

**IN THE COURT OF APPEALS OF IOWA**

No. 1-273 / 10-1432  
Filed June 15, 2011

**MELVIN D. BRYSON,**  
Plaintiff,

**vs.**

**IOWA DISTRICT COURT  
FOR POLK COUNTY,**  
Defendant.

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**IN RE MARRIAGE OF TINA BRYSON  
AND MELVIN D. BRYSON**

**Upon the Petition of  
TINA BRYSON,**  
Petitioner,

**And Concerning  
MELVIN D. BRYSON,**  
Respondent.

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Appeal from the Iowa District Court for Polk County, Robert J. Blink,  
Judge.

Melvin Bryson seeks certiorari review of a district court ruling finding him  
guilty of two counts of contempt and sentencing him to a suspended six month  
sentence on each count. **WRIT SUSTAINED AND CASE REMANDED.**

Robert A. Nading II of Nading Law Firm, Ankeny, for respondent.

Kimberley K. Baer of Baer Law Office, Des Moines, for petitioner.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.****I. Background Facts and Proceedings**

On March 25, 2009, Tina Bryson filed a petition for dissolution of her marriage to Melvin Bryson. The same day, in accordance with a request by Tina in her petition, the district court filed an order to preserve assets, which enjoined Tina and Melvin from “selling . . . or in any other manner disposing of personal or real property . . . without prior court approval or without prior written agreement of the parties.”

On May 3, 2010, Tina filed an amended application for rule to show cause asserting Melvin had violated the order to preserve assets by selling a business interest in December 2009 and by selling a parcel of land in February 2010. Specifically, her application stated that Melvin had received \$42,000 from the sale of his interest in a club in Denison and \$43,331.32 from the sale of property in Ames, both without her knowledge.

The district court considered Tina’s application for rule to show cause at the trial on her petition for dissolution of marriage. The district court addressed the application for rule to show cause in its decree, finding:

The court finds Melvin’s sale of the Ames real estate and the sale of the Denison club to be contemptuous. These proceeds were significant and should have been accounted for. This conduct amounts to \$85,331.32 in unexplained depletion of marital assets. The court will take this into account in the distribution of assets.

The court finds Melvin guilty of two counts of contempt based upon these acts and sentences him to serve six months in the Polk County Jail on each count for a total term of 360 days. These jail terms are suspended conditioned upon Melvin’s strict compliance with the terms of this decree, including but not limited to executing all necessary documents to facilitate the distribution of assets ordered.

Melvin filed a motion to enlarge and reconsider, asserting that pursuant to Iowa Code section 598.23 (2009), his sentence could not exceed thirty days for each act of contempt. The district court denied Melvin's motion, and Melvin filed a petition for writ of certiorari, which the supreme court granted on September 14, 2010.

Melvin asserts the district court entered an illegal sentence for a finding of contempt in a dissolution of marriage case.

## **II. Standard of Review**

We review the district court's ruling for correction of errors at law. *State Pub. Defender v. Iowa Dist. Court*, 745 N.W.2d 738, 739 (Iowa 2008). Relief through certiorari is appropriate if the district court has exceeded its jurisdiction or acted illegally. *Id.* A sentence not authorized by statute is illegal, and we will sustain a writ on this basis. *Id.*

## **III. Merits**

Melvin argues the district court's sentence violated Iowa Code section 598.23, which provides:

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.

Tina asserts that Iowa Code section 665.5 allows a court to impose more severe sanction for coercive purposes. She argues on appeal that because the district court's sanction was coercive rather than punitive in nature, section 598.23 does not apply. *See Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 139 (Iowa 1988)

(finding the provisions of section 598.23 to be inapplicable where the district court's order was coercive, not punitive, in nature).

“Chapter 665 comprehensively regulates the contempt power . . . .” *Skinner v. Ruigh*, 351 N.W.2d 182, 184 (Iowa 1984). “Section 665.4 authorizes specific periods of incarceration as punishment for past acts of contempt. Section 665.5 . . . authorizes incarceration to forcefully coerce compliance with a court order.” *Amro*, 429 N.W.2d at 139. Section 665.5 states, “If the contempt consists in an omission to perform an act which is yet in the power of the person to perform, the person may be imprisoned until the person performs it.” By its plain language, section 665.5 is not applicable to this case. *See State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981) (stating when a statute is plain and its meaning is clear, we need not search for meaning beyond its express language). The district court found Melvin guilty of contempt based on his past sales in violation of the order to preserve assets. These sales did not constitute an “omission to perform an act,” but rather constituted acts that themselves violated an order.

Nor could the district court, at the time of the decree, have used coercive sanctions authorized by section 665.5 to ensure Melvin would comply with the divorce decree. Coercive sanctions under section 665.5 are to be used against someone who was in contempt for failing to perform an act they could still perform. At the time of the decree, Melvin could not have been in contempt for failing to comply with the decree since it had not yet been issued. Because Melvin could not have failed to comply with the decree before its issuance, the district court could not impose punishment under section 665.5. The sanction in

this case was punitive, not coercive. Because the contempt was based on disobedience of an order in a dissolution case, section 598.23, not section 665.4 provides the punishment for contempt. See Iowa Code section 665.4 (providing the punishment for contempt, “where not otherwise specifically provided”); *Skinner*, 351 N.W.2d at 184 (“Section 598.23 constitutes a specific provision for a . . . penalty for contempt based on disobedience of orders in dissolution cases.”).

We remand to the district court for entry of an order consistent with this opinion.

**WRIT SUSTAINED AND CASE REMANDED.**