

IN THE COURT OF APPEALS OF IOWA

No. 9-864 / 09-0550
Filed November 12, 2009

**IN RE THE MARRIAGE OF LYDIA O. KETELSEN
AND BRIAN J. KETELSEN**

**Upon the Petition of
LYDIA O. KETELSEN,
n/k/a LYDIA O. WULF,**
Petitioner-Appellant,

**And Concerning
BRIAN J. KETELSEN,**
Respondent-Appellee.

Appeal from the Iowa District Court for Cedar County, C.H. Pelton, Judge.

Lydia Wulf appeals the district court's finding that her former husband, Brian Ketelsen, was not in contempt of court. **AFFIRMED.**

Robyn C. Huss of Wm. B. Norton Law Firm, P.C., Ames, for appellant.

Brian Ketelsen, Grand Mound, pro se.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

DANILSON, J.

The parties' marriage was dissolved by a decree entered on October 24, 2008. Pursuant to the decree, Brian was ordered to pay Lydia spousal support in the amount of \$250 per month, beginning October 1, 2008, and continuing until Lydia is able to withdraw benefits from her Social Security account. Brian was also ordered to pay a \$10,000 property equalization payment, Lydia's attorney fees in the amount of \$1000, and the costs of the divorce action. By agreement of the parties, Lydia was not ordered to pay child support for the parties' two minor children. After the decree was entered, Brian lost his job as an auto mechanic at a new-car dealership. Thus far, Brian has been unsuccessful in finding a new job, due to health problems and a lack of available jobs for his marketable skills. Brian failed to make payments to Lydia, for spousal support or otherwise.

On February 6, 2009, Lydia filed an application for rule to show cause requesting the district court to find Brian in contempt of court for failing to follow the terms of the parties' decree. After a hearing on Lydia's application, the district court determined Lydia had failed to prove beyond a reasonable doubt that Brian willfully refused to comply with the terms of the decree when he had the ability to do so. Lydia appeals, requesting this court reverse the district court's order finding Brian not in contempt.

We review this matter to determine if substantial evidence supports the district court's decision. *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007).

We have reviewed the record and the brief submitted by Lydia.¹ We find substantial evidence supports the district court's decision, and we affirm without opinion. Iowa R. App. P. 6.1203 (a), (d) (2009). Notwithstanding this conclusion, Brian remains obligated to comply with the provisions in the parties' dissolution decree and has an obligation to make a good faith effort to seek employment. See *Rater v. Iowa Dist. Ct.*, 548 N.W. 588, 591 (Iowa 1996).

Lydia requests an award of attorney fees both for the contempt action and this appeal. Attorney fees are not a matter of right, but rather rest in the court's discretion. *In re Marriage of Sullins*, 715 N.W.2d 242, 255 (Iowa 2006). In arriving at our decision, we consider the financial positions of the parties and the merits of the appeal. *Id.* We decline to award attorney fees in this case. Costs on appeal are taxed to Lydia.

AFFIRMED.

¹ Brian did not submit a brief in his defense on this matter.