

IN THE COURT OF APPEALS OF IOWA

No. 0-618 / 09-1496
Filed October 6, 2010

PAUL BERNELL MORTON,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT FOR
LINN COUNTY,**
Defendant-Appellee.

Certiorari to the Iowa District Court for Linn County, Jane F. Spande,
District Associate Judge.

An alleged contemnor seeks review of a district court order finding him in
contempt for failing to complete a batterer's education program. **WRIT
ANNULLED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Russell Keast and Rena Nerhus,
Assistant County Attorneys, for appellee.

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

VAITHESWARAN, P.J.

More than sixteen years ago, the district court found Paul Morton guilty of domestic abuse assault. The court ordered Morton to complete a batterer's education program. Morton failed to follow through with this requirement. Over the years, the State filed two applications to have him held in contempt and the district court issued arrest warrants when he failed to appear. Morton persisted in evading the batterer's education requirement.

On Morton's most recent arrest in 2009, he moved to dismiss the State's second contempt application on the ground that the proceeding was barred by a criminal statute of limitations. The district court denied the motion. The court later found Morton guilty of contempt, sentenced him to two days in jail, and again ordered him to attend the batterer's education program.

Morton petitioned for a writ of certiorari, which our supreme court granted. He contends (1) the right to a speedy trial guaranteed by our rules of criminal procedure should apply to contempt proceedings, and (2) his trial attorney was ineffective in failing to raise the equitable defenses of laches and estoppel by acquiescence.

As the district court noted, we resolved the first issue in *State v. Delap*, 466 N.W.2d 264, 268 (Iowa Ct. App. 1990). The defendant in *Delap* contended the contempt adjudication could not stand "because of delay between the warrant charging contempt and the date of the hearing on the contempt allegations." 466 N.W.2d at 268. Like Morton, he specifically complained "the contempt hearing was not held within the speedy trial and speedy indictment deadlines" set forth in

the rules of criminal procedure. After considering the issue, this court concluded “the Iowa Rules of Criminal Procedure are not applicable to contempt proceedings.” *Id.* at 269. In reaching this conclusion, we considered precedent holding contempt proceedings are criminal in nature. *Id.* at 268 (citing *Phillips v. Iowa Dist. Ct.*, 380 N.W.2d 706, 709 (Iowa 1986)). We found this precedent inapplicable, as contempt is not an “indictable offense” within the meaning of the pertinent rule of criminal procedure. *Id.* *Delap* is dispositive. Accordingly, the district court did not err in denying Morton’s motion to dismiss. See *Reis v. Iowa Dist. Ct.*, ___ N.W.2d ___, ___ (Iowa 2010) (reviewing for errors of law).

We turn to Morton’s ineffective-assistance-of-counsel claim. Morton claims his trial attorney was ineffective in failing to raise the equitable defenses of laches and estoppel by acquiescence. Those defenses are not available in contempt proceedings. See *In re Marriage of Welsher*, 274 N.W.2d 369, 372 (Iowa 1979). Counsel thus had no duty to raise this issue. See *State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009).

WRIT ANNULLED.