IN THE COURT OF APPEALS OF IOWA

No. 1-382 / 10-1966
Filed June 29, 2011

EMILY M. PEDERSON,
Plaintiff-Appellee,

vs.

SCOTT M. MEYER,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, Bryan H. McKinley, Judge.

Scott Meyer appeals from the denial of his application for contempt. **AFFIRMED.**

John Slavik of Elwood, O'Donohoe, Braun & White, L.L.P., Charles City, for appellant.

William T. Morrison of Morrison Law Firm, Mason City, for appellee.

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

POTTERFIELD, J.

Scott Meyer contends Emily Pederson has willfully disobeyed the parties' stipulation as to "parenting time" incorporated into their dissolution decree. The district court found the stipulation does not specifically state the time of day the child is to be exchanged and thus denied his application for contempt. On appeal, we agree with the district court that the decree and stipulation do not specify the timing of the exchange of the child and we therefore affirm the dismissal of the application to show cause.

I. Background Facts and Proceedings.

Problematically, the visitation provisions of the parties' dissolution decree are contained in an attached "transcript of the Stipulation and Agreement reached by counsel and the parties, which addresses all issues."[1] The stipulation was for Meyer to

> have maximum continuing contact with the child, which shall include at least the following: Ten overnight days per month with a day, consisting of a day that ends by the child staying overnight with Dr. Meyer. Those ten days will be exercised in—on the—between the first—well, the first ten days of each month unless the parties agree otherwise.
>
> . . . .
>
> Provided further, that with respect to those ten days each month, the parties will endeavor to mutually agree upon the time but that [Meyer] may notify [Pederson] in writing or by electronic communication at least 30 days in advance of that particular month of his intention to exercise visitation other than the first ten days of

[1] The district court instructed the parties to reduce the agreement to writing for incorporation into the decree, however the parties failed to do so in a timely fashion, and the court instead incorporated the transcript into the decree. The court noted in the decree the "original plan" "was to have counsel prepare a proposed decree" but "one month has passed, and the Court believes it is in the best interest of the child that the Court file the respective Decree." The court stated further, "In the event the parties submit a proposed decree agreed to by counsel, the Court may substitute the agreed upon decree."

> the month, and if he so gives that election, that's when the parenting time will take place.

The dissolution decree was filed on February 5, 2010. Issues arose almost immediately.[2] Meyer filed his first application to show cause on April 27, 2010, in which he asserted Pederson had "failed and refused [sic] abide by the terms, conditions and intent of the agreement approved by the decree" with "conduct contrary to the parenting time provisions." Attached to the application was Meyer's affidavit in which he asserted that during the month of April, Pederson had refused to deliver the child by 5 a.m., to allow Meyer and the child to board a 5:45 a.m. flight to California. He also complained that when the child came to California with grandparents, the plane arrived at 1:30 p.m., depriving Meyer of parenting time. He asserted other instances of difficulties surrounding exchange in January and February.

Meyer's application to show cause, and two applications to show cause filed by Pederson, were heard on August 2, 2010. On August 10, 2010, the court filed its ruling on the three contempt applications.[3] With respect to Meyer's application:

> The Court has reviewed the stipulation, along with the written Decree, filed January 6, 2010, and finds that the language of the Decree does not support [Meyer's] allegation that [Pederson] has failed to comply with the provisions of the stipulated agreement, which the Decree incorporated.
>
> [Meyer]'s parenting time on a monthly basis is based upon ten overnights per month. It does not specifically state the time of

[2] Reading the transcript of the "stipulation," it is clear the district court anticipated the stipulation as to parenting time might not be adequate: "What about language that simply says in the event the parties cannot agree and it becomes a habitual problem, they make application to the Court and then we can work out the details of that at that point."

[3] The district court dismissed one of Pederson's applications, but found Meyer in contempt for willfully failing to pay Pederson's attorney fees as previously ordered.

> day in which he receives the child from [Pederson]. As a result, it is a matter of debate and disagreement between the parties as to the timing of the exchange of [the child].

On September 10, 2010, Meyer filed a second application for rule to show cause, again asserting Pederson had violated the decree and stipulation. He alleged in pertinent part:

> 3. In July, [Meyer] notified [Pederson] that he would exercise his visitation . . . in September from September 3rd to September 13th. [Pederson] did not object to the time frame. In early August, 2010, [Meyer] made travel arrangements for his visitation in September. Just as he had in prior visitations, [Meyer] scheduled a flight to Iowa for the night before visitation was to begin, September 2, 2010, with a return flight to California scheduled for the day visitation commenced on September 3, 2010.
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> 4. On August 20, 2010, [Pederson] contacted [Meyer] and stated that she would refuse to allow visitation begin before 5:00 p.m. on September 3, 2010.
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> 5. Because of [Pederson's] unreasonable actions, [Meyer] has been forced to incur significantly increased airfare, lodging, rental car, and food expenses.

Pederson did not contest the facts as asserted in paragraphs three and four. She testified that she had requested a flight itinerary from Meyer and did not receive one.

On November 2, 2010, the court found "the issues are identical to the issues addressed in the Court's ruling of August 10, 2010," where the court "found that Scott's parenting time on a monthly basis is based upon ten overnights per month," the "Decree/Stipulation does not specifically state the time of day in which he receives the child from" Pederson, and "it is a matter of debate and disagreement between the parties as to the timing of the exchange" of the child. The application to show cause was dismissed.

Meyer now appeals, contending the district court erred in failing to find Pederson willfully violated the terms of the decree.

II. Scope and Standard of Review.

"[N]o person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt." *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986).

Where an appeal is from a court's refusal to hold a party in contempt under a statute that allows for some discretion,[4] the district court has "broad discretion" and may "consider all the circumstances, not just whether a willful violation of a court order has been shown, in deciding whether to impose punishment for contempt in a particular case." *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995). Unless this discretion is "grossly abused," the court's decision must stand. *Id.* Such an abuse of discretion occurs if the district court "exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Schettler v. Iowa Dist. Court*, 509 N.W.2d 459,

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[4] Iowa Code section 598.23 (2009) provides:

> 1. 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.
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> 2. The court *may*, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following:
>
> a. Withholds income under the terms and conditions of chapter 252D.
>
> b. Modifies visitation to compensate for lost visitation time or establishes joint custody for the child or transfers custody.
>
> c. Directs the parties to provide contact with the child through a neutral party or neutral site or center.
>
> d. Imposes sanctions or specific requirements or orders the parties to participate in mediation to enforce the joint custody provisions of the decree.

(Emphasis added.)

464 (Iowa 1993). "'Unreasonable' in this context means not based on substantial evidence." *Id.; see also In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa Ct. App. 1993) ("When a trial court refuses to hold a party in contempt in a dissolution proceeding, our review is not de novo. Instead, we review the record to determine if substantial evidence exists to support the trial court's finding." (internal citations omitted)).

III. Discussion.

Both parties come to this court arguing their "reasonable" interpretation of what constitutes a "day" for purposes of their "parenting time" stipulation, which provides Meyer with "ten overnight days per month." That these terms are "a matter of debate and disagreement between the parties as to the timing of the exchange" is fully supported by the arguments before this court. For example, Meyer contends a "day" is "the time of light between one night and the next" and he argues Pederson's insistence that visitation not occur until 5 p.m.—in the winter months—would be after dark and thus not "day." Pederson responds with an interpretation that the exchange can occur "at some time on the first day and end at some time on the eleventh day, resulting in visitations of ten overnights, and portions of 11 days."

There is no clear time of exchange and the district court did not abuse its discretion in finding Pederson did not willfully violate the decree. However, the absurdity of the positions taken by the parties here and with each other evidences the contentiousness of their relationship. What is evident is that the decree does not adequately set out a schedule that clearly defines the parents' rights and responsibilities. The parties are urged to cooperate with visitation in

order that their child may have maximum continuing contact with both parents and avoid the dissension currently displayed.

Costs are taxed to Meyer.

AFFIRMED.