

IN THE COURT OF APPEALS OF IOWA

No. 2-180 / 11-1290
Filed April 11, 2012

JULIE ANN STRICKER,
Petitioner-Appellee,

vs.

JOHN JOSEPH FOLLIS,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Respondent appeals the district court order refusing to find petitioner in
contempt for failing to provide him with visitation with the parties' minor child.

AFFIRMED.

Pamela A. Vandell, Des Moines, for appellant.

David L. Brown and Jay D. Grimes of Hanson, McClintock & Riley, Des
Moines, for appellee.

Considered by Eisenhauer, C.J., Danilson, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

ZIMMER, S.J.

John Follis appeals from a district court decision denying his application for rule to show cause. He contends the court abused its discretion in failing to hold Julie Stricker in contempt of court for denying him visitation with the parties' child. He also contends the district court should have awarded him attorney fees. Upon our review, we find no merit in either of his contentions. Accordingly, we affirm.

I. Background Facts & Proceedings.

John Follis and Julie Stricker are the parents of a minor child. On January 4, 2006, in equity case DRCV33523 the district court entered a paternity decree granting the parties joint legal custody of the child, with Julie having physical care. The court established a visitation schedule for John that included every Tuesday overnight, every Friday overnight, alternating weekends, alternating holidays, and four weeks in the summer.

On April 12, 2010, John was charged with harassment in the first degree in criminal case AGCR236599, in violation of Iowa Code section 708.7 (2009). As a result, a no-contact order was issued on April 13, 2010, with Julie as the protected party.

On April 16, 2010, in DA17416, the court entered a protective order by consent, pursuant to Iowa Code section 236.3, which ordered John to have no contact with Julie. The protective order modified the visitation schedule established in the 2006 paternity order to provide John would have visitation Wednesday overnight and alternating weekends. Pick-up and drop-off of the

child was to be accomplished through intermediaries. The protective order was to remain in effect until April 29, 2011.

The record reveals John was subsequently convicted of third-degree harassment. A sentencing no-contact order was issued in AGCR236599 on June 25, 2010, to remain in effect for five years—until June 25, 2015. The order provided, “Defendant may see child as allowed in DA17416.”

On May 27, 2011, in DRCV33523, John filed an application for rule to show cause.¹ He claimed after the protective order in DA17416 expired on April 29, 2011, the parties’ visitation schedule reverted to the terms set forth in the paternity decree entered in 2006. John claimed Julie was in contempt because she would not follow the visitation schedule in the paternity decree and instead continued to abide by the schedule that had been set in DA17416 and then incorporated by reference in the criminal no-contact order.

A hearing on the matter was held July 25, 2011. The court ruled:

[John’s] application for contempt is denied. The court finds that the visitation provisions set out in AGCR 236599 referring to and incorporating the visitation provisions set out in DA 17416 remain in full force and effect, even though DA 17416 has expired, so long as AGCR 236599 protective order is in effect.

The court also denied John’s application for attorney fees. John has appealed the district court’s rulings.

¹ John had initially filed an application to modify the no-contact order in AGCR236599, the criminal case. Without a hearing, a judge issued an order on May 16, 2011, stating the no-contact order only applied to Julie, and not the child. The court then denied the application to modify the criminal no-contact order. Neither party has challenged this ruling on appeal.

II. Standard of Review.

Where a district court has refused to find a party in contempt under a statute that permits the court some discretion, we review for an abuse of discretion. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995) (“We hold the trial court here had broad discretion and ‘unless this discretion is grossly abused, the [trial court’s] decision must stand.’” (citation omitted)).

III. Contempt.

John points out that the protective order entered in DA17416 expired on April 29, 2011. He argues that because the visitation provisions in AGCR236599 refer to an order that has expired, the visitation provisions of the paternity decree should now be in effect. John argues that after April 29, 2011, the order that pertained to his visitation was the paternity decree. He claims Julie had a duty to follow the terms of the paternity decree and she willfully failed to perform that duty. *See Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007) (noting a party alleging contempt has the burden to prove the alleged contemnor had a duty to obey a court order and willfully failed to perform that duty). Contempt must be established by proof beyond a reasonable doubt. *Id.*

Following our review of the record, we find no reason to disagree with the district court’s resolution of this matter. Although DA17416 expired on April 29, 2011, the criminal no-contact order found in AGCR236599 remains in effect until June 25, 2015. The order in AGCR236599 incorporates the visitation provisions of DA17416, as if they had been fully set out in AGCR236599. The order in AGCR236599 provides, “This order shall remain in effect through 6/25/2015 unless it is modified, terminated, or extended by further written order of the

court.” Like the district court, we conclude the visitation provisions of the chapter 236 protective order, as incorporated by reference in the criminal no-contact order, continue for the duration of the criminal no contact order. It does not matter that the chapter 236 protective order has expired.

Julie did not have a duty to follow the visitation provisions of the paternity decree while AGCR236599 remained in effect. Further, John has failed to show Julie violated the terms of the controlling visitation schedule. The district court did not abuse its discretion in any manner by refusing to hold Julie in contempt.

IV. Attorney Fees.

John contends the district court abused its discretion by refusing to award him attorney fees. We disagree. John has not been successful in his attempt to have Julie found in contempt. We find no abuse of discretion by the district court in failing to grant John attorney fees.

We affirm the decision of the district court.

AFFIRMED.