IN THE COURT OF APPEALS OF IOWA

No. 7-601 / 06-1752
Filed October 12, 2007

MARJORIE O. ATTLESON,
Plaintiff-Appellant,

vs.

DENNIS ATTLESON, DEAN ATTLESON, JOE ATTLESON, JOHN ATTLESON and VANESSA KING,
Defendants-Appellees.

Appeal from the Iowa District Court for Chickasaw County, Thomas N. Bower, Judge.

Marjorie Attleson appeals the district court's denial of her application for citation of contempt. **AFFIRMED.**

Judith O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant.

Roger Sutton of Sutton Law Office, Charles City, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

Marjorie Attleson appeals the district court's denial of her application for citation of contempt. We affirm.

I. Background Facts and Proceedings

On October 21, 2005, Marjorie Attleson filed her petition for partition against the appellees. Subsequently, the appellees filed their answer. Trial was set for April 13, 2006. On that date, the district court was informed the parties had reached a settlement agreement and trial was no longer necessary. A hearing was held on April 14, 2006, regarding the settlement agreement. Although Marjorie personally appeared along with her counsel, the appellees did not personally appear; however, their attorney, John Tremaine, appeared on their behalf. At the hearing, the district court approved the terms of the settlement agreement and ordered the parties to comply with its terms and to execute and file it. The appellees failed to sign the settlement agreement or otherwise comply with the order.

On July 25, 2006, Marjorie filed her application for citation of contempt. Thereafter, a rule to show cause and an order for rule to show cause were issued. A hearing on Marjorie's application was held on September 26, 2006. The evidence revealed Joe Attleson e-mailed Tremaine on April 12, 2006, accepting an offer to settle on his behalf and on the other appellees' behalf, even though he was only able to speak to John Attleson, who informed Joe that he desired to accept the offer. That same day Tremaine sent the appellees a letter informing them of the settlement and enclosing the settlement agreement for their signatures. Vanessa King and Dean Attleson testified this was the first time

they heard of a settlement and/or the terms of a settlement and they did not give Tremaine authority to settle the case on their behalf. On October 3, 2006, the district court issued its ruling, denying Marjorie's request to find the appellees in contempt because there was "a legitimate dispute between the respective defendants and their former attorney, Mr. Tremaine, on the scope of his authority."

On appeal, Marjorie claims (1) the district court's order incorporating the settlement agreement is enforceable and (2) she sustained her burden of proof that the appellees' violation of the order was willful. Assuming without deciding that the order is enforceable, we find Marjorie failed to sustain her burden of proof that the appellees' violation of the order was willful.

II. Standard of Review

When a district court denies a contempt application, a direct appeal is allowed. *In re Marriage of Ruden*, 509 N.W.2d 494, 496 (Iowa Ct. App. 1993) (citing *State v. Lipcamon*, 483 N.W.2d 605, 606 (Iowa 1992)). Our standard of review is for assigned errors only, not de novo. *In re B.C.A.K.*, 508 N.W.2d 738, 739-40 (Iowa Ct. App. 1993) (citing *City of Masonville v. Schmitt*, 477 N.W.2d 874, 876 (Iowa Ct. App. 1991)). We review the record to decide if the district court's decision is supported by substantial evidence. *In re Marriage of Hankenson*, 503 N.W.2d 431, 433 (Iowa Ct. App. 1993) (citing *In re Marriage of Wegner*, 461 N.W.2d 351, 354 (Iowa Ct. App. 1990)).

III. Contempt

Iowa Code section 665.2(3) (2005) provides that "[i]llegal resistance to any order or process made or issued by it" is punishable as a contempt. Violation of

a court order is willful disobedience. *In re Inspection of Titan Tire*, 637 N.W.2d 115, 132 (Iowa 2001) (citing *Rolek v. Iowa Dist. Ct. for Polk County*, 554 N.W.2d 544, 547 (Iowa 1996)). "Willful disobedience" means

> conduct that 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, or unauthorized, coupled with an unconcern whether the contemner had the right or not.

Ary v. Iowa Dist. Ct. for Benton County, 735 N.W.2d 621, 624 (Iowa 2007) (quoting *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980)).

Because of its quasi-criminal nature, contempt must be proven beyond a reasonable doubt. *McKinley v. Iowa Dist. Ct. for Polk County*, 542 N.W.2d 822, 824 (Iowa 1996) (citing *Phillips v. Iowa Dist. Ct. for Johnson County*, 380 N.W.2d 706, 709 (Iowa 1986)). The applicant bears the burden to show that the contemner "(1) had a duty to obey a court order, and (2) willfully failed to perform that duty." *Christensen v. Iowa Dist. Ct. for Polk County*, 578 N.W.2d 675, 678 (Iowa 1998) (citing *In re Marriage of Jacobo*, 526 N.W.2d 859, 866 (Iowa 1995)). Next, the burden shifts to the contemner to produce evidence that he or she did not willfully violate the order. *Gizmo v. Iowa Dist. Ct. for Hardin County*, 561 N.W.2d 833, 835 (Iowa Ct. App. 1997) (citing *Skinner v. Ruigh*, 351 N.W.2d 182, 185 (Iowa 1984)). However, the burden of persuasion remains with the applicant to prove beyond a reasonable doubt that the contemner willfully violated the court order. *Wurpts v. Iowa Dist. Ct. for Sioux County*, 687 N.W.2d 286, 290 (Iowa Ct. App. 2004) (citing *In re Marriage of Jacobo*, 526 N.W.2d at 866).

In general, an attorney possesses the authority to "[b]ind a client to any agreement, in respect to any proceeding within the scope of the attorney's . . .

proper duties and powers. . . ." Iowa Code § 602.10114(2). According to our supreme court,

> [a]n attorney's offer of settlement is generally within the scope of the attorney's litigation duties. *See Strong v. Rothamel*, 523 N.W.2d 597, 600 (Iowa App. 1994); *Starlin v. State*, 450 N.W.2d 257, 258 (Iowa App. 1989). However, an attorney cannot settle or compromise a case without authority. *Dillon v. City of Davenport*, 266 N.W.2d 918, 924 (Iowa 1985). If a settlement is made with authority, that settlement is binding on the client. *Id.*; *see* Iowa Code § 602.10114(2).
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> An attorney is presumed to act with authority. *Dillon*, 366 N.W.2d at 923. The presumption, however, is not conclusive and may be rebutted. *Id.* The presumption is overcome only by clear and satisfactory proof. *Lonning v. Lonning*, 199 N.W.2d 60, 62 (Iowa 1972).

Gilbride v. Trunnelle, 620 N.W.2d 244, 251 (Iowa 2000).

Like the district court, we believe a legitimate dispute exists between the appellees and Tremaine on the scope of his authority to settle the case on their behalf. Therefore, we find Marjorie failed to sustain her burden of proof that the appellees' violation of the order was willful.

VI. Appellate Attorney Fees

Although the appellees request attorney fees on appeal, they fail to cite any authority in support thereof. *See* Iowa R. App. P. 6.14(1)(*c*) (stating that "[f]ailure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue"). Therefore, we decline to address the appellees' request.

AFFIRMED.