

IN THE COURT OF APPEALS OF IOWA

No. 2-378 / 11-1831
Filed May 23, 2012

TED JOSEPH WHITE,
Plaintiff,

vs.

**THE IOWA DISTRICT COURT
FOR CLINTON COUNTY,**
Defendant.

Certiorari from the Iowa District Court for Clinton County, Paul L. Macek,
Judge.

Ted White challenges a finding of contempt of a domestic abuse
protective order. **WRIT ANNULLED.**

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, for plaintiff.

David M. Pillers and Adrienne C. Williamson of Pillers & Richmond,
DeWitt, for defendant.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

POTTERFIELD, J.

Ted White challenges the district court's finding he was in contempt of a domestic abuse protective order. He claims he cannot be held in contempt because the protective order was void. If not void, he claims the protective order had expired by operation of law and thus, was ambiguous. White also contends the district court erred in finding his conduct was willful and abused its discretion in imposing a ninety-day sentence and unreasonable restrictions on his work release. We reject each contention in turn and annul the writ.

I. Background Facts and Proceedings.

We set out some of the extensive history preceding the court's finding of contempt as it arises in the context of acrimonious dissolution proceedings involving Jessica Randolph (formerly known as Jessica White) and Ted White, whose marriage was dissolved March 2, 2007. Jessica and Ted have one child. Under the 2007 decree, the parties were awarded joint physical care. Since then, the court has been called on numerous times to rule upon applications to enforce provisions of the decree, applications to modify the child custody and support provisions of the decree, and applications for rule to show cause.

On January 7, 2008, the court entered an order modifying the decree, granting physical care of the parties' child to Jessica, and granting Ted liberal and reasonable visitation.

On January 12, 2009, the court entered an order accepting the parties' settlement agreement and modifying the decree to specify dates and times of visitation, calculating Ted's child support obligation, awarding the dependency deduction, and specifying numerous other obligations of the parties.

On February 26, 2009, Jessica moved to modify the decree asserting Ted “had repeatedly harassed and threatened” her; had harassed the child care provider to the point that she would no longer care for the child; and was verbally abusive and hostile to Jessica and her family during visitation exchanges. Jessica asked that the court modify the decree to “provide contact with the minor child through a neutral site or center.” That same date, Jessica made an application for rule to show cause alleging Ted had willfully failed to obey numerous provisions of the decree as modified. She also asked that the court order Ted undergo a mental health examination.

May 1, 2009 Ruling.

On May 1, 2009, following a hearing on April 29, the court ruled on the request for visitation changes, the contempt action, and the motion for mental health examination. The court wrote in part:

The Court finds and concludes that it is in the best interests of the child that Ted’s visitation be terminated for 30 days for safety to Jessica, the child, and her family, and afford Ted an opportunity to consult a competent psychologist or other mental health and family counselor to assist him with changes in his behavior, and thereafter begin limited supervised visitation. Ted is also in contempt based upon ample evidence of Ted’s recent threatening, assaultive, and harassing behavior toward Jessica and others, coupled with evidence of the damage his misbehavior is causing their child. The Court finds Ted currently dangerous, and was compelled to issue a temporary domestic abuse protective order [(TPO)] at the close of the [April 29, 2009] hearing.

The court continued:

Since the January 2009 modification, Ted’s behavior has worsened. There is ample credible evidence in the record he has constantly harassed and threatened Jessica. He does not communicate effectively or cooperate with Jessica on details of visitation; he declined to provide her his work schedule upon which the visitation is based; he refuses to provide her his residence or

where the child is when the child is with him; he intimidated the childcare provider such that she would prefer to terminate her services for them, is scared of him, and intends to call police if he comes upon her premises; he filed an unfounded complaint against her with DHS; he is verbally abusive and hostile toward Jessica's parents when assisting visitation exchange; he repeatedly provoked a sheriff's deputy there to maintain peace during an exchange and filed an unfounded complaint against him with the sheriff. All of this occurs in the presence of the parties' 3-year-old child, who is now acting out, anxious, and aggressive following visitations with his father.

The court terminated Ted's visitation for thirty days during which time "he is afforded an opportunity to settle down and seek assistance" from a professional to "advise him on changes in his behavior necessary to commence limited supervised visitation under the supervision of the professional he has chosen for a period of six months." After that period, the court invited Ted to apply to modify the decree to increase his visitation.

The court also found Jessica had proved Ted willfully and contumaciously refused to comply with the January 12, 2009 modification decree, but deferred entry of judgment and sentence for a period of seven months. Ted was "placed on bench probation conditioned upon not threatening or harassing Jessica or her family during this period of time."

July 9, 2009 Ruling.

On July 9, 2009, a hearing concerning the court's April 29 TPO was held, after which the court concluded the conditions of probation set in its May 1 ruling

are equivalent to the terms of a protective order that would replace the TPO. Therefore, the TPO shall be cancelled. The terms of the bench probation imposed in the order of May 1, 2009, shall remain in full force and effect, precluding the respondent from threatening or harassing the petitioner or her family during the period of probation.

July 2009 Application to Modify Continued.

That same month Ted sought to have Jessica found in contempt alleging she was two and one-half hours late for a visitation exchange on February 6, 2009. He also asserted he had seen a psychologist who found he had no mental health issues and asked that the court modify the dissolution decree to allow reasonable visitation as set out in the January 12, 2009 modification.

On September 16, 2009, a hearing was held on Ted's applications. At the hearing, Ted withdrew his application for a contempt citation. The court ruled the application to modify was premature under the terms of the court's May 1, 2009 ruling. The court "on its own motion continues trial on the merits of Ted's application to modify the decree" and rescheduled the matter for November 12. However, the hearing was later rescheduled for January 28, 2010.

December 29, 2009 Rule to Show Cause.

On December 29, 2009, Jessica filed an application to find Ted in contempt for failing to provide required information, failing to reimburse her for the child's medical expenses, and other alleged violations of the decree. This application was also scheduled for hearing on January 28, 2010. But the court continued the combined hearing to March 8, 2010.

At the March 8, 2010 hearing, Ted moved to voluntarily dismiss his application for modification, which was granted.

March 8, 2010—New Application for Rule to Show Cause Filed.

After the March 8 hearing, Jessica filed an affidavit to start contempt proceedings asserting Ted had intimidated and harassed her and her father as they were leaving the courthouse, in violation of the orders of May 1 and July 9,

2009. The court set this request to show cause for hearing on March 19, 2010, and ordered that Ted “shall have no contact with the protected party and shall not harass the protected party, persons residing with the protected party, or members of the protected party’s family.” The court later consolidated Jessica’s two (December 29 and March 8) contempt requests and set them both for hearing on March 30.

Ted resisted Jessica’s March 8 application for rule to show cause, contending Jessica was “not under any specific protection of a current protective order” and “the allegations took place 3/8/10 outside of the temporary protective order issued 4/29/09 and the subsequent 7 month probation order.” At the March 30 hearing, Ted appeared pro se and asked Judge Pelton to recuse himself asserting the court was “prejudiced based on having heard several disputes between these parties in the past and has found him not credible and in contempt.” The court found insufficient grounds to demand recusal, but ruled “it would be quite appropriate if a different judge heard these cases to disposition. Thus, the undersigned will recuse in this hearing only, and reschedule the case for a trial.”

April 30, 2010 Ruling.

On April 27, 2010, the combined contempt hearing was held before Judge McKenrick. A written ruling was filed on April 30. With respect to Jessica’s December 29, 2009 application, the court found Ted had delayed paying certain medical expenses “for the purpose of harassment of the petitioner,” which had placed the child’s care and Jessica’s credit rating at risk. The court found him in contempt of previous orders to pay medical bills in a timely manner.

The court noted that previous orders also required Ted to provide Jessica with his work schedule. The court found Ted provided a master work schedule for his employer's work shifts, but did not identify on which shift he was to work. "Although the obvious intent of the provision of the previous court order on this issue is to allow the petitioner to know the respondent's work hours, the order is not clear and definite in that regard," and there was no finding of contempt. "However, the respondent's behavior in this regard is indicative of the respondent's continuing harassment of the petitioner as well as his manipulative and contumacious nature."

The court noted this was the second contempt finding against Ted, the first having not resulted in any punishment. The court also noted that after the first contempt finding, "the respondent has become more manipulative and contumacious toward the petitioner and toward the Court." The court then sentenced Ted to thirty days incarceration on each of the five medical bills he failed to pay in a timely manner to be served consecutively, but suspended all but thirty days. The court allowed Ted to purge the balance of the sentence by complying with conditions set forth in the written ruling. *Mittimus* was to issue May 14.

As to the March 8, 2010 application concerning Jessica's claim that Ted harassed her and her father as they attempted to leave the courthouse, the court heard testimony from Jessica, her father, Ted, and Ted's aunt. The court ruled:

The Court was able to observe the petitioner's father and the respondent's aunt during their testimony on this issue. The Court also observed the parties throughout the trial. Based on the demeanor of the witnesses and the parties, and the arrogant and snide demeanor of the respondent's aunt toward counsel for the

petitioner, the Court finds the testimony of the petitioner and her father to be credible on this issue.

However, the Court is unable to conclude that the respondent's behavior in that regard was in violation of the terms under which the respondent could purge his previous contempt had it occurred before December 1, 2009, the date on which the purge provision terminated by its terms. Therefore, the respondent cannot be found in contempt on that basis.

Nevertheless, the Court finds that the respondent did physically impede the petitioner and her father in a threatening manner. They reasonably feared an immediate physical contact which would have been painful, injurious, insulting or offensive, and the respondent had the apparent ability to do the act. Therefore the Court concludes that the respondent committed a domestic abuse assault, and the petitioner is entitled to a domestic abuse protective order.

May 14, 2010 Protective Order.

On May 14, 2010, Jessica filed an application for an order of protection based upon the court's ruling that Ted had committed a domestic abuse assault. A "domestic abuse protective order accompanying dissolution decree" issued upon the court's finding that Ted "represents a credible threat to the physical safety of the protected party." The order stated it "shall remain in effect unless it is modified, terminated or superseded by a later written order, or until the dismissal of the case." Ted was personally served with the protective order, which stated he was not to: "threaten, assault, stalk, molest, attack, harass, or otherwise abuse the protected party," or communicate with the protected party "in person or through any means including third persons." The order further stated, "only the court can relieve defendant from the restrictions contained in this order," which was "effective immediately."

On June 22, 2011, Jessica filed another application for rule to show cause why Ted should not be held in contempt, asserting failures to reimburse her for

covered medical expenses, failing to provide necessary information about the child's health insurance, failing to fill out paperwork authorizing the insurance provider to release information to her regarding the coverage of the child, failing to provide his current address, and failing to provide her with his work schedule. Rule to show cause was filed and the matter set for hearing on July 27. However, Ted did not appear for the hearing and it was continued to October 12.

On October 4, 2011, Ted sent Jessica this email: "Jessica. I hope you rot in hell. I will have my Son back sooner than you think."

On October 17, 2011, Jessica filed a form affidavit to start contempt proceedings based on a chapter 236 protective order. Jessica's accompanying statement quoted the email message above and stated further that Ted "willingly consented to the termination of his parental rights" on August 31, 2011, and "there is a valid order of protection in place for myself and [son] against Ted White." She further stated she was concerned for the safety and well-being of herself and her child. The court found probable cause to believe Ted had violated a domestic abuse order entered for Jessica's protection and set the matter for hearing on October 28.

Ted appeared on October 28 and asked for a continuance to obtain legal counsel, which was granted.

November 9, 2011 Ruling.

The contempt hearing was held on November 9. Ted testified he had been served with the May 14, 2010 protective order and knew he was not to communicate with Jessica by email. He stated that he believed the protective order would expire after one year because he "had been subject to a couple,

maybe one temporary, one—I can't remember. It's—at least two before." Ted testified his email was a "knee-jerk reaction" to opening his mail and receiving an explanation of benefits indicating to him that his son remained on his insurance even though his parental rights had been terminated "and it upset me." He also testified that in the prior two months his live-in girlfriend had died and then his grandmother died. On cross-examination he acknowledged that there was no expiration date on the protective order itself.

The court ruled from the bench:

The record reflects that a domestic abuse protective order was served on the respondent. He acknowledged receiving it. That order said the following, in pertinent part: "The Court hereby orders the above-named defendant is restrained from any contact with the protected party." The words are "any contact." The order goes on to state, "this order shall remain in effect unless it is modified, terminated, or superseded by a later written order, or dismissal of the case." The file does not reflect that this order was modified, terminated, superseded by a later written order, or the case was dismissed. The order contains a warning to the defendant that says, "Only the Court can change this order."

.....
That order was entered on May 14, 2010. Petitioner's Exhibit No. 1 contains or is a communication by the defendant, Mr. White, to the protected party. The Court finds beyond a reasonable doubt that Mr. White knowingly violated the domestic abuse protective order, and therefore was and is in contempt of the domestic abuse protective order entered in this matter.

Counsel for Ted asked the court to address the argument that the May 14, 2010 order was illegal because it violates Iowa Code section 236.5(2) (2009),¹ which says a protective order shall be for a fixed period of time not to exceed one year. The court responded, "this particular order was entered pursuant to chapter 598. It gives the protections of 236, but in this respect not the limitation."

¹ All citations are to the 2009 Iowa Code, which was in effect at the time the protective order was entered.

The court again noted that the order “clearly states that it is effective and shall remain in effect unless modified, terminated, or superseded by a later written order.”

The written ruling found Ted “is in violation of the protective order now in force” and sentenced him to ninety days in jail. The court granted Ted work release subject to the following restrictions:

Respondent shall leave the jail twenty (20) minutes before he is scheduled to begin work and return within (20) minutes after he is scheduled to end work; Respondent shall not exit his vehicle for any reason during his commute to and from work; Respondent shall not communicate with anyone on his way to or from work; and Respondent shall not possess a cellular telephone or any other communication device.

Arguments.

Ted filed a petition for writ of certiorari with the supreme court contending the district court exceeded its authority or acted illegally in finding the May 14, 2010 protective order remained in full force and effect because Iowa Code section 236.5(2) limits the term of domestic abuse protective orders to one year, and the May 14, 2010 protective order “was not for a fixed period and contains no expiration date,” and the order “expired as a matter of law on May 14, 2011.” He also contends chapter 598 does not separately and independently authorize the entry of a protective order without expiration. He also contends the court exceeded its authority “in sentencing him to 90 days in jail for sending a two-sentence email to the protected party seventeen months after entry of the protective order” and in placing “oppressive and unnecessary restrictions and conditions” on his work release. The supreme court granted the writ and transferred the matter to this court.

II. Standard of Review.

We review certiorari actions at law. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). Our review is limited to examining the district court's jurisdiction and the legality of its actions. *Id.* Illegality occurs when the court's fact findings are not supported by substantial evidence or when the court has not applied the law properly. *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 138 (Iowa 1988). A contemner's sentence is reviewed for an abuse of discretion. *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007).

III. Analysis.

Generally, a party cannot collaterally attack the validity of a court order that is the basis for a contempt decision. *Allen v. Iowa Dist. Ct.*, 582 N.W.2d 506, 508 (Iowa 1998). The proper means to challenge an underlying court order is to appeal that order. *Id.* However, a person may not be punished for violation of a void order. *Id.*

"If there is jurisdiction of the parties and legal authority to make an order, it must be obeyed, however erroneous or improvident." *Lutz v. Darbyshire*, 297 N.W.2d 349, 352 (Iowa 1980), *overruled on other grounds by Phillips v. Iowa Dist. Ct.*, 380 N.W.2d 706, 709 (Iowa 1986). Hughes concludes that the inverse is also true: If the court lacks legal authority to make an order, it need not be obeyed.

"When a court acts without legal authority to do so, it lacks jurisdiction of the subject matter." *Wederath v. Brant*, 287 N.W.2d 591, 595 (Iowa 1980); *accord Linn Cnty. Sheriff v. Iowa Dist. Ct.*, 545 N.W.2d 296, 299 (Iowa 1996). Subject matter jurisdiction is "the authority of the court to hear and determine cases of the general class to which the proceedings in question belong." *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989). Any orders entered by a court lacking subject matter jurisdiction are void. *Linn Cnty. Sheriff*, 545 N.W.2d at 299. We have stated that one cannot be punished for violation of a void order. *Clark v. Dist. Ct.*, 125 N.W.2d 264, 266 (Iowa 1963); *accord* 17 Am. Jur. 2d *Contempt* § 148, at 504 (1990); *see Lutz*, 297 N.W.2d at 352.

Violation of orders merely alleged to be erroneous may, however, be punished as contempt:

Where the court has jurisdiction over the subject matter and the parties and has the authority to render a particular order or decree, the fact that such order or decree is erroneous or irregular or improvidently rendered does not justify a person in failing to abide by its terms; failure to obey the order may be punished as contempt despite the error or irregularity.

17 Am. Jur. 2d *Contempt* § 147, at 502; *accord St. George's Soc'y v. Sawyer*, 214 N.W. 877, 878 (Iowa 1927).

Iowa Supreme Ct. Bd. of Prof'l Ethics v. Hughes, 557 N.W.2d 890, 892–93 (Iowa 1996).

A. *Protective Order Void?* Ted claims he cannot be held in contempt because the May 14, 2010 protective order was void. “A void judgment is one that, from its inception, is a complete nullity and without legal effect.” *Opat v. Ludeking*, 666 N.W.2d 597, 606 (Iowa 2003) (citation omitted). “A judgment is void when the court lacks jurisdiction of the parties or of the subject matter, lacks the inherent power to make or enter the particular order involved, or acts in a manner inconsistent with due process of law.” *Id.*

Here, the May 14, 2010 protective order was issued by the district court in ongoing proceedings to enforce the decree of dissolution, and thus, the court had jurisdiction of the parties and the subject matter. See Iowa Code § 598.2. Section 664A.2 states, “A protective order issued in a civil proceeding shall be issued pursuant to chapter 232, 236, or 598. Punishment for a violation of a protective order shall be imposed pursuant to section 664A.7.” Section 664A.7 in turn states, “Violation of a no-contact order issued under this chapter or a

protective order issued pursuant to chapter 232, 236, or 598, including a modified no-contact order, is punishable by summary contempt proceedings.”

“Domestic abuse” is statutorily defined as “committing an assault” when the “assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault” or “between persons who are parents of the same minor child.” *Id.* § 236.2(2)(b), (c). “Upon a finding that the defendant has engaged in domestic abuse . . . [t]he court may grant a protective order” *Id.* § 236.5. The district court had the authority and power to enter this protective order. See *Wilker v. Wilker*, 630 N.W.2d 590, 596 (Iowa 2001) (“[T]he domestic abuse chapter is meant to be protective rather than punitive in nature and is given a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it.” (internal citations and quotation marks omitted)).

Ted argues the order was void because it exceeded the permissible one year limit of section 235.5(2). Even if we presume this protective order exceeded the statutory limit, “[p]rocedural irregularities or errors of law render a judgment voidable, not void.” *Opat*, 666 N.W.2d at 606. A judgment that is merely voidable is enforceable until reversed or vacated. *Id.* Ted did not appeal from entry of the May 14, 2010 protective order, and thus, it is not subject to a collateral attack. See *id.* (finding a temporary injunction was valid and binding until dissolved or vacated even though entered without required certification). Violation of an erroneous order may be punished by contempt. *Hughes*, 557 N.W.2d at 892.

B. Expired by Operation of Law? Ted argues that if the protective order is not void, it had expired by operation of law. We reiterate that the protective order was enforceable until vacated. See *Opat*, 666 N.W.2d at 606. By its terms, the protective order remained in effect “unless it is modified, terminated or superseded by a later written order, or until the dismissal of the case.” None of which had occurred at the time Ted sent the October 4 email.

C. Protective Order Ambiguous? Ted also contends the protective order was ambiguous as to its statutory basis and its duration. This argument merely restates the preceding claim. Ted was informed he was to have no contact with the protected party until the order was modified by the court. There is no ambiguity.

D. Conduct Willful? Ted contends the district court erred in finding his conduct was willful. This is based upon his testimony that he believed the protective order terminated after one year based upon his experience with prior protective orders.

“A party alleging contempt has the burden of proving the contemner had a duty to obey a court order and willfully failed to perform that duty.” *Amro*, 429 N.W.2d at 138. Contempt proceedings are quasi-criminal proceedings; therefore, the willful disobedience of the contemner must be established by proof beyond a reasonable doubt. *Id.* A finding of willful disobedience requires: “Evidence of conduct that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not.” *Id.* Willfulness is not proven if a contemner shows the order was indefinite

or the contemner was unable to comply with the order. *Christensen*, 578 N.W.2d at 678. Substantial evidence to support the district court's contempt finding requires evidence that could convince a rational trier of fact the contemner is guilty of contempt beyond a reasonable doubt. *Ary*, 735 N.W.2d at 624-25.

The district court found Ted knew of the protective order, knew he was to have no contact with Jessica, but did so nonetheless. The district court was free to reject Ted's testimony he believed the protective order had expired. See *State v. Lopez*, 633 N.W.2d 774, 786 (Iowa 2001) ("The court as fact finder could believe some of the testimony, all of the testimony, or none of it."). There is substantial evidence to support the court's findings and thus, no illegality in its finding of contempt. See *Amro*, 429 N.W.2d at 138 (noting illegality occurs when the court's fact findings are not supported by substantial evidence).

E. Sentence Unreasonable? Lastly, Ted argues the district court abused its discretion in imposing a ninety-day sentence and unreasonable restrictions on his work release.

We grant courts wide discretion in the matter of sentencing for contempt. *Shedlock v. Iowa Dist. Ct.*, 534 N.W.2d 656, 660 (Iowa 1995). "We will interfere only where that discretion has been clearly abused. By that we mean a finding that the court's decision rests on grounds that are unreasonable or untenable, clearly against logic, or founded on erroneous conclusions." *Id.* (citations omitted).

In light of the district court's history with Ted, Ted's prior disregard for court orders, and the court having had to provide very specific orders to assure

Ted's compliance in the past, we do not find the court's work release restrictions unreasonable. We find no abuse of discretion, and we accordingly annul the writ.

WRIT ANNULLED.