

IN THE COURT OF APPEALS OF IOWA

No. 7-105 / 06-1069
Filed March 28, 2007

**IN RE THE MARRIAGE OF CHRISTINE R. MYERS THOMPSON
AND BRYAN D. THOMPSON**

**Upon the Petition of
CHRISTINE R. MYERS THOMPSON,
n/k/a CHRISTINE R. MYERS,**
Petitioner-Appellee,

**And Concerning
BRYAN D. THOMPSON,**
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Respondent appeals the district court decision refusing to find petitioner in
contempt of the terms of the parties' dissolution decree. **AFFIRMED.**

William P. Kelly of Davis, Brown, Koehn, Shors & Roberts, P.C., Des
Moines, for appellant.

Cathleen J. Siebrecht of Siebrecht & Siebrecht Law Firm, Des Moines, for
appellee.

Considered by Sackett, C.J., and Mahan, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

Bryan Thompson and Christine Myers were formerly married. The parties' dissolution decree,¹ filed on September 23, 1998, provided:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that [Bryan] shall be entitled to claim the parties' minor children as dependents and exemptions for federal and state income tax purposes so long as he is entirely current with his child support obligation by January 15 for the preceding calendar year, for the calendar years 1998-2000. As of calendar year 2001, each party shall be entitled to claim one of the parties' minor children as a dependent and exemption for federal and state income tax purposes so long as [Christine] is employed outside the home. At such time as there is only one child to claim as a dependent and exemption for federal and state income tax purposes, the parties shall alternate years with [Bryan] claiming said child the first year. Both parties shall sign all forms from the Internal Revenue Service and/or the Iowa Department of Revenue, necessary to effectuate this provision.

On March 9, 2006, Bryan filed an application for Christine to be found in contempt for failing to sign documents which would permit him to claim one of the children as an exemption on his taxes for the years 2004 and 2005. At the contempt hearing Christine testified she believed Bryan was entitled to the tax exemption only if he was current in his child support obligation. She stated Bryan became delinquent by \$524 in 2004, and had not paid this amount in 2004 or 2005. Bryan stated he paid child support through the Child Support Recovery Unit (CSRU), and upon inquiry, the CSRU found he was current in his support obligation. He also argued that after 2001, under the terms of the decree he was not required to be current in his support obligation to claim one tax exemption.

¹ The parties' dissolution decree was later modified to increase Bryan's child support obligation. See *In re Marriage of Thompson*, No. 02-0387 (Iowa Ct. App. Mar. 12, 2003). The tax exemption provision was not modified.

The district court entered an order which stated, “Based on the record made the Court finds Petitioner’s Contempt was not proven beyond a reasonable doubt and the rule to show cause is dismissed with costs assessed to Respondent.” Bryan appeals the district court’s ruling.

II. Standard of Review

Where a district court declines to find a party in contempt under a statute that allows the court discretion, we review for an abuse of discretion. *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995). Iowa Code section 598.23(1) (Supp. 2005), provides a party *may* be found in contempt for violating the terms of a dissolution decree. Thus, unless the court grossly abused its discretion, the court’s decision will not be reversed. *See id.*

III. Merits

A finding of contempt must be supported by proof beyond a reasonable doubt. *In re Marriage of Spears*, 529 N.W.2d 299, 304 (Iowa Ct. App. 1994). There must be evidence the alleged contemner’s conduct was “intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not.” *In re Marriage of Wegner*, 461 N.W.2d 351, 353 (Iowa Ct. App. 1990) (citations omitted).

In the present case, the parties disagreed as to the meaning of their dissolution decree. Christine believed Bryan could only claim a child as an exemption if he was current in his support obligation, and he was not current. Bryan stated the decree clearly states that after 2001, he is entitled to the

exemption for one child even if he is not current. He further states that even if Christine's interpretation prevailed, he was current in his support obligation. A court may consider all of the circumstances, not just whether a technical violation of the terms of the dissolution decree occurred, in determining whether to find a party in contempt. *Swan*, 526 N.W.2d at 327. Based upon the facts of this case, we find the district court did not abuse its discretion in refusing to find Christine in contempt.

On appeal, both parties ask us to interpret the dissolution decree in their favor. The district court did not rule on this issue. No post-trial motions were filed, and we conclude the issue has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002).

We affirm the decision of the district court.

AFFIRMED.