

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL  
(Memorandum Web Opinion)**

LINDSAY V. LINDSAY

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION  
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

MELISSA LINDSAY, APPELLEE AND CROSS-APPELLANT,

v.

JOHN LINDSAY, APPELLANT AND CROSS-APPELLEE.

Filed March 26, 2024. No. A-23-291.

Appeal from the District Court for Sarpy County: STEFANIE A. MARTINEZ, Judge.  
Affirmed.

Bradley E. Nick, of Sidner Law, for appellant.

Ryan M. Swaroff, of Rembolt Ludtke, L.L.P., for appellee.

MOORE, BISHOP, and ARTERBURN, Judges.

MOORE, Judge.

INTRODUCTION

John Lindsay appeals from the order of the district court for Sarpy County, which affirmed the order of the county court for Sarpy County, dismissing John’s motion for contempt against Melissa Lindsay. We affirm.

STATEMENT OF FACTS

This case stems from John’s failure to deliver to Melissa the family dog, Tazzar, which she was awarded pursuant to an arbitration award entered in the parties’ Colorado dissolution of marriage action. The Colorado Teller County District Court (hereinafter “Colorado court”) entered an order adopting the arbitration award on June 14, 2021. On June 22, the Colorado court issued an order granting Melissa’s motion for surrender of marital property concerning Tazzar. The order required John to deliver Tazzar to a specified location in Colorado by noon on Friday June 25. The

order also gave Melissa 21 days from return of the property to file a motion and order for attorney fees. Melissa arranged for a delivery service to transport Tazzar (who the parties agreed had special medical needs) from Colorado to New York, where Melissa was residing. However, John did not comply with the order. At some point, John moved to Nebraska with Tazzar.

On June 29, 2021, Melissa filed a contempt action against John in the Colorado court. Melissa also filed a replevin action in the Sarpy County Court, seeking recovery of Tazzar from John. The parties thereafter entered into an agreement in the Sarpy County action, which was memorialized at a hearing held on December 10. Pursuant to the order entered on December 14, John agreed to bring Tazzar to the local sheriff's office on December 17, at which time Melissa was to pick up the dog at that location. The order further provided that after Tazzar had been delivered to Melissa, she would dismiss with prejudice the contempt action in Colorado. Tazzar was delivered to Melissa on December 17. On December 22, Melissa filed a motion to withdraw the Colorado contempt action concerning Tazzar, attaching a copy of the Sarpy County Court order. The Colorado court entered an order on December 28, showing that the contempt motion concerning Tazzar was "withdrawn and dismissed."

On January 7, 2022, Melissa filed a motion for attorney fees and costs in the Colorado court, seeking recovery of fees and expenses for John's failure to comply with the June 22, 2021, order for surrender. On February 8, the Colorado court entered an order and judgment, awarding Melissa the sum of \$21,227.63 in attorney fees and \$9,443.85 for transportation expenses incurred for the dog. John appealed this judgment to the Colorado Court of Appeals, which court affirmed the trial court's order awarding the fees and costs. See *In re Marriage of Lindsay*, No. 22CA0518, 2023 WL 5156761 (Colo. App. Aug. 10, 2023).

On April 20, 2022, John filed the instant contempt motion claiming that Melissa failed to dismiss the Colorado contempt action with prejudice as required by the December 2021 replevin order. John complained that Melissa withdrew her contempt motion, as opposed to dismissing it with prejudice, and then proceeded to seek fees and expenses in another proceeding arising out of the same issues.

Melissa subsequently filed a Motion for an Amended Order in the Colorado court, requesting that the December 28, 2021, order be amended to show that her contempt motion be "dismissed with prejudice." John objected to this motion and the Colorado court denied the motion.

On October 27, 2022, the Sarpy County Court entered an order finding that Melissa was not in contempt and "once again" dismissing the action. The court indicated that it had read the briefs and exhibits provided by the parties. The court found that Melissa filed pleadings in the Colorado court "in furtherance" of the provision of the replevin order requiring dismissal of the Colorado contempt action, and that Melissa had "sufficiently complied" with the orders of the court. The court ordered that each party pay his or her own attorney fees and costs.

John appealed to the Sarpy County District Court. In an order entered on March 16, 2023, the district court affirmed the order of the county court. John appeals and Melissa cross-appeals.

#### ASSIGNMENTS OF ERROR

John assigns that the district court erred in affirming the county court's decision that Melissa should not be held in contempt for her failure to dismiss "with prejudice" the Colorado

court matter. In her cross-appeal, Melissa assigns that the district court erred in affirming the county court's order requiring each party to pay their own attorney fees.

#### STANDARD OF REVIEW

The district court and higher appellate courts generally review appeals from the county court for error appearing on the record. *Schaefer Shapiro v. Ball*, 305 Neb. 669, 941 N.W.2d 755 (2020). When reviewing a judgment for errors appearing on the record, the inquiry is whether the decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable. *Id.* However, in instances when an appellate court is required to review cases for error appearing on the record, questions of law are nonetheless reviewed de novo on the record. *Schmunk v. Aquatic Solutions*, 29 Neb. App. 940, 962 N.W.2d 581 (2021).

In a civil contempt proceeding where a party seeks remedial relief for an alleged violation of a court order, an appellate court employs a three-part standard of review in which (1) the trial court's resolution of issues of law is reviewed de novo, (2) the trial court's factual findings are reviewed for clear error, and (3) the trial court's determinations of whether a party is in contempt and of the sanction to be imposed are reviewed for abuse of discretion. *Yochum v. Yochum*, 312 Neb. 535, 980 N.W.2d 17 (2022).

A trial court's decision awarding or denying attorney fees in a contempt proceeding will be upheld on appeal absent an abuse of discretion. *Id.* A judicial abuse of discretion requires that the reasons or rulings of the trial court be clearly untenable insofar as they unfairly deprive a litigant of a substantial right and a just result. *Id.*

#### ANALYSIS

##### *Contempt Action.*

John argues that the district court erred in affirming the county court's dismissal of his contempt action. He claims that Melissa blatantly violated the December 14, 2021, order of the Sarpy County Court which required her to dismiss her Colorado contempt action "with prejudice." John argues that instead, Melissa only "withdrew" the matter and then proceeded with further action on her "Motion to Surrender" to seek fees and costs. John claims that Melissa's Colorado contempt action was clearly an enforcement mechanism for the Colorado Order to Surrender entered on June 22, 2021. John asserts that had Melissa dismissed the contempt action with prejudice, such dismissal would have precluded her from any further action against him regarding the surrender of Tazzar.

Melissa argues that the stipulation entered in the replevin action required her to dismiss the Colorado contempt action, but did not address the June 22, 2021, Colorado order which allowed her to seek fees and costs arising out of her motion for surrender. Additionally, Melissa asserts that John is precluded from arguing that the Nebraska stipulation barred her from recovering attorney fees and expenses in Colorado, as that argument was raised and rejected by the Colorado court and affirmed on appeal.

Civil contempt proceedings are instituted to preserve and enforce the rights of private parties to a suit when a party fails to comply with a court order made for the benefit of the opposing party. *Yochum v. Yochum, supra*. Willful disobedience is an essential element of contempt; "willful" means the violation was committed intentionally, with knowledge that the act violated

the court order. *Vyhlidal v. Vyhlidal*, 311 Neb. 495, 973 N.W.2d 171 (2022). Outside of statutory procedures imposing a different standard or an evidentiary presumption, the complainant must prove all elements of contempt by clear and convincing evidence. *Id.* Willfulness is a factual determination to be reviewed for clear error. *Braun v. Braun*, 306 Neb. 890, 947 N.W.2d 694 (2020).

Based upon our review of this extensive record, we can find no abuse of discretion by the county court in its determination that Melissa was not in willful contempt of the order entered in the replevin action. As set forth above, Melissa filed a motion to withdraw her contempt action concerning Tazzar, which motion was not opposed by John. She attached a copy of the replevin order to the motion. The Colorado court entered an order showing the contempt citation was “withdrawn and dismissed.” Melissa’s further actions in recovering fees and expenses in connection with the Order to Surrender issued by the Colorado court were in conformity with that order and John has not shown by clear and convincing evidence that her actions were an intentional violation of the Nebraska replevin order.

Because we have found no abuse of discretion in the finding that Melissa was not in contempt of the Nebraska replevin order, we need not address her argument regarding issue preclusion. An appellate court is not obligated to engage in an analysis that is not needed to adjudicate the controversy before it. *SID No. 596 v. THG Development*, 315 Neb. 926, 2 N.W.3d 602 (2024).

The district court did not err in affirming the county court’s order finding that Melissa was not in contempt and dismissing John’s contempt action.

#### *Attorney Fees.*

In her cross-appeal, Melissa assigns error to the county court’s order requiring each party to pay their own fees. She argues that Neb. Rev. Stat. § 25-824.01 (Reissue 2016) supports an award of attorney fees and costs in this case. This statute sets forth the factors to be considered in determining the amount of a cost or an attorney’s fee award pursuant to Neb. Rev. Stat. § 25-824(2) (Reissue 2016), which provides:

Except as provided in subsections (5) and (6) of this section [not applicable here], in any civil action commenced or appealed in any court of record in this state, the court shall award as part of its judgment and in addition to any other costs otherwise assessed reasonable attorney’s fees and court costs against any attorney or party who has brought or defended a civil action that alleges a claim or defense which a court determines is frivolous or made in bad faith.

Melissa argues that John’s action in filing this contempt action were frivolous and solely for the purpose of harassing her. She requests that we reverse the district court’s affirmance of the county court order and “for the sake of judicial economy,” award her \$4,497.70 in attorney fees for defendant against the contempt action.

Neither the county court nor district court specifically addressed whether John’s contempt action was frivolous. Rather, the county court simply required each party to pay their own fees and costs and the district court affirmed the county court order. A frivolous action is one in which a litigant asserts a legal position wholly without merit; that is, the position is without rational

argument based on law and evidence to support the litigant's position. *SID No. 596 v. THG Development, supra*. The term "frivolous" connotes an improper motive or legal position so wholly without merit as to be ridiculous. *Id.* Any doubt about whether a legal position is frivolous or taken in bad faith should be resolved in favor of the one whose legal position is in question. *Id.*

While the length and breadth of these legal proceedings between the parties to resolve the award of Tazzar to Melissa certainly strain logic, we cannot say that the county court abused its discretion in denying Melissa's request for legal fees in the instant contempt action.

#### CONCLUSION

We affirm the district court's order which affirmed the order of the county court, finding that Melissa was not in contempt, dismissing John's contempt action, and ordering each party to pay their own attorney fees and costs.

AFFIRMED.