

IN THE COURT OF APPEALS OF IOWA

No. 23-1174
Filed March 27, 2024

SARA WHITEAD,
Petitioner-Appellee,

vs.

JUSTIN MARVIN OLSON,
Respondent-Appellant.

JUSTIN MARVIN OLSON,
Plaintiff,

vs.

IOWA DISTRICT COURT FOR WOODBURY COUNTY,
Defendant.

Appeal from and certiorari to the Iowa District Court for Woodbury County,
Zachary Hindman, Judge.

A father appeals an order modifying the visitation provisions of a custody
decree and finding him in contempt. **MODIFICATION AFFIRMED; WRIT
ANNULLED.**

Krisanne C. Weimer of Weimer Law, P.C., Council Bluffs, for appellant.
Elizabeth Row and Anthony L. Osborn of Gehling Osborn Law Firm, PLC,
Sioux City, for appellee.

Considered by Bower, C.J., Langholz, J., and Danilson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2024).

BOWER, Chief Judge.

Justin Olson appeals the district court's order modifying the visitation provisions of a custody decree and finding him in contempt for depriving Sara Whitehead of parenting time with their child. We affirm the modification of the parties' custody decree. We further find substantial evidence Justin willfully violated the decree, and we annul the writ of certiorari. We deny Justin's challenge to the district court's award of trial attorney fees to Sara, and we award Sara \$9842.50 in appellate attorney fees.

I. Background Facts and Proceedings

Justin and Sara never married but have one child together, born in 2017. In October 2018, Sara filed a petition to establish paternity, custody, visitation, child support, and related matters. The court entered a decree in September 2019, pursuant to the parties' stipulation. The decree placed the parties' child in their joint legal custody, but stated, "In the event that the parties are unable to agree on an issue related to selection of school, medical provider, daycare provider, or the child's extracurricular activities, Sara shall be permitted to make the final decision." The decree placed physical care of the child with Sara, subject to Justin's visitation every other weekend from Friday at 5:00 p.m. to Monday at 8:00 a.m. and every Wednesday overnight.

In February 2022, Sara filed for modification of the decree. She requested physical care and sole legal custody of the child and reduction of Justin's parenting time. In support, she alleged a substantial and material change in circumstances based on Justin's actions in depriving her of parenting time, accusing her of abuse and neglect, and making false reports and derogatory remarks. Sara also filed an

application for rule to show cause, raising the same claims and alleging numerous other violations of the decree.

Justin answered Sara's modification petition, requesting shared physical care, or in the alternative, physical care of the child. He later filed a counterclaim, requesting several other modifications of the decree. Justin also filed an application for rule to show cause, claiming violations of the decree by Sara.

Over three days in January and March 2023 the court heard evidence concerning the parties' modification requests and contempt claims. Ultimately, the court found Sara had shown a material and substantial change in circumstances, "namely, the significant escalation of Justin's unreasonable conduct directed toward Sara since the decree was filed, and the harm that that conduct has caused." The court further found "Sara is able to provide [the child] superior care." The court granted Sara's request for sole legal custody of the child, eliminated Justin's Wednesday overnight visitation, and reduced Justin's every-other-weekend visitation to Friday at 5:00 p.m. until Sunday at 5:00 p.m.¹

The court also found Justin in contempt for his refusal to return the child to Sara's care for two days after she returned from a vacation in the Black Hills² and for his refusal to return the child to Sara's care "in the immediate aftermath of

¹ The court made other modifications to the parties' custody decree, which are not relevant to the issues presented on appeal.

² Specifically, the court found Sara was "running late by accident on account of circumstances beyond her control" from vacation in the Black Hills and "returned [the child] to [Justin's] care an hour and a half after the scheduled time for doing so," to which Justin responded by withholding the child from Sara's care "for two days" in "retaliation for her late return from vacation." The court observed the record "as a whole, reveals that Justin routinely takes unreasonable actions to get back at Sara for conduct by her of which he disapproves."

[Justin's] false sexual abuse allegation."³ The court further found "Justin's contempt, especially his contempt relating to the false accusation of sexual abuse, is egregious to an extreme degree." The court sentenced him to 210 days in jail (30 days for the Black Hills incident and 180 days for the false sexual-abuse allegation incident, to run consecutively), with an opportunity to purge the remaining 180 days after he had served 30 days "by complying with all provisions of the parties' decree for a period of one year from the date of [the modification] order."

The court also found Sara guilty of contempt for denying Justin parenting time on two occasions.⁴ However, the court found "Sara's contempts were not particularly egregious," noting her "culpability is somewhat reduced in light of how difficult Justin is to deal with." The court sentenced Sara to serve one day in jail, mittimus suspended pending compliance with the decree.

³ Specifically, the court found Justin "fabricated [a] sexual abuse allegation" that Sara's "older son had sexually abused" the parties' child. As the court noted, upon learning about the accusation, Sara agreed to have her older child stay with his father pending an investigation by the Iowa Department of Health and Human Services (DHS), and the parties' child was to return to her care through the department's safety plan. However, Justin refused to return the child to Sara's care during the investigation. Ultimately, the investigation revealed no concerns of sexual abuse, but rather, the falsity of Justin's allegations. Yet despite being unfounded, Justin persisted by filing a petition for relief from sexual abuse on the child's behalf against Sara's older child. Sara, her older child, and the older child's father appeared in court, but Justin did not, so the petition was dismissed.

The court, aside from finding "Justin fabricated this accusation for the sole purpose of harassing and harming Sara" "despite the obvious fact that making the accusation would harm [the child], would harm [the child]'s relationship with his mother and his half-brother, and would harm Sara's older child," found Justin "used the false accusation of sexual abuse as a means to deny Sara parenting time to which she was entitled under the parties' decree."

⁴ Specifically, the court found Sara refused to provide the child to Justin for his parenting time on February 5, 2021, and June 8, 2022.

The court ordered Justin to pay \$7500 toward Sara's attorney fees and Sara to pay \$500 toward Justin's attorney fees, to be offset against her award.

Justin appeals.⁵

II. Visitation Modification

At the outset, Justin points out the parties agreed to "the initial physical care award," "which was adopted by the court." He claims, however, "[i]t is clear the parties were not able to get along both prior and subsequent to the entry of the original decree." Accordingly, he challenges the district court's finding the parties' deteriorated relationship was a change in circumstances warranting modification of the decree. According to Justin, Sara's recent "complaints" about their relationship "do not reflect a change in the circumstances of the parties. Rather, they reflect a continuation of their previously contentious relationship that was existent at the time of the September 2019 stipulation" Justin also claims, "no evidence was presented that [he] is unfit to provide care for [the child]."

We first note Justin does not challenge the court's modification of the decree to grant sole legal custody to Sara. Instead, Justin challenges the court's modification of the visitation provisions of the decree, in which the court eliminated Sunday overnights from his every-other-weekend visitations and eliminated his Wednesday overnight visitations.⁶ He claims "[his] Wednesday night and Sunday night parenting time should be restored."

⁵ Regarding the court's findings of contempt against him, Justin sought appellate jurisdiction through a petition for writ of certiorari, which the supreme court granted.

⁶ Specifically, the court stated:

Justin's conduct since the entry of the decree shows that he has become less interested in using his parenting time to parent [the child], than he is in using his parenting time as a means to harass

The guiding principles used to determine whether a modification to visitation should occur are well-established:

The burden upon the petitioner in a modification of visitation rights differs from the burden upon him or her in a modification of custody. The degree of change required in a modification of visitation rights is much less than the change required in a modification for custody. As to modification of visitation rights as compared to child custody changes, the general rule is that a much less extensive change of circumstances need be shown in visitation right cases. Our focus should always be on the best interest of the child.

Nicolou v. Clements, 516 N.W.2d 905, 906 (Iowa Ct. App. 1994) (cleaned up).

Our review of the district court's decision to modify provisions of a custody decree is de novo. *Thorpe v. Hostetler*, 949 N.W.2d 1, 4 (Iowa Ct. App. 2020); see also Iowa R. App. P. 6.907. "While we are not bound by the fact-findings of the district court, we give them weight, especially as to credibility determinations." *Thorpe*, 949 N.W.2d at 5.

Here, the court acknowledged "the parties have long had an acrimonious relationship, including prior to the entry of the original decree (as evidenced by the domestic abuse protective order that is mentioned in that decree)." But the court found Justin's communications and conduct since the decree was entered had become "extreme and unreasonable," to the point the parties "simply are not able

and to attempt to control Sara. Moreover, the present parenting time schedule is the source of some (although certainly not all) of the strife between the parents, and the Court finds that Sara's requested modifications of Justin's visitation schedule are likely to reduce the present acrimony. In particular, by eliminating Justin's midweek visitation, Justin will have less opportunity to use [the child] against Sara. And by ending Justin's weekend visitation on Sunday evening, the parties will be able to avoid the problems that have arisen when Justin refuses to bring the child to tutoring before school.

to coparent.” Contrary to Justin’s contention, the court pinpointed a marked change in Justin’s conduct “after Sara began, subsequent to the entry of the decree, to pursue romantic relationships with other men and to decline to continue a sexual or romantic relationship with Justin.” The court described this change in circumstances as follows:

[At that point,] Justin’s unreasonable behavior escalate[d] to its current, extreme level. Sara credibly testified that prior to the decree, Justin had committed and threatened domestic violence against her; that the parties had disagreed about daycare; that Justin had harassed her about who was caring for [the child] while she was working; that Justin would come to her house during exchanges and cause her problems; and that Justin threatened her. But Sara credibly testified that even despite these problems, the parties were often able to work together both before and for a while after the entry of the decree. Indeed, for a while after entry of the decree, Sara regularly allowed Justin to have extra time with [the child]. But eventually, Justin’s refusal to coparent reasonably began to escalate, and Justin’s more recent behavior—discussed at length elsewhere in this ruling—is far, far more egregious than anything he did before. So Justin’s conduct over the last couple of years amounts to a change of circumstances since the entry of the original decree.

The Court also finds that this change in circumstances was not contemplated by the original decretal court. This, in the Court’s view, is self-evident. A court would not award parents joint legal custody if the court expected one of the parents to behave like Justin has behaved since the entry of the parties’ decree. Further, despite the already-mentioned animosity between the parties which existed at the time of the entry of the original decree, nothing in the record suggests that the decretal court would have had any reason to believe that Justin’s unreasonable conduct would escalate to the extent that it has. The Court finds that at the time of the entry of the parties’ decree, the acrimony between the parties was at a level consistent with the more acrimonious side of what is typical in a child custody case. But Justin’s conduct since the entry of the decree is so extreme as to be truly—indeed, extremely—unusual.

The Court finds that the change in circumstances is more or less permanent. The Court so finds based on how long, as reflected in the record, Justin has been engaging in the extreme and unreasonable conduct discussed throughout this ruling.

“[W]e recognize that the district court was able to listen to and observe the parties and witnesses.” *McKee v. Dicus*, 785 N.W.2d 733, 736 (Iowa Ct. App. 2010). Although we have reviewed the record, including the testimony of the parties and witnesses, we were not able to independently assess their demeanor. See *Hesseltine v. Sorensen*, No. 18-1603, 2019 WL 2524120, at *2 (Iowa Ct. App. June 19, 2019). Therefore, we give weight to the court’s factual findings, especially in determining the credibility of witnesses. See *Thurman v. Shuey*, No. 21-1829, 2022 WL 3906794, at *3 (Iowa Ct. App. Aug. 31, 2022).

The court repeatedly stated it did not find Justin to be credible, even going so far as to emphasize, “it is difficult to capture in words just how obvious it was from Justin’s demeanor that his testimony was mostly evasive or outright dishonest.” Considering the egregious facts presented in this record, we can read between the lines regarding Justin’s disturbing behavior. The court properly concluded Sara had shown a substantial change of circumstances. Sara established the discord between the parties had amplified, to the extent a change was warranted, since the decree was entered in 2019.

“We recognize the importance of a child maintaining meaningful relationships and substantial contact with both parents.” *Connell v. Barker*, No. 22-1791, 2023 WL 4759458, at *3 (Iowa Ct. App. July 26, 2023). However, in evaluating the child’s best interests, we seek “to place the child[] in the environment most likely to bring them to health, both physically and mentally, and

to social maturity.” *In re Marriage of Hansen*, 733 N.W.2d 683, 695 (Iowa 2007).⁷

Under these facts and circumstances, we conclude the district court properly found a reduction in Justin’s parenting time was in the child’s best interests. The record is replete with examples of Justin acting to the detriment of the child’s best interests, directly and indirectly. As the court noted, in part:

For example, Justin’s decision to sabotage Sara’s career by making false accusations to her employer and the Iowa Nursing Board imperiled her ability to provide for [the child].^[8] By way of another example, Justin used his false allegation of sexual abuse to rip [the child] out of his home at a time when, because of the fallout from that allegation, [the child] would have benefited from the stability of remaining in his usual abode. Relatedly, as a result of Justin’s false accusation of sexual abuse, [the child] was forced to endure an intrusive [child protective services] investigation. And more generally, Justin’s refusal to set aside his animosity and to coparent reasonably with Sara has rendered [the child]’s environment somewhat unstable and full of conflict.

. . . .
Justin has also repeatedly made false statements to Sara about [the child]. For example, [the child] suffered a bloody nose while at school. Sara understood that this was spontaneous, and informed Justin about the matter. But Justin later told her that he learned that [the child] had been hit by a baseball bat. So Sara followed up with [the child]’s teacher about the matter, and learned that Justin’s statement about the bat was not true.

. . . .
. . . . Justin’s communications also reveal that he desires to undermine the relationship between Sara and [the child]. The Court will not repeat here all or even a portion of the vile comments that Justin has directed toward Sara since the entry of the decree—those statements are in the record, and they speak for themselves. But from those statements, the only conclusion that the Court can

⁷ Because we apply the same standards to modifications of custody orders as we do dissolution decrees, see Iowa Code § 600B.40(2), we may look to dissolution cases for guidance.

⁸ Specifically, the record shows Justin contacted Sara’s employer, Mercy Medical Center, and alleged she was using drugs and stealing drugs. Although his accusations were proven to be “fabricated,” Sara “had to resign” from her job as a nurse. Justin also called the state nursing board and made similar reports about Sara. The nursing board determined the “allegations were false.” We note Justin’s allegations coincided with texts he sent to Sara about “ruining [her] life.”

reasonably draw is that Justin gets enjoyment from causing Sara problems, from calling her names, and from making her worry about [the child]. Indeed, Justin's ex-wife credibly testified at trial, in response to a question whether Justin has made any allegations to her about Sara's parenting, that Justin has said that one of his main goals in life is to make his kids hate their mothers.

. . . .

Justin has also refused to cooperate with Sara in a reasonable manner with respect to [the child]'s schooling and activities. Justin has refused to fill out and return to Sara necessary school papers like papers relating to conferences. He disagrees with Sara's belief (which is based on information from the school) that [the child] would benefit from tutoring, and so he has at times refused to take [the child] to scheduled tutoring sessions that fall on his time—instead, he uses [the child]'s need for tutoring to accuse Sara of being a deficient mother, and to demand more time with the child. He has . . . refused to take [the child] to Beyond the Bell in the summer. Sara signed [the child] up for a "ninja" class, but Justin has refused to take the child to this class during Justin's parenting time. [The child] played tee ball in the spring of 2022, but Justin often refused to bring the child to games and practices, and when he did show up he created disturbances and otherwise interfered with Sara's enjoyment of the child's activity. And Justin's refusal to consistently bring [the child] to activities is hard on the child, because the child likes the activities and wants to take part in them.

. . . .

Yet another matter has arisen since the entry of the parties' decree which suggests that Sara is able to provide superior care: Sara has credible doubts about the safety of [the child] in Justin's home. As mentioned above, Justin recently assaulted his adult son in his home, and caused him injuries. Justin's seventeen-year-old daughter also recently overdosed on some kind of pills while in Justin's home, and was hospitalized as a result.

The district court's detailed and thorough order documented numerous other incidents presented in the record of Justin acting against the child's best interests, which we need not repeat here. Suffice it to say, we agree with the court Sara established herself as the parent who is better able to meet the child's needs and a slight modification of Justin's parenting time furthers the child's best interests. *See In re Marriage of Kisting*, No. 23-0948, 2024 WL 466123, at *4 (Iowa Ct. App. Feb. 7, 2024). We affirm on this issue.

III. Contempt Finding

Justin also claims the district court should not have found him in contempt for “the January 2022 [child protective services (CPS)] allegations.” “If a party fails to comply with or violates the terms or conditions of an order made pursuant to this chapter, the party shall be held in contempt and punished by the court” Iowa Code § 600B.37 (2022). Because “[a]n action for contempt is treated in the nature of a criminal proceeding,” “[n]o person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt.” *Amro v. Iowa Dist. Ct.*, 429 N.W.2d 135, 140 (Iowa 1988).

Here, to find Justin guilty of contempt,⁹ the court must have found beyond a reasonable doubt he willfully violated the decree. *In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995) (referencing Iowa Code section 598.23, which addresses contempt actions filed under the dissolution chapter). Sara had the burden of showing the decree imposed a duty on Justin and he failed to perform that duty. *See id.* If Sara succeeded, the burden then shifts to Justin to produce evidence he did not willfully violate the decree. *See id.* But the burden of persuasion remained on Sara to prove beyond a reasonable doubt Justin willfully acted in violation of the decree. *Id.*

Willfulness can be shown by evidence of conduct that is (1) intentional and deliberate with a bad or evil purpose; (2) wanton and in disregard of the rights of others; (3) contrary to a known duty; or (4) unauthorized, coupled with an unconcern whether the contemner had the right or not.

⁹ As noted above, the court found Justin in contempt for two violations of the decree. On appeal, Justin challenges only the court’s contempt finding relating to the child-abuse allegations.

Moritz v. Iowa Dist. Ct., No. 15-1744, 2016 WL 5930833, at *1 (Iowa Ct. App. Oct. 12, 2016). Our review of this issue is at law. *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007) (“Certiorari is an action at law; therefore, our review is at law.”). We review a contempt finding by certiorari to determine whether substantial evidence supports the district court’s judgment. See *Jacobo*, 526 N.W.2d at 866.

Justin acknowledges he made false reports to CPS about Sara on more than one occasion prior to January 2022, which the court found “d[id] not violate any clear and enforceable command . . . in the parties’ decree.” Indeed, the court noted:

Sara alleges that Justin has repeatedly made false accusations of abuse and neglect against her to [CPS]. . . .

Sara presented testimony about several such false allegations by Justin. To date from January 2021: Justin reported to CPS that Sara had used marijuana in [the child]’s presence, that she had abused Adderall while [the child] and her older child were present; and that she allowed a known methamphetamine user to reside with her and the kids; and he separately alleged that that same supposed known meth user had used meth while providing care for both of Sara’s children. But Sara credibly testified, at the instant hearing, that she did not use marijuana or abuse Adderall as alleged by Justin. And she credibly explained that although she has associated with the supposed known meth user, whom she has known since they attended middle school together and who she concedes in the past was a meth user, that individual never lived with her, and never used anything or was under the influence of anything in her residence or in the kids’ presence.

The CPS worker who investigated these allegations also testified at trial, and the Court finds her testimony to be entirely credible. The worker explained that she interviewed Justin, Sara, [the child], Sara’s older son, and Sara’s older son’s father about the allegations. The worker also contacted the schools and daycares the kids attend, and she spoke with the family doctor who Sara’s kids see. In the course of her investigation, the worker concluded that Justin had lied to her about making a police report concerning the matter. More generally, the worker concluded that the credibility of Justin’s accusations was “questionable.” The worker did not find that it was more likely than not that Sara was abusing any substance, or that the supposed meth user was residing in her home. And the

worker concluded that neither [the child] nor Sara's older son was at any risk in Sara's home.

The Court finds that Justin's allegations underlying these two CPS investigations were false, and were fabricated for the purpose of harassing Sara. The Court so finds, in large part, based on the evidence just discussed. The Court also so finds based on the evidence before the Court of how Justin has conducted himself since the entry of the parties' decree. Whenever Justin does not get his way or is angry with Sara, he lashes out in extreme ways. His lashing out has frequently involved making false accusations against Sara, including to authorities. And Justin's text messages reveal that far from hiding this course of conduct, he revels and wallows in it, more or less bragging to Sara that if she crosses him, he will ruin her both personally and professionally. The Court thus has no doubt at all that Justin's allegations are completely false, that he knew those allegations were false when he made them, and that he made the allegations because he was unhappy with Sara and for the sole purpose of harming Sara.

But the Court nonetheless is unable to find beyond a reasonable doubt that Justin's just-discussed false accusations amount to contempt. The record does not establish that as a result of these false accusations, Sara lost any parenting time. And making false accusations of child abuse to CPS and others does not violate any clear and enforceable command (as opposed to aspirational provision) in the parties' decree. Thus, while Justin's just-discussed false accusations may well be actionable through some other legal mechanism, the Court concludes that those false accusations do not amount to contempt.

(Emphasis added.) (Footnote omitted.)

Justin hinges his contention on the court's reasoning in denying Sara's other contempt claims, as set forth above. According to Justin, his January 2022 report to CPS was not a violation of the parties' decree, but the court "allowed its repulsion about the subject matter of reported allegation to CPS to cloud its judgment and misapply the law." Without disputing the falsity of his accusations, Justin argues his January 2022 report to CPS "was no more the basis for a finding of contempt than the other calls to CPS" dismissed by the court "as not contempt."

Fatal to Justin's claim is a critical distinction—whether Justin's false accusations ultimately resulted in lost parenting time for Sara, in willful violation of the parties' decree. In reaching its determination relating to Justin's January 2022 report, the court specifically concluded "Justin used the false accusation of sexual abuse as a means to deny Sara parenting time to which she was entitled under the parties' decree." Without going into the complete details relating to Justin's accusations—which again, he does not contest were false—we focus on the court's relevant findings:

In January 2022, Sara discovered, when she received a call from a counselor offering help with her family, that Justin had removed or withheld [the child] from school, and that a DHS worker was at Justin's home. She eventually learned that Justin had alleged that Sara's older son had sexually abused [the child]. Justin did not relay this accusation to Sara before withholding [the child] from school and contacting DHS. And a few days later, when under the parties' decree Sara was to have [the child], Justin refused to return the child to her care.

On account of the nature of Justin's allegation, the investigation of that allegation necessarily involved Sara's older child. Sara discussed the allegation with her older son's father. And they, together with DHS, agreed that pending the resolution of the investigation, Sara's older child would live with his father. Through this DHS-approved safety plan, [the child] was to be returned to Sara's care.

But Justin refused to return [the child] to Sara's care. Rather, he withheld the child from Sara during the investigation. And when DHS tried to contact Justin about returning [the child] to Sara's care, Justin stopped responding to DHS communications. Justin also refused to send [the child] to school for a week and a half, despite the school threatening to commence a truancy investigation. Justin, during his trial testimony, initially claimed that DHS never told him about the safety plan. Then when confronted with evidence that DHS had told him about the plan, Justin changed his story and claimed that although DHS told him about the plan, the worker had refused to provide him with the details of the plan or adequate assurances that [the child] and Sara's older child would not be together. Justin's evolving story, and his demeanor during this portion of his testimony completely undermine his credibility, and not just in relation to this

incident, but (together with other of his testimony) overall—the Court simply does not believe what Justin says.

. . . .
 Eventually, DHS arranged for [the child] to be interviewed at the Child Advocacy Center [(CAC)] about the allegation. The child reported that no one had ever touched his private parts inappropriately, he made no allegations against Sara’s older child, and he said nothing even remotely similar to what Justin had reported. Nothing during [the child]’s interview suggested that he had ever been sexually abused. The DHS worker who investigated Justin’s allegation likewise had no concerns about sexual abuse of [the child], including after the CAC interview, and the worker found no evidence whatsoever supporting Justin’s allegation—indeed, the worker concluded that Justin’s allegation was false. And at the conclusion of the CAC interview, *DHS instructed Sara to take [the child] home with her.*

. . . .
 The Court finds, beyond a reasonable doubt, that Justin’s allegation of sexual abuse was false. The Court further finds that Justin fabricated this accusation for the sole purpose of harassing and harming Sara, and that he did so despite the obvious fact that making the accusation would harm [the child], would harm [the child]’s relationship with his mother and his half-brother, and would harm Sara’s older child. The Court so finds based to a large extent on the evidence just discussed—it is apparent to the Court that there was no basis to the allegation. . . .

And in this case, the Court finds, again beyond a reasonable doubt, that Justin’s conduct in this regard constitutes contempt. In particular, *Justin used the false accusation of sexual abuse as a means to deny Sara parenting time to which she was entitled under the parties’ decree. That he knowingly made a false allegation of sexual abuse, and then used that allegation to deny Sara parenting time to which she was entitled, is a violation of the parenting-time provisions of the parties’ decree*—while sufficiently severe safety concerns can, under some circumstances, effectively provide a defense against a contempt allegation arising from one parent denying the other contact with a child, that is not the case with respect to safety concerns which are knowingly false. And the Court further finds that Justin’s violation of the parenting-time provisions of the parties’ decree was willful—his willfulness is apparent from his course of conduct, described elsewhere in this ruling, of lashing out at Sara whenever he is unhappy with her, as well as from how obviously false was his allegation, and how nonchalantly he abandoned the allegation once he had used all of the legal tools at his disposal to use the allegation to harm Sara.

In sum, the Court concludes, beyond a reasonable doubt, that Justin's conduct in relation to his false allegation of sexual abuse of [the child] by Sara's older son constitutes contempt.

(Emphasis added.) (Internal citation omitted.)

We find substantial evidence Justin interfered with Sara's parenting time by willfully refusing to return the child to her care, in violation of the parties' decree. We further note Justin does not dispute he withheld the child from Sara during her parenting time; rather, he claims his false CPS report was not a violation of the decree. We agree with the district court's finding of contempt and annul the writ of certiorari.

IV. Contempt Sentence

Justin further challenges the sentence imposed by the court on his contempt violation. He claims the court imposed an "outrageously severe contempt sentence" "for [his] denial of two days parenting time" to Sara. To further support his contention, Justin points to the "disparity of treatment" Sara received by the court's imposition of a one-day jail sentence as punishment for her denial of parenting time to him.

"[C]ourts enjoy wide discretion in determining and punishing contemptuous behavior." *In re S.D.L.*, 568 N.W.2d 41, 42 (Iowa 1997). "We interfere in such judgments only when discretion has been clearly abused, that is, when the court's decision rests on unreasonable or untenable grounds, or erroneous legal conclusions." *Id.*

Here, in evaluating "the appropriate disposition" for Justin's contempt, the court opined Justin's contempt was "egregious to an extreme degree," observing "[t]he extreme nature of [his] conduct," as well as "the broader surrounding

circumstances,” “strongly suggests that a severe punishment is warranted.” The court then reluctantly acknowledged Sara’s request that “jail time” imposed on Justin “be suspended with a chance to purge.” The court stated it was “somewhat troubled” by Sara’s request, noting “but for [her] request, [it] would not hesitate to impose a very lengthy jail sentence, with no chance to purge any of it.” The court further stated, in its view, “if a jail sentence with no chance to purge is ever warranted in a contempt proceeding, it is warranted here.”

Ultimately, the court sentenced Justin to a total of 210 days in jail (180 days of which for the false sexual-abuse allegation incident he challenges on appeal), with an opportunity to purge the remaining 180 days after he had served 30 days “by complying with all provisions of the parties’ decree for a period of one year from the date of [the modification] order.” Upon our review, “we cannot say the district court clearly abused its wide discretion.” *Blackwood v. Knop*, No. 22-1084, 2023 WL 2674094, at *5 (Iowa Ct. App. Mar. 29, 2023). We annul the writ of certiorari.

V. Trial Attorney Fees

Justin claims the court abused its discretion by ordering him to pay \$7000 toward Sara’s attorney fees. According to Justin, the court “ignored” the income disparity between the parties, his increased child-support obligation, his retroactive child-support payment, and his contempt sentence, and “felt that saddling [him] with an additional \$7000 in attorney fees was appropriate.” Relating to Sara’s request for attorney fees, the court made the following detailed ruling:

Sara seeks an attorney fee award of \$11,000. In support of that request, she filed an attorney fee affidavit, which indicates that she has incurred attorney fees in relation to this matter in the total

estimated amount of \$11,744.90. Sara also testified at trial that on account of certain pretrial filings by Justin, she actually incurred more in attorney fees than is reflected in her request and her attorney fee affidavit.

But while the Court finds the amount of the attorney fees that Sara has incurred to be reasonable, in light of the work that her attorney has done, the Court also concludes that not all of those attorney fees are recoverable. In particular, Sara may not recover attorney fees for defending against Justin's contempt application—for one thing, she did not prevail in her defense in two respects, discussed above; and for another, attorney fees are not recoverable even by a party who successfully defends against a contempt application in whole or in part. Likewise, the evidence presented at trial suggests that a portion of Sara's attorney fees were incurred in relation to her defense against Justin's petition for relief from sexual abuse, but not only is an award of attorney fees for a defense against such a petition not statutorily authorized—such an award is statutorily precluded under chapter 236A.

The Court does, however, conclude that an award of attorney fees is warranted with respect to the attorney fees that Sara incurred in successfully prosecuting her petition for modification, and with respect to the attorney fees that she incurred in litigating those portions of her contempt application on which she prevailed. The Court so concludes, even though Sara earns more than Justin does, because Justin nonetheless earns enough to pay Sara's recoverable attorney fees. The Court also concludes that an attorney fee award is warranted in light of the extent to which Sara has prevailed on her modification petition and on her contempt application.

And although Sara's attorney fee affidavit does not differentiate the amount of fees she incurred in relation to her modification and contempt application (which fees are recoverable), as opposed to the amount of fees that she incurred in relation to Justin's contempt application and the [sexual-abuse protection] case (which fees are not recoverable), the Court concludes, having considered all of the relevant factors, that Sara should be awarded reasonable attorney fees in the amount of \$7500, to be paid as set forth below.

Although both Sara and Justin prevailed to an extent in the district court, Sara was largely the prevailing party. We further note both parties requested

attorney fees and both were awarded a portion of their respective requests.¹⁰ We cannot say the court abused its discretion. See Iowa Code § 600B.26 (providing “the court may award the prevailing party reasonable attorney fees” in a custody or visitation modification action); *Markey v. Carney*, 705 N.W.2d 13, 25 (Iowa 2005) (setting forth the standard of review for a trial-attorney-fee award in a modification proceeding); cf. Iowa Code § 598.24 (authorizing taxing of attorney fees against a party who is found in contempt in a dissolution proceeding); *Felton v. Iowa Dist. Ct.*, No. 21-1398, 2023 WL 1809820, at *6 (Iowa Ct. App. Feb. 8, 2023) (reviewing attorney-fee award in a contempt action). We affirm on this issue.

VI. Appellate Attorney Fees

Both parties request appellate attorney fees and submitted attorney-fee affidavits supporting their requests. Sara seeks appellate attorney fees in the amount of \$9842.50; Justin seeks \$10,000 in appellate attorney fees.

Appellate attorney fees may be awarded after considering “the needs of the party making the request, the ability of the other party to pay, and whether the party making the request was obligated to defend the trial court’s decision on appeal.” *Markey*, 705 N.W.2d at 26 (citation omitted). “An award of appellate attorney fees is within the discretion of the appellate court.” *Id.* Given the financial positions of the parties and merits of the arguments on appeal, we decline to award appellate attorney fees to Justin. However, we conclude an award to Sara is appropriate, and we order Justin to pay \$9842.50 toward Sara’s appellate attorney fees.

¹⁰ The court ordered Sara to pay \$500 toward Justin’s attorney fees, noting Justin “prevailed in part on his contempt application, and Sara earns considerably more than Justin does.”

VII. Conclusion

Having addressed the issues raised on appeal, we affirm the order of the district court and annul the writ of certiorari.

MODIFICATION AFFIRMED; WRIT ANNULLED.