lack of any credible evidence that would suggest Michael has willfully interfered with Julie's visitation rights or stood passively by, allowing the girls to determine visitation. The facts of this case reveal a severely dysfunctional relationship between mother and daughters, such that even the professional counselors involved have not been able to engender a harmonious relationship. Moreover, the same district court judge presided over the dissolution hearing and the contempt hearing. He was very familiar with the dynamics of this particular family, and the efforts taken to attempt reconciliation between mother and daughters. The court's own frustration over the lack of progress was noted. Nonetheless, to find a party in contempt requires a level of willfulness that was simply not demonstrated in this case. There was no evidence Michael's behavior or his lack of forcefulness with the girls led to non-compliance with the visitation set forth in the initial visitation order or in the decree of dissolution of marriage.

We have reviewed the record from the rule to show cause hearing and agree with the district court's fact findings and legal conclusions that there is not substantial evidence to support Julie's claim. As such, Julie has not proven beyond a reasonable doubt that Michael committed willful disobedience of any court order and the district court properly granted Michael's motion for directed verdict.

**AFFIRMED.**