

IN THE COURT OF APPEALS OF IOWA

No. 3-710 / 12-1287
Filed August 7, 2013

**IN RE THE MARRIAGE OF JANICE LYNN BUCKINGHAM
AND LARRY EUGENE BUCKINGHAM**

**Upon the Petition of
JANICE LYNN BUCKINGHAM,**
Petitioner-Appellee,

**And Concerning
LARRY EUGENE BUCKINGHAM,**
Respondent-Appellant.

Appeal from the Iowa District Court for Davis County, Dan F. Morrison,
Judge.

Larry Buckingham appeals the district court's refusal to hold Janice
Buckingham in contempt for failure to comply with court-ordered DNA testing.

APPEAL DISMISSED.

Larry Buckingham, Bloomfield, appellant pro se.

Janice Buckingham, Bloomfield, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

VOGEL, P.J.

Larry Buckingham appeals from the district court's denial of his request to hold his former wife, Janice Buckingham, in contempt for refusing to comply with court-ordered DNA testing for the parties' two children.¹

DNA testing was ordered on July 14, 2010. Because that was not timely completed, Larry filed a contempt application on October 28, 2011. On April 27, 2012, the court issued its order denying the application. It held it had no jurisdiction over the parties' son, who had reached age eighteen, to order testing other than on a voluntary basis. The court then ordered, "The contempt action is dismissed pending petitioner's cooperation with the DNA testing."

We review the district court's refusal to hold a party in contempt for an abuse of discretion. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995) (given the contempt statute's permissive nature, the district court has wide discretion to deny a contempt application). However, an order is appealable as a matter of right only if it is a final judgment. *In re Marriage of Denly*, 590 N.W.2d 48, 49 (Iowa 1999). If it is a non-final judgment, it is an interlocutory appeal that may only be granted "on finding that such ruling or decision involves substantial rights and will materially affect the final decision" *Id.* (internal citation omitted). Here, the district court dismissed Larry's request "pending petitioner's cooperation," which necessarily requires further action on behalf of the parties. Therefore, it is not a final judgment. *See IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000) ("[A] ruling is interlocutory if it is not finally decisive of the case.") (internal citations omitted). Furthermore, we find this ruling does not involve

¹ Neither Janice nor the children's guardian ad litem filed a responsive brief.

substantial rights or materially affect a final decision such that it may be reviewed as an interlocutory appeal. As such, the district court's order cannot be appealed, and the appeal will be dismissed.

APPEAL DISMISSED.