

**IN THE COURT OF APPEALS OF IOWA**

No. 0-748 / 10-0507  
Filed November 10, 2010

**IN RE THE MARRIAGE OF MICHELLE  
SAWYER AND BRENT SAWYER**

**Upon the Petition of  
MICHELLE SAWYER,  
n/k/a MICHELLE JANSSEN,**  
Petitioner-Appellee,

**And Concerning  
BRENT SAWYER,**  
Respondent-Appellant.

---

Appeal from the Iowa District Court for Marshall County, Michael J. Moon,  
Judge.

Brent Sawyer challenges the district court's refusal to find Michelle  
Janssen in contempt of court for failing to allow visitation from March 11, 2009,  
through June 18, 2009. **AFFIRMED.**

Reyne L. See of Johnson, Sudenga, Latham, Peglow & O'Hare, P.L.C.,  
Marshalltown, for appellant.

Melissa A. Nine and Barry S. Kaplan of Kaplan, Frese & Nine, L.L.P.,  
Marshalltown, for appellee.

Considered by Sackett, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

Brent Sawyer challenges the district court's refusal to find Michelle Janssen in contempt of court for failing to allow visitation from March 11, 2009, through June 18, 2009.

"Proof of contempt in violating a court order requires a showing that there was a willful violation." *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa Ct. App. 1994) (internal citations omitted). The party alleging contempt has the burden of establishing willfulness beyond a reasonable doubt. *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007). Contempt proceedings under chapter 598, involving noncompliance with a dissolution decree, are punitive in nature and our standard of review is "somewhat unique." *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995). Brent is appealing from the court's refusal to hold Michelle in contempt under a statute that allows for discretion. See Iowa Code § 598.23(1) (2009) ("If a person against whom . . . a final decree has been entered willfully disobeys the . . . decree, the person *may be* cited and punished by the court for contempt . . . ." (emphasis added)). Because the statute provides for discretion, "a trial court is not required to hold a party in contempt even though the elements of contempt may exist." *Swan*, 526 N.W.2d at 327. Unless its discretion is "grossly abused," the trial court's decision must stand. *Id.*

Brent Sawyer and Michelle Janssen (formerly Michelle Sawyer) were divorced in April 2007. The decree awarded Michelle sole legal custody and awarded Brent "reasonable and liberal visitation . . . as the parties may agree." In the event they were unable to agree, the decree set out minimal visitation.

The parties had a brief period in which they attempted reunification and Brent exercised very liberal visitation. The reunification attempt ended, the parties no longer agreed on visitation, and the parties have been embroiled in conflict since. We recently reviewed an order modifying the dissolution decree and affirmed additional visitation, but upheld sole legal custody in Michelle. *In re Marriage of Sawyer*, No. 09-558 (Iowa Ct. App. Aug. 19, 2009). We find any further recitation of the history of the parties' personal problems or details of their conflict would serve no useful purpose. Suffice it to say that each has sought to have the other held in contempt on more than one occasion.

In this appeal Brent challenges the district court's refusal to find Michelle in contempt of court for failing to allow visitation from March 11, 2009, through June 18, 2009.

After a two-day hearing on dueling applications to show cause and Brent's motion for sanctions, the district court denied both applications for rule to show cause. The district court concluded:

Brent has failed to show beyond a reasonable doubt that Michelle has willfully disobeyed the visitation provisions of the decree, as modified. There is no showing that she deliberately prevented [the children] from participating in scheduled visitations prior to April 22, 2009. For the period April 22, 2009 through June 18, 2009, I believe she was justified under the peculiar circumstances of this case to withhold visitation to the extent that she did. There was an active investigation underway into abuse allegations both by the Iowa Department of Human Services and the Marshall County Sheriff's Office, which, if founded, would have had dire consequences for the [children] if they had been placed back in the home of Brent. Michelle was advised both by Rick Nilles and Wade Ruopp not to allow visitation to continue while the investigation was underway.

While I do not find that Michelle violated the terms and provisions of the decree, I am concerned about the welfare of both

[children] and the apparent inability of their parents to lay aside their differences and cooperate in raising their children.

The district court had the parties and witnesses before it and was able to observe their demeanor in the courtroom firsthand. The court was thus in a better position to make credibility determinations and we give weight to the trial court's findings, especially when they deal with the credibility of the witnesses. Iowa R. App. P. 6.904(3)(g); *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999).

After reviewing the record, we find no abuse of discretion. We join in the district court's concern about the welfare of these children who are obviously affected by the conflict between their parents. We urge the parties to consider seriously the recommendation of Dr. Carroll Roland, the Child Protection Center at St. Luke's Hospital, and the Iowa Department of Human Services for visitation/relationship counseling.

We affirm the court's dismissal of Brent's contempt application.

We decline to award either party appellate attorney fees. Costs are taxed to Brent.

**AFFIRMED.**