

**IN THE COURT OF APPEALS OF IOWA**

No. 7-211 / 06-1328  
Filed May 23, 2007

**RANDALL J. SHANKS,**  
Plaintiff,

**vs.**

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

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Certiorari to the Iowa District Court for Pottawattamie County, Joel E. Swanson, Judge.

Plaintiff seeks certiorari review of a district court order finding him in contempt for failing to obey provisions in a dissolution decree. **WRIT SUSTAINED.**

John M. French of Peters Law Firm, P.C., Council Bluffs, for plaintiff.

James R. Wainwright of Ahlers & Cooney, P.C., Des Moines, for Teresa Milner.

Considered by Miller, P.J., and Baker, 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**

A dissolution decree was entered for Randall Shanks and Teresa Shanks, now known as Teresa Milner, on March 13, 2006. Under the terms of the property distribution, Randall was to pay Teresa \$150,000 in three installments of \$50,000, the first installment being due on April 1, 2006. He was also to continue making alimony payments of \$2500 per month until April 2006.<sup>1</sup> On March 13, Randall requested a stay of all proceedings pending disposition of post-trial motions. No ruling was made on this motion. In a post-trial ruling, dated March 29, the district court ordered that certain personal items in the possession of Randall should be given to Teresa.

Randall appealed on March 30, 2006. On the same date he assigned \$209,000 from a retirement account as a bond under Iowa Rule of Appellate Procedure 6.7(1), in an effort to stay proceedings during the pendency of the appeal. On April 5, Teresa filed a praecipe for execution, seeking to collect amounts due under the decree.

On April 10, 2006, Randall requested a hearing on the sufficiency of the bond under rule 6.8. The motion stated the clerk of court had indicated she would not accept the retirement account as an appeal bond. Randall asked the court to approve the assignment of his retirement account as a supersedeas bond, and to stay execution of the decree until a hearing was held. The district

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<sup>1</sup> Randall had been ordered to pay alimony of \$2500 per month, on the twentieth of the month, in a temporary order. The dissolution decree ordered him to make a last payment in April 2006, and then no further alimony was awarded.

court entered an order staying execution under the decree until a hearing could be held on the sufficiency of the bond.<sup>2</sup>

On April 17, 2006, the district court determined the retirement account was not sufficient as an appeal bond because the funds would not be immediately available to Teresa. The court determined Randall should provide a supersedeas bond of \$220,000. The court denied Randall's request for a stay. Teresa was awarded attorney fees of \$500, payable on May 1, 2006. Randall also appealed this decision.<sup>3</sup>

On April 18, 2006, Randall assigned a certificate of deposit for \$220,000 as an appeal bond in the case. The clerk of court issued a stay order that same day, under rule 6.7(4).

Teresa filed a contempt action against Randall on May 15, 2006, alleging he had failed to abide by several provisions of the dissolution decree.<sup>4</sup> Teresa claimed Randall was in contempt for (1) failing to pay \$2500 in alimony in the months of March and April; (2) not turning over to her all of the personal items she was entitled to receive; and (3) failing to pay \$500 in attorney fees by May 1. Teresa requested additional attorney fees for the contempt action. Randall resisted the contempt action, pointing out that he had posted an appeal bond,

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<sup>2</sup> This order was removed from the court file, purportedly by the issuing judge, but was never specifically voided or rescinded.

<sup>3</sup> The second appeal was consolidated with the first appeal. Both appeals were considered in *In re Marriage of Shanks*, No. 06-0557 (Iowa Ct. App. Mar. 14, 2007).

<sup>4</sup> While the appeals were pending, Teresa filed a motion before the Iowa Supreme Court seeking a limited remand to bring this contempt action. The supreme court ruled, "An order for limited remand is unnecessary as a district court continues to have jurisdiction to address issues relating to the enforcement of decrees."

and enforcement of the dissolution decree should be stayed. Randall requested sanctions against Teresa for filing the contempt action.

A hearing in the contempt action was held on August 9, 2006. The court found Randall was in contempt for failing to pay Teresa \$50,000 on April 1, 2006,<sup>5</sup> and failing to pay \$500 in attorney fees by May 1. The court concluded the April 2006 alimony payment was not due until April 20, 2006, the stay was entered on April 18, and Randall was not in contempt on this ground. Randall was fined \$500 on each of the two findings of contempt. He was also ordered to pay \$1889.50 to Teresa for attorney fees. Randall's request for sanctions was denied.

Randall filed a petition for writ of certiorari. The Iowa Supreme Court granted the petition for writ of certiorari. The court stayed execution of the contempt order while the certiorari action was pending.

## **II. Standard of Review**

When a district court has made a finding of contempt, we review the evidence to determine that the court's factual findings are supported by substantial evidence. *In re Marriage of Swan*, 526 N.W.2d 320, 326-27 (Iowa 1995). We review the court's legal conclusions for the correction of errors at law. *Id.* at 327. A person should not be punished for contempt unless the alleged contumacious actions have been established by proof beyond a reasonable doubt. *Phillips v. Iowa Dist. Court*, 380 N.W.2d 706, 709 (Iowa 1986).

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<sup>5</sup> Although the issue was not raised on appeal, we note the application alleging contempt did not raise this ground. Because contempt proceedings are quasi-criminal, specificity in pleading is required. *Johnson v. Iowa Dist. Court*, 385 N.W.2d 562, 564 (Iowa 1986). A person is entitled to reasonable notice of contempt charges. *In re Marriage of Bruns*, 535 N.W.2d 157, 164 (Iowa Ct. App. 1995).

### III. Merits

A person may be found in contempt if there is evidence beyond a reasonable doubt the person willfully violated a court order or decree. Iowa Code § 598.23 (Supp. 2005); *Phillips*, 380 N.W.2d at 709. A person's conduct is considered "willful" if there is evidence it 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." *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980).

A situation similar to that found in the present case is found in *McGee v. Damstra*, 431 N.W.2d 375, 380 (Iowa 1988), as follows:

The record reflects that in appealing the decree of specific performance Damstra was earnestly attempting to stay its execution by means of posting a supersedeas bond. He was eventually successful in accomplishing that result. The district court's finding of a willful violation of the decree related to the period of time before a stay had been obtained.

. . . Because we find that Damstra, at all times relevant to the issue of willful violation, intended to obtain a lawful stay of the execution of the decree, we conclude that his disregard of its requirements was not sufficiently willful to sustain a finding of contempt.

Also, in *Heishman v. Jenkins*, 372 N.W.2d 506, 509 (Iowa 1985), a party's attempt to post a supersedeas bond was unsuccessful. The supreme court found:

Notwithstanding the legal infirmities in Mavis's efforts to stay the proceedings, we believe that her good faith belief that she had successfully stayed enforcement of the order, recognized by both the district court and the court of appeals, does offer a valid defense to the claim that her violation of the decree of ouster was willful.

*Heishman*, 372 N.W.2d at 510.

Under Iowa Rule of Appellate Procedure 6.7(1), proceedings are not stayed during an appeal unless an appellant executes a supersedeas bond. A court may enforce a decree through contempt proceedings unless a supersedeas bond is filed or a stay is entered. *Lutz*, 297 N.W.2d at 352. If a party's attempt to post a bond is unsuccessful, or a period of time elapses before a bond is filed, a party may be found in contempt for failing to obey the court's orders. See *McGee*, 431 N.W.2d at 380, *Heishman*, 372 N.W.2d at 510. However, a party's good faith or earnest efforts to obtain a stay should be considered in determining whether the party willfully violated a court order or decree. *McGee*, 431 N.W.2d at 380; *Heishman*, 372 N.W.2d at 510.

When a party files a supersedeas bond, the clerk of court issues a written order to stay the proceeding being appealed. Iowa R. App. P. 6.7(4). The stay in this case was issued on April 18, 2006. Randall was not required to pay \$500 in attorney fees to Teresa until May 1. We determine Randall should not have been found in contempt for failing to pay \$500 in attorney fees to Teresa. A court may not enforce its judgment if there has been a stay. See *Lutz*, 297 N.W.2d at 352.

The dissolution decree required Randall to pay Teresa \$50,000 on April 1, 2006.<sup>6</sup> On that date, Randall thought execution of the decree had been stayed because he had filed a bond on March 30. Thereafter, at all times relevant to the issue of willful violation, Randall intended to obtain a lawful stay of the dissolution decree. See *McGee*, 431 N.W.2d at 380. We find there is not substantial evidence in the record to show beyond a reasonable doubt that Randall willfully

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<sup>6</sup> We again note the application alleging contempt did not raise this issue. Furthermore, Teresa presented no evidence on this issue at the contempt hearing.

violated a court order or decree. The record shows Randall was making earnest attempts to obtain a stay while his appeals were pending. *See id.*

We conclude the writ of certiorari should be sustained.

**WRIT SUSTAINED.**