

**IN THE COURT OF APPEALS OF IOWA**

No. 6-501 / 05-1997  
Filed August 23, 2006

**IN RE THE MARRIAGE OF SHELLY R. WALLINGA  
AND MELVIN L. WALLINGA**

**Upon the Petition of  
SHELLY R. WALLINGA  
n/k/a SHELLY R. RITSEMA,**  
Petitioner-Appellant,

**And Concerning  
MELVIN L. WALLINGA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Sioux County, John D. Ackerman,  
Judge.

Petitioner appeals from district court ruling that terminated her award of  
traditional spousal support and denied her application to hold respondent in  
contempt for his failure to pay spousal support. **AFFIRMED.**

Bradley K. De Jong and Debra S. De Jong of Klay, Veldhuizen, Bindner &  
De Jong, P.L.C., Orange City, for appellant.

Randy L. Waagmeester of Waagmeester Law Office, P.L.C., Rock Rapids,  
for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**ZIMMER, J.**

Shelly Ritsema appeals from a district court ruling that terminated the spousal support her former husband, Melvin Wallinga, had been ordered to pay following the dissolution of the parties' marriage. She also contends the district court erred by ruling that Melvin was not in contempt. We affirm the district court.

Shelly and Melvin were married in 1978. Their twenty-three-year marriage was dissolved in 2001. The dissolution decree, as modified by posthearing rulings, ordered Melvin to pay Shelly \$1000 per month in rehabilitative spousal support until either December 31, 2010, or Shelly's death. The decree further stated that, because the goal was to afford Shelly an opportunity to become self-sufficient, support would not terminate on her remarriage.

Following an appeal by Shelly, a panel of this court concluded Shelly was entitled to traditional, rather than rehabilitative, spousal support. We accordingly modified the decree "to provide for the payment of traditional alimony of \$1,000 per month until Melvin begins receiving social security payments." *In re Marriage of Wallinga*, No. 02-0620 (Iowa Ct. App. March 26, 2003) (*Wallinga I*).

In April 2005 Shelly filed a petition for modification requesting the court to establish a postsecondary education subsidy for the parties' daughter. Shelly remarried in June 2005. Melvin stopped paying alimony soon after Shelly's remarriage. In August 2005 Melvin filed an amended answer to Shelly's petition. Melvin asked the court to modify or terminate his spousal support obligation. Shelly then filed an application seeking to hold her former spouse in contempt for nonpayment of alimony.

In October 2005 the district court heard Melvin's petition to modify or terminate spousal support, as well as Shelly's application to hold Melvin in contempt. The key question before the court was the effect Shelly's June 2005 marriage to Randy Ritsema had upon Melvin's spousal support obligation. The court initially determined the remarriage provision in the parties' original decree survived our decision in *Wallinga I* and, after considering and rejecting Melvin's other alleged substantial changes in circumstances, denied his request to modify or terminate Shelly's support. The court also rejected Melvin's assertion that he believed his support obligation automatically terminated upon Shelly's remarriage, concluding "the effect of remarriage upon the alimony award was not indefinite or ambiguous or uncertain." It accordingly held Melvin in contempt, but withheld punishment pending payment of the support arrearage.

However, following a posthearing motion by Melvin, the district court concluded spousal support should be terminated and that it would not hold Melvin in contempt. Upon reconsideration of our decision in *Wallinga I*, the court determined the remarriage provision in the original decree had been eliminated, which rendered the modified decree silent on the question of whether Shelly's support obligation would terminate upon her remarriage. The court noted this shifted the burden to Shelly to show "extraordinary circumstances" justifying continued support, and concluded she had not met that burden. The court also determined the record failed to show, beyond a reasonable doubt, Melvin's willful violation of the modified decree's spousal support provision. It noted that under either party's interpretation of the spousal support provision Melvin was obligated to continue paying support until further order, but that there was no evidence his

“counsel had informed him of his legal obligations under either alternative scenario.”

Shelly appeals. She contends the district court’s initial ruling correctly resolved the spousal support and contempt issues, and that the court’s post-hearing ruling was in error.

We conduct a de novo review of the court’s decision to terminate spousal support. *In re Marriage of Shima*, 360 N.W.2d 827, 828 (Iowa 1985). In contrast, we review its contempt ruling for the correction of errors at law. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995). We look to see whether the court abused its broad discretion in declining to hold Melvin in contempt, and whether its factual findings are supported by substantial evidence. *Id.*; *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa Ct. App. 1994).

*Termination of Spousal Support.* We conclude the district court correctly determined the modified decree was silent regarding the effect of Shelly’s remarriage on Melvin’s spousal support obligation, and thus the burden shifted to Shelly to demonstrate “extraordinary circumstances” justifying its continuation. See *Shima*, 360 N.W.2d at 828. The record reveals the district court expressly included the remarriage provision in the parties’ original decree because it was awarding rehabilitative spousal support. See *In re Marriage of Ales*, 592 N.W.2d 698, 704 (Iowa Ct. App. 1999) (noting that, because goal of rehabilitative support is to assist economically-dependent spouse through a limited period of education and retraining, with objective of achieving self-sufficiency, it is often allowed to continue after remarriage). Thus, our determination that Shelly was entitled to traditional rather than rehabilitative spousal support eliminated the rationale

behind the remarriage provision. The district court properly interpreted *Wallinga I* as reversing not only the award of rehabilitative spousal support, but the inextricably related remarriage provision. See *In re Marriage of Davis*, 608 N.W.2d 766, 769 (Iowa 2000) (requiring district court to consider context and circumstances as well as express words of appellate decision, and necessary implications of the decision as though they were clearly and expressly stated).

We also agree that Shelly failed to establish extraordinary circumstances justifying continuation of the support obligation, which include a subsequent spouse's death or inability to provide support, or the invalidity, annulment, or dissolution of a subsequent marriage. See *Shima*, 360 N.W.2d at 829. The record reveals Shelly receives significant financial support from Randy.<sup>1</sup> For instance, Randy paid the balance of Shelly's home mortgage, so she is now free from that encumbrance. We accordingly affirm the district court's decision to terminate spousal support.

*Contempt.* We also uphold the district court's refusal to hold Melvin in contempt for his failure to pay spousal after June 2005. Shelly was required to prove Melvin's willful disobedience of a court order beyond a reasonable doubt. *In re Marriage of Wegner*, 461 N.W.2d 351, 354 (Iowa Ct. App. 1990). The record reveals that some confusion existed regarding the order for spousal support at issue in this case. Under the circumstances presented here, we

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<sup>1</sup> Shelly continues to earn approximately \$14,000 per year as a part-time teacher's aid. Randy is employed full-time and earns approximately \$36,000 per year, and provides health insurance coverage for Shelly through his employment.

cannot conclude the district court erred when it refused to hold Melvin in contempt.

*Conclusion.* We affirm the district court's ruling.<sup>2</sup> Each party has requested an award of appellate attorney fees. We award no appellate attorney fees.

**AFFIRMED.**

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<sup>2</sup> In light of our decision today, we also reject Shelly's assertion the district court erred when it ordered the parties to pay their own attorney fees. The court has discretion to award attorney fees, but only against a party found to be in contempt or in favor of a party that prevails in a modification action. See Iowa Code §§ 598.24, 598.36 (Iowa 2005).