

IN THE COURT OF APPEALS OF IOWA

No. 8-527 / 07-1743
Filed August 13, 2008

JAY EDWARD HANSEN,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT FOR
MARSHALL COUNTY,**
Defendant-Appellee.

Appeal from the Iowa District Court for Marshall County, Carl D. Baker,
Judge.

On writ of certiorari, Jay Hansen challenges the legality of the trial court's
order finding him in contempt of court. **WRIT SUSTAINED.**

Sharon Greer, Marshalltown, for appellant.

Barry S. Kaplan and Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., for
respondent, Rochelle Hansen.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

On writ of certiorari, Jay Hansen challenges the legality of the trial court's order finding him in contempt of court.

I. Background Facts and Proceedings.

Jay Hansen and Rochelle (Roe) Hansen were divorced on September 14, 1995. Roe was granted physical care of their two children, and Jay was granted liberal visitation privileges.

Jay filed an application for modification of the September 14, 1995 dissolution decree on October 27, 2005, requesting the children's physical care be transferred to him. On appeal, we affirmed the trial court's decision denying Jay's modification request. *In re the Marriage of Hansen*, No. 06-1112 (Iowa Ct. App. June 13, 2007).

On January 18, 2007, Roe filed an application for rule to show cause alleging Jay was in contempt of the September 1995 decree because "[Jay] is harboring the parties' oldest child, Kaley, and is refusing to return said child." Prior to the February 26, 2007 hearing on the merits of Roe's application, the parties' other child, Jacob, moved in with Jay. Roe accordingly claimed Jay was also in contempt for refusing to return Jacob to her physical care. Jay denied any willful violation of the court's order, citing the children's refusal to return to their mother's care. In an order filed on March 29, 2007, Judge David Danilson declined to find Jay in contempt for the following reasons:

Here, [Roe] has not met her burden of willfulness. [Jay] has actively encouraged at least one of the children's return home as observed by other witnesses and in corroboration of his testimony. It appears that the children have, for whatever reasons, displayed anti-authoritative behavior and refuse to return to their mother's

residence. This is not a case where the non-custodial parent was exercising his visitation and refused to return the children.

Roe's application for rule to show cause was accordingly dismissed. Roe did not appeal from or otherwise challenge the legality of Judge Danilson's order.

On July 11, 2007, Roe filed another application for rule to show cause alleging "At this point the Petitioner has failed to return the minor children, which in [sic] clear violation of the Decree, the order that failed to modify the Decree and the most recent decision of the Iowa Court of Appeals." In his resistance to Roe's application, Jay stated:

1. This application for Rule to Show Cause was already filed earlier in 2007. See the ruling of the court on March 29, 2007 referred [sic] to the issues with respect to returning the children. [Jay] has paid for all of the counseling involving the children and various other expenses of the children so that he does not owe [Roe] any monies at this point.

2. The Parties have not attempted in good faith to work out these issues.

Roe's second application for rule to show cause was heard by Judge Carl D. Baker. Judge Baker's August 17, 2007 order found Jay was in contempt of court because:

This Court concludes Jay has purposely alienated the children from their mother. He has succeeded in turning them against her. Although he has stated that he has no control over the children and where they live, this Court concludes that Jay has purposely obstructed [Roe's] efforts to return the children to her home in compliance with the decree. The District Court and then the Court of Appeals have concluded that Jay is not an accurate reporter of the facts concerning custody issues. This Court concludes that Jay is in contempt for his willful and intentional refusal to comply with the provisions of the decree concerning primary physical care of Kaley and Jacob.

Jay was therefore cited for contempt and punished accordingly.

On August 24, 2007, Jay filed a motion to reconsider, citing the preclusive effect of the trial court's March 29, 2007 ruling dismissing Roe's first application for rule to show cause. Jay also argued there was no "intentional or deliberate action on his part" because he was relying on the March 29, 2007 order.

In an order filed October 4, 2007, the trial court denied Jay's motion to reconsider for the following reasons:

This Court disagrees with [Jay's] view of the doctrine of the law of the case. After the order entered by Judge Danilson denying [Jay's] application for rule to show cause, the Iowa Court of Appeals rendered a decision in which it affirmed the decision of the trial court placing primary physical care of Kaley and Jacob with [Roe]. However, the children were not returned to [Roe] pursuant to the decision of the Iowa Court of Appeals.

It should also be noted that the finding by Judge Danilson that [Jay] was not in contempt in March 2007 does not forever render it impossible that [Jay] can be found in contempt at some future time. [Jay] failed to comply with the trial court decree placing primary care of the children with [Roe], and he has now failed to comply with the decision of the Iowa Court of Appeals affirming the action of the trial court.

The trial court also ordered Jay to return the children to Roe's physical care within ten days of its ruling, and his failure to do so would result in his incarceration as originally imposed in the trial court's August 17, 2007 order.

Jay filed a petition for writ of certiorari on October 11, 2007. The supreme court granted Jay's petition on November 6, 2007. Jay contends Judge Danilson's March 29 order precluded further litigation of the issues raised and litigated in Roe's July 11, 2007 application for rule to show cause and Judge Baker acted illegally by concluding otherwise. He also challenges the sufficiency of the evidence supporting Judge Baker's finding that his failure to comply with the provisions of the 1995 decree were willful and intentional.

II. Standard of Review.

Certiorari is an action at law to test whether the district court's actions were legal; therefore, our review is at law. *Whitlock v. Iowa Dist. Ct.*, 497 N.W.2d 891, 893 (Iowa 1993). We are to examine only the legality of the district court's actions. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). "Illegality exists when court's factual findings lack substantial evidentiary support, or when the court has not properly applied the law." *Id.*

III. The Merits.

The doctrine of issue preclusion bars the same parties from relitigating identical issues raised and litigated in a prior contempt proceeding. *Clark v. Glanton*, 370 N.W.2d 606, 608 (Iowa Ct. App. 1985). Application of the doctrine requires:

(1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Hunter v. City of Des Moines Mun. Hous. Auth., 742 N.W.2d 578, 584 (Iowa 2007). The doctrine of issue preclusion furthers goals of providing fairness to the successful party and promoting efficient use of court resources by not allowing relitigation of the same issue. *State ex rel. Casas v. Fellmer*, 521 N.W.2d 738, 740-41 (Iowa 1994). Roe argues issue preclusion does not apply because there were "new and additional facts in the second contempt hearing." We disagree.

The new or additional facts to which Roe refers are the time lapse between her serial contempt actions as well as our intervening opinion. Neither, however, changed Roe's theory of contempt or her burden to prove Jay's

allegedly contumacious behavior was willful. In both actions Roe claimed Jay refused or otherwise failed to effectuate the children's return to her care as required by the 1995 decree. Jay's defense was the same, and the dispositive issue was whether Jay's conduct was willful. Moreover, the record indicates the hearing on Roe's July 11, 2007 application was no more than a rehash of the same evidence she presented at the hearing on her January 18, 2007 application.

Based on our review of the record, we find the issues raised and litigated in the January and July contempt actions were identical. These issues were material and relevant to the disposition of the January contempt action. Additionally, the determination of these issues was necessary and essential to the resulting judgment. We accordingly conclude Roe's July contempt action was precluded by Judge Danilson's order entered following the January 18, 2007 contempt action.

We have considered all arguments presented, whether or not specifically discussed, and conclude the writ must be sustained.

WRIT SUSTAINED.