

IN THE COURT OF APPEALS OF IOWA

No. 6-1054 / 05-1880
Filed February 14, 2007

ROSEMARY SISK,
Plaintiff,

vs.

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

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Rosemary Sisk challenges the sufficiency of the evidence supporting the
district court's decision finding her in contempt of court. **WRIT ANNULLED.**

Kendra M. Olson, Sioux City, for Plaintiff.

Ronald Winters, Gowrie, pro se.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Rosemary Sisk and Ronald Winters are the unmarried parents of Joshua, born in March 1990 and fifteen years of age at the time of the events giving rise to this case. Pursuant to prior court orders Ronald has physical care of Joshua and Rosemary has visitation rights. Following a hearing on Ronald's application, the district court found Rosemary in contempt of court for refusing to return Joshua to Ronald after scheduled weekend visitation. More specifically, the court found she was in contempt for (1) refusing to return Joshua for the period from the end of weekend visitation on May 15, 2005, until an emergency temporary custody order was entered by a South Dakota court on June 14, 2005, and, (2) failing to return Joshua after August 1, 2005, as the South Dakota court had ordered that its emergency temporary custody order expired as of that date and that Rosemary return Joshua to Ronald on or before that date.

Our supreme court granted Rosemary's petition for a writ of certiorari. Rosemary claims that substantial evidence does not support the district court's finding that she is guilty of contempt beyond a reasonable doubt. We annul the writ.

Our review on certiorari is limited to determining whether the district court acted illegally or without jurisdiction. *Madyun v. Iowa Dist. Court*, 544 N.W.2d 441, 443 (Iowa 1996). Review is not de novo but at law. *Id.*

Contempt judgments must be reviewed to ensure substantial evidence supports the judgment of contempt. Contempt is sufficiently shown if some of the default was willful. Because of the quasi-criminal nature of the proceedings, a finding of contempt must be established by proof beyond a reasonable doubt. Substantial evidence is such evidence as could convince a rational

trier of fact the alleged contemner is guilty of contempt beyond a reasonable doubt.

Rater v. Iowa Dist. Court, 548 N.W.2d 588, 590 (Iowa Ct. App. 1996) (citations omitted).

A party requesting a contempt finding has the burden of proving a contemnor (1) has a duty to obey a court order and (2) willfully failed to perform that duty. *Gimzo v. Iowa Dist. Court*, 561 N.W.2d 833, 835 (Iowa Ct. App. 1997).

Willful disobedience is established if the evidence demonstrates

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.

In re Marriage of Jacobo, 526 N.W.2d 859, 866 (Iowa 1995) (quoting *Ervin v. Iowa Dist. Court*, 495 N.W.2d 742, 744 (Iowa 1993)).

Upon our review we find ample evidence and a correct application of relevant law to the facts support the finding of contempt of court beyond a reasonable doubt. See Iowa Ct. R. 21.29(1)(d), (e). We therefore annul the writ of certiorari.

WRIT ANNULLED.