IN THE COURT OF APPEALS OF IOWA

No. 9-230 / 08-1087
Filed June 17, 2009

JAN REIS and DEAN STOWERS,
Plaintiffs,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,
Defendant.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

Jan Reis and Dean Stowers appeal a district court order holding them in contempt of court. **WRIT SUSTAINED.**

Dean Stowers of Stowers Law Firm, Des Moines, pro se.

Mari Culver, Des Moines, for appellant Jan Reis.

Kevin Visser and Dawn Gibson, Cedar Rapids, and Randall Armentrout and Mitchell R. Kunert of Nyemaster, Goode, West, Hensell & O'Brien, P.C., Des Moines, for appellee Care Initiatives.

Jacqueline Samuelson, Des Moines, for appellee Hulon Walker.

Heard by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

PER CURIAM

Jan Reis and Dean Stowers appeal a district court order holding them in contempt of court.

I. Background Facts and Proceedings.

Reis was involved in employment-related litigation. In the course of that litigation, the district court issued a protective order to govern the use and disclosure of documents. The order applied to Reis as well as her spouse, Dean Stowers, and provided in pertinent part:

> All persons who are afforded access to any documents or information subject to this Stipulation and Protective Order shall not use or disclose such documents or information for purposes of business or competition, or for any purpose other than the preparation for and the conducting of this proceeding, or any appellate review thereof, and then solely as contemplated herein, and shall keep the documents and information secure and confidential in accordance with the purpose and intent of this Stipulation and Protective Order.

Reis subsequently settled the litigation and dismissed her lawsuit. The settlement agreement provided that she would return the employer's documents, but did not specify a deadline. The agreement was not approved or confirmed by the district court.

The documents, located at the offices of Reis's attorneys, were sorted and readied for return to the employer. Meanwhile, Stowers asked the attorneys for an opportunity to review them. One of Reis's attorneys eventually gave the documents to Reis and Stowers. He informed the employer's attorney that his office no longer had possession of them and he no longer represented Reis or Stowers.

A newspaper article subsequently disclosed that the government was investigating the finances of Reis's former employer. Stowers responded to the disclosure by e-mailing the chief financial officer of the company. His e-mail stated in pertinent part, based "upon information known and that disclosed publicly . . . you should quietly tender your resignation from all positions." A copy of this e-mail was provided to Reis. Stowers also sent threatening e-mails to members of the board of directors and its attorneys.

Two days after Stowers's e-mail to the CFO, the employer's attorney asked to have the confidential documents returned. Stowers effectively denied the request, indicating the documents bore on the matters under investigation.

The employer applied to have Reis, Stowers, and her former attorneys cited for contempt of court. The employer also sought to enforce the settlement agreement. Following a preliminary hearing, the district court ordered the documents returned to the law offices of Reis's former attorneys. Following a second hearing, the district court determined that Stowers and Reis willfully violated the protective order and settlement agreement by demanding possession of the documents and by using the possession of the documents as a basis for threats against agents of the employer. The court stated in pertinent part:

> [I]t is clear from the e-mails written by Mr. Stowers that he assumed representation of Ms. Reis with regard to the documents produced in this case. It is also clear that he was using and/or threatening to use information he obtained from these documents and making harassing statements to [] employees, board members, and attorneys. And while Stowers's correspondence contains his opinions and does not specifically reveal any confidential information, it certainly indicates his willingness and intention to use information in these confidential documents to back up his threats.

With respect to Stowers, the court concluded:

> The Protective Order entered by this Court to facilitate protection of the production of documents by [the employer] clearly stated that the documents could not be used "for any purpose other than the preparation for and the conducting of this proceeding." Mr. Stowers's actions after the settlement of the case in participating and facilitating Ms. Reis's failure to return these documents and in then threatening to use knowledge gained from the documents against [the employer's] employees, agents, and/or attorneys clearly uses the documents for "purposes other than the litigation." Stowers's actions constitute a willful and wanton disregard of this court's order and support holding Mr. Stowers in contempt for violation of the order of this court for these actions.

With respect to Ms. Reis, the court concluded that

> Ms. Reis was aware of the contents of the court's Protective Order and the contents of the Settlement Agreement in this case; that she knowingly and willfully violated the terms of the court's Protective Order and of the Settlement Agreement by demanding possession and keeping the documents produced by [the employer] in her possession; and that she refused to return these documents as agreed while allowing her husband to use their possession of documents in making threats to [the employer's] agents and employees. Based upon these findings the court finds Ms. Reis guilty of contempt of court for violating the protective order and for refusing to return the documents as agreed in the settlement agreement.

The court held Stowers and Reis in contempt of court and ordered them to pay all reasonable attorney fees incurred by their former attorneys and by the employer's attorneys. The court also stated that the protective order would "continue to cover any confidential information learned by any individual, including the parties, their attorneys, and Dean Stowers from confidential documents produced pursuant to the Protective Order." The court declined to find the former attorneys in contempt.

Stowers and Reis filed a writ of certiorari, raising jurisdictional and substantive challenges to the court's ruling.

A. Jurisdiction.

Stowers and Reis first contend that the dismissal of Reis's lawsuit divested the court of personal and subject-matter jurisdiction. They argue the protective order did not contain any language indicating it survived the dismissal of the lawsuit. The employer counters that, by the terms of the protective order, the documents were to be used "only for the purposes of this litigation and for no other purpose" and the documents were to be "secure and confidential in accordance with the purposes and intent of this Stipulation and Protective Order." This language, the employer states, reveals an intent to have the order survive dismissal of the lawsuit.

The employer has the better argument. The protective order is only as good as the ability to enforce it in the event of a violation. We conclude that the court's enforcement ability survived the dismissal of the lawsuit. *See Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 535 (1st Cir. 1993) (stating that although "the lubricating effects of the protective order on pre-trial discovery would be lost if the order expired at the end of the case or were subject to ready alteration," the district court retains jurisdiction over protective orders—like any ongoing injunction—"even after judgment"); *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 784 (9th 1983) (addressing contempt and discovery sanctions for attorney's refusal to return documents governed by protective order following dismissal of lawsuit); *Jochims v. Isuzu Motors, Ltd.*, 151 F.R.D. 338, 341 (S.D. Iowa 1993) ("This court, having presided over the trial, believes that it is in the

best position to determine whether the designated confidential documents, and testimony related to them, should enjoy continued confidential status and be sealed from disclosure.”). Accordingly, the court was not divested of jurisdiction to consider the employer’s application.

B. *Evidentiary Support for Contempt Findings.*

The key question is whether substantial evidence supports the district court’s findings of contempt. Iowa Code section 665.2 (2007) lists the actions constituting contempt. Here, the pertinent action is “[i]llegal resistance to any order.” Iowa Code § 665.2(3). To be contemptuous, the resistance or violation must be willful. *In re Inspection of Titan Tire*, 637 N.W.2d 115, 132 (Iowa 2001). A finding of willful disobedience must be supported by

> 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.

Amro v. Iowa Dist. Court, 429 N.W.2d 135, 140 (Iowa 1988) (quoting *Lutz v. Darbyshire*, 297 N.W.2d 349, 353 (Iowa 1980)). *“*No person may be punished for contempt unless the allegedly contumacious actions have been established by proof beyond a reasonable doubt.” *Id.*

As a preliminary matter, we agree with Stowers and Reis that the settlement agreement could not form the basis of a contempt finding, as it was not confirmed or approved by order. *See Zimmermann v. Iowa Dist. Ct.*, 480 N.W.2d 70, 75 (Iowa 1992) (“Because there was no *express* order prohibiting the evaluation, Zimmermann did not illegally resist any order when he had Brewer evaluate T.D.” (emphasis in original)).

Turning to the protective order, the district court correctly noted that the order prohibited the "use" or disclosure of documents "for any purpose other than the preparation for and the conducting of this proceeding." The district court's finding that Stowers "used" the documents by transmitting e-mails is not supported by substantial evidence. One e-mail on which the court relied referred to "information known and that disclosed publicly," but made no specific mention of the confidential documents from the employment litigation. Another e-mail indicated discomfort in returning the documents in the face of a federal investigation of the company and contained a suggestion that the documents might be disclosed to federal authorities but, again, did not specifically cite the documents. Given the heavy burden associated with proving contempt, we conclude these e-mails were insufficient to establish contempt.

As for the court's finding that Reis allowed her husband to "use" the documents in this fashion, that finding is also not supported by substantial evidence. The record reveals that Stowers, an attorney, asked for the documents "on behalf of" his wife, Reis wished to cull through and extract her medical records from the piles of documents, and Reis was copied on an e-mail Stowers transmitted to the employer's CFO. There is no evidence that Reis willfully "used" the documents outside the litigation. For this reason, we conclude the finding of contempt as to Reis was not supported by substantial evidence.

We reverse the contempt findings as to Stowers and Reis. We find the remaining issues unnecessary to decide or without merit.

WRIT SUSTAINED.

Vaitheswaran, J. concurs in part and dissents in part.

VAITHESWARAN, J. (Concurring in part and dissenting in part)

I respectfully concur in part and dissent in part. I agree with the majority's conclusion that the employer did not meet its heavy burden of showing Reis was in contempt of the protective order, but I disagree with the majority that substantial evidence was lacking to find Stowers in contempt. In my view, the court's findings that Stowers "used" the documents for purposes unrelated to the employment litigation is supported by the e-mails he transmitted. *See On Command Video Corp. v. LodgeNet Entertainment Corp.*, 976 F. Supp. 917, 922 (N.D. Cal. 1997) ("[T]he Protective Order is not limited to the mere disclosure of protected information. Rather, as defendant correctly points out, it prohibits *use* . . . . Plaintiff's *use* of protected information to file a *separate* state court lawsuit—as opposed to *this* litigation—is tantamount to no compliance at all." (emphasis in original)). Although Stowers did not disseminate the confidential documents, he could not have made the thinly-veiled threats contained in the e-mails but for his possession of those documents. I would conclude these threats amounted to "use" of the documents and I would affirm the district court's citation for contempt as to Stowers.