

IN THE COURT OF APPEALS OF IOWA

No. 8-709 / 07-1378
Filed October 15, 2008

TIFFANY BELLAMY,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Domestic abuse order's protected party seeks certiorari review of the
court's ruling finding her in contempt. **WRIT SUSTAINED.**

Michelle Mackel-Wiederanders, Iowa Legal Aid, Des Moines, for appellant.

Alexander Rhoads, Des Moines, for appellee.

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

EISENHAUER, J.

The district court adjudged Tiffany Bellamy in contempt for violating provisions of a no-contact order issued against John Miller, her ex-boyfriend. Bellamy challenges the court's contempt finding through a petition for writ of certiorari. We conclude substantial evidence does not support a finding Bellamy is in contempt. Accordingly, we annul the judgment and sustain the writ.

I. Background Facts and Proceedings.

After a hearing on July 19, 2007, the district court issued a domestic abuse protective order requiring Miller to refrain from contact with Bellamy. The parties were ordered to return property through third parties.

Miller lives with Bellamy's ex-husband, Timothy. On July 22, 2007, Timothy had visitation with the Bellamy children and was scheduled to return the children by 6:00, but did not. Bellamy drove to Timothy's residence at 6:30 to pick up the children. Bellamy parked on the public street and never left her car. She threw a CD case of Miller's into the front yard, allegedly yelled something about the CD case, and left with her kids. During this time Miller was holding his son and standing outside near the house and away from the street.

On July 23, 2007, Miller filed a petition initiating contempt proceedings against Bellamy. He alleged she violated the provisions of the domestic abuse order directed at him. The district court found Bellamy in contempt and ruled she initiated contact with Miller and should have returned the CD's through a third party. The court sentenced Bellamy to seven days in jail.

II. Standard of Review.

We review certiorari actions at law. *Christensen v. Iowa Dist. Court*, 578 N.W.2d 675, 678 (Iowa 1998). Our review is limited to examining the district court's jurisdiction and the legality of its actions. *Id.* Illegality occurs when the court's fact findings are not supported by substantial evidence or when the court has not applied the law properly. *Amro v. Iowa Dist. Court*, 429 N.W.2d 135, 138 (Iowa 1988).

III. Merits.

"A party alleging contempt has the burden of proving the contemner had a duty to obey a court order and willfully failed to perform that duty." *Id.* Contempt proceedings are quasi-criminal proceedings; therefore, the willful disobedience of the contemner must be established by proof beyond a reasonable doubt. *Id.* A finding of willful disobedience requires:

Evidence of 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.

Id. Willfulness is not proven if a contemner shows the order was indefinite or the contemner was unable to comply with the order. *Christensen*, 578 N.W.2d at 678. Substantial evidence to support the district court's contempt finding requires evidence that could convince a rational trier of fact the contemner is guilty of contempt beyond a reasonable doubt. *Ary v. Iowa Dist. Court*, 735 N.W.2d 621, 624-25 (Iowa 2007).

Bellamy is the protected party in the domestic abuse order directed at Miller and Miller's future conduct. This case is not based on an order directed at

Bellamy. However, “[c]ontempt orders may be enforced against nonparties who act . . . in concert with the person to whom the court's order is directed.” *Henley v. Iowa Dist. Court*, 533 N.W.2d 199, 202 (Iowa 1995) (finding protected party in contempt when she acted in conspiracy with the person subject to the court order).

While Bellamy did toss a CD case out the window and into the yard, there is no showing she acted “in concert” or “in a conspiracy” with Miller. Rather, Bellamy drove to her ex-husband’s house to pick up her children, never left the car, remained on the public street, and Miller happened to be standing outside. Bellamy’s conduct is not intentional conduct with a bad or evil purpose. There is no substantial evidence to support a finding beyond a reasonable doubt that Bellamy willfully disobeyed the court’s order or aided and abetted Miller’s knowing and intentional violation of his no-contact order.

The judgment holding Bellamy in contempt is annulled and the writ is sustained.

WRIT SUSTAINED.