

NEBRASKA SUPREME COURT

Yochum v. Yochum

312 Neb. 535 (2022) · No. No. S-21-563 · Decided September 30, 2022

SUMMARY

The Nebraska Supreme Court reviewed contempt findings arising from a divorce decree’s dependency-exemption provisions. It reversed the finding of contempt and vacated related damages for tax year 2014, affirmed the contempt finding for tax year 2019, vacated an unsupported \$600 damages award, and remanded for reconsideration of attorney fees.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 30, 2022
DOCKET	No. S-21-563
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Heather appealed a district court order finding her in willful and contumacious contempt for violating dependency-tax-exemption provisions in a divorce decree, awarding damages and attorney fees to Chad, and imposing a jail sentence avoidable through monthly payments.
STANDARD OF REVIEW	The meaning of a divorce decree is reviewed de novo. In a civil contempt proceeding seeking remedial relief, legal issues are reviewed de novo, factual findings for clear error, and the contempt determination and sanction for abuse of discretion. An attorney-fee decision in a contempt proceeding is reviewed for abuse of discretion. Whether damages evidence is reasonably certain is a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Heather K. Yochum, now known as Heather K. Underwood v. Chad C. Yochum

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QUESTIONS PRESENTED

1. Whether Heather willfully violated the divorce decree by claiming dependency exemptions for the 2014 and 2019 tax years.
2. Whether Chad was current on his child-support and childcare obligations under the decree at the end of the relevant tax years.
3. Whether the district court's damages awards were supported by reasonably certain evidence.
4. Whether the district court's award of attorney fees should be upheld after the contempt and damages rulings were modified.

HOLDINGS

1. Under the plain language of the decree, "current" meant fully paid and up to date. Because Chad owed a child-support balance on December 31, 2014, he was not current and was not entitled to claim the dependency exemptions; Heather therefore did not violate the decree by claiming them.
2. The district court erred by finding Heather in willful and contumacious contempt for claiming the 2014 dependency exemptions.
3. Heather was in contempt for claiming the 2019 dependency exemptions because Chad was current on his obligations under the decree and order of modification.
4. The \$3,975 damages award for 2014 was vacated because Chad was not harmed with respect to his 2014 tax liability.
5. The \$600 damages award was vacated because the record contained no evidence, judicial notice, stipulation, or admission establishing that Chad lost a second \$600 relief payment.
6. The \$3,000 attorney-fee award was reversed, and the issue was remanded for the district court to reconsider and recalculate reasonable attorney fees in light of the modified contempt and damages rulings.

KEY QUOTATIONS

"We conclude that "current" in the context of this decree means fully paid and up to date." (312 Neb. at 543-544)

"A plaintiff's evidence of damages may not be speculative or conjectural and must provide a reasonably certain basis for calculating damages." (312 Neb. at 546)

"Accordingly, we reverse the award of attorney fees and remand the cause for reconsideration and recalculation of attorney fees in light of this opinion." (312 Neb. at 547-548)

FACTUAL BACKGROUND

The parties' 2011 divorce decree awarded Heather physical custody and permitted Chad to claim specified dependency exemptions only while current on his child-support, childcare, and medical-care obligations. Chad had a remaining child-support arrearage of \$557.79 on December 31, 2014, resulting primarily from missed payments after he lost his job in 2013, but he had a child-support credit on December 31, 2019. Heather claimed the relevant exemptions for both tax years, and the district court found her in contempt, awarded Chad damages and attorney fees, and imposed a conditional jail sentence.

PROCEDURAL HISTORY

The Lancaster County District Court dissolved the parties' marriage in 2011 and modified the decree in 2016 without changing the dependency-exemption or childcare provisions. After hearings on the parties' competing contempt applications, the district court found Heather in contempt for claiming dependency exemptions in tax years 2014 and 2019, awarded Chad \$10,075 in damages and attorney fees, and imposed a conditional jail sentence. The Nebraska Supreme Court reversed the 2014 contempt finding, affirmed the 2019 contempt finding, vacated portions of the damages award, reversed the attorney-fee award, and remanded for further proceedings regarding attorney fees.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reconsider and recalculate Chad's reasonable attorney fees in light of the reversal of the 2014 contempt finding and the vacation of the \$3,975 and \$600 damages awards, and conduct further proceedings consistent with the opinion.

CASES CITED

- *Vyhlidal v. Vyhlidal*, 311 Neb. 495, 973 N.W.2d 171 (2022)
- *Becher v. Becher*, 311 Neb. 1, 970 N.W.2d 472 (2022)
- *Pribil v. Koinzan*, 266 Neb. 222, 665 N.W.2d 567 (2003)
- *In re Estate of Radford*, 297 Neb. 748, 901 N.W.2d 261 (2017)
- *Smick v. Langvardt*, 216 Neb. 778, 345 N.W.2d 830 (1984)

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