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DARWIN W. O'DONELL, Plaintiff, vs SHEILA MAE O'DONELL, Defendant, Civil Action - Law DRS 1997 - 229, JEFFREY LYNN TRIMMER, Plaintiff vs. REBECCA LYNN TRIMMER, Defendant Civil Action - Law Drs 1997 - 433 Franklin County Branch

O'Donel v. O'Donel, DRS 1997-229; Trimmer v. Trimmer, DRS 1997-443

Civil contempt for failing to fill out employment search forms; condition of purge to find and maintain employment for three weeks through work release not unlawful condition

1. Order of contempt of a support order is civil contempt.
2. Purpose of civil contempt is to enforce compliance with an order of court for benefit of party in whose favor the order runs.
3. Sentence of imprisonment for civil contempt must specify conditions of purge which it is convinced, beyond reasonable doubt, the contemnors has present ability to comply.
4. Argument that purge condition of payment of \$500 is unlawful on ground that the court did not determine whether contemnors had the present ability to comply is moot where both contemnors paid the sum within 24 hours of the order.
6. Argument that purge condition to obtain and maintain employment for three weeks is unlawful is not moot, because the contemnors may again fail to fill out employment forms and the court may again be faced with the question of what conditions of purge may be imposed.
7. Condition to obtain and maintain employment for three weeks, the fulfillment of which allows the contemnors to be released from their 60 day sentence, is not tant amount to an unconditional sentence of three weeks which would violate the rules of civil contempt.
8. Requirement that contemnors must have present ability to comply with purge condition does not mean they must be able to fulfill condition *immediately*.
9. Condition of purge to obtain and maintain employment for three weeks through work release program is not unlawful because it fulfills purpose of civil contempt by forcing contemnors to comply with court order to find work and by aiding the contemnors' children who are entitled to support.

Beth Ann C. Gabler, Esquire, Counsel for Plaintiff's
David R. Yoder, Assistant Public Defender, Counsel for
Defendant's

OPINION AND ORDER

Walker, P.J., September 30, 1997:

Factual and Procedural Background

This case involves two women who found themselves in the same situation: they were both held in contempt and sentenced to 60 days imprisonment for failure to comply with the court's order to fill out

weekly employment search forms. The women, Rebecca Trimmer and Sheila O'Donel, had both been before the court in relation to support payments for their children. Because neither of the women had a job, no monetary support orders were entered. Instead, they were ordered to complete one employment search form (requiring contacts with ten employers) each week.

Both women appeared in a contempt hearing before this Court on July 31, 1997. Neither of them had complied with the order to fill out the forms. Rebecca Trimmer testified that she had not done so because she had recently moved to Pennsylvania from Maryland and because she had custody of the children for the summer vacation. Sheila O'Donel testified that she had obtained a part time job, and had looked for supplemental employment, but had not filled out the forms to show she was making efforts to obtain full time employment because she was uncertain about the requirements.

At the contempt hearing, this Court found that the failure of both women to comply with the court order to fill out the employment search forms had been willful. The court found both Trimmer and O'Donel in contempt of court, and sentenced them to imprisonment for a period not to exceed 60 days at the Franklin County Prison. As conditions of purge, the court ordered that they could be released after they obtained employment through the work release program at the prison and completed three weeks of full time employment, or upon payment of \$500. Both women paid the sum of \$500 and were released from prison. However, through their attorney, David R. Yoder, Assistant Public Defender, they filed a habeas corpus petition asserting that the conditions of purge were unlawful. A hearing was held on August 7, 1997. Both David Yoder and Beth Ann Gabler for the Domestic Relations Section, have filed briefs in support of their positions. For the reasons set forth below, the court finds that the purge conditions were not unlawful.

Discussion

Upon failure to comply with an order of support, the Domestic Relations Section must file a petition for civil contempt after arrearages have accrued for fifteen days. Pa.R.Civ.P. 1910.21-1. If the court finds that the failure to comply was willful and that there is present ability to comply, the court may consider incarceration and

other appropriate sanctions. Pa.R.Civ.P. 1910.21-2. Contempt is punishable by imprisonment for a period not to exceed six months, a fine of no more than \$1,000, or probation for a maximum period of one year. 23 Pa.C.S.A. § 4345(a). An order committing a respondent to jail for contempt of a support order must specify the conditions the fulfillment of which will result in the release of the obligor. § 4345(b).

This case involves civil, not criminal contempt. The Domestic Relations Section does not dispute that it initiated civil contempt proceedings under Pa.R.Civ.P. 1910.21-6 and 42 Pa.C.S.A. § 4345. Furthermore, the purpose of civil contempt is to enforce compliance with an order of court for the benefit of the party in whose favor the order runs. *Durant v. Durant*, 339 Pa. Super. 488, 491, 489 A.2d 266 (1985), citing *Commonwealth v. Falkenham*, 306 Pa. Super. 330, 452 A.2d 750 (1982). The court's purpose in imposing the sentence was to ensure that the children of both women would receive support. Since the court's purpose was to aid the children, rather than to vindicate the authority of the court or to protect the public interest, the contempt was civil in nature. See *Durant*, at 491.

As stated above, the law requires that conditions of purge be attached to a sentence of imprisonment for civil contempt. 42 Pa.C.S.A. § 4345(b). Trimmer and O'Donel ("contemnors") argue that both conditions of purge imposed on their sentence were unlawful. The court will first discuss the condition to make a payment of \$500 and then the employment condition.

1. Purge condition to pay the sum of \$500

Contemnors argue that the condition of purge to pay the sum of \$500 was unlawful because the court did not inquire whether the contemnors had the ability to meet that condition. Conditions of purge give the contemnor the key to his jail house. *Crozer-Chester Medical Center v. Moran*, 522 Pa. 124, 131, 560 A.2d 133 (1989). Upon fulfillment of the conditions imposed, he will be released. A court may not convert a coercive sentence into a punitive one by imposing conditions that the contemnor cannot perform. *Barrett v. Barrett*, 470 Pa. 253, 262, 368 A.2d 616 (1977). The Pennsylvania Supreme Court has held that the court must "set conditions of purge with which it is convinced beyond a reasonable doubt, from the

totality of the evidence before it, the contemnor has the present ability to comply." *Barrett*, at 263, 368 A.2d at 621.

The court acknowledges that it must impose conditions with which contemnors have the ability to comply. However, the court finds that contemnors' argument that the court did not inquire into their ability to pay the \$500 is moot since both of them paid that sum within 24 hours of the order. It is clear that they were able to meet the condition and that they were not confined to jail for their inability to do so. Therefore, this is no longer a viable issue.

The court would note that these women who had previously not paid a cent towards support and were too lazy to even attempt to find employment, were able to raise \$500 and purge themselves of contempt.

2. Condition of purge to obtain and maintain full time employment

Contemnors also argue that the condition to obtain and maintain full time employment for three weeks was unlawful because it forced them to spend a minimum of three weeks in prison. Because the condition cannot be fulfilled right away, they argue that it violates the law governing civil contempt. They furthermore suggest that no condition of purge can be imposed to enforce the order to fill out employment search forms each week, but that the court must resort to indirect criminal contempt instead to enforce its orders.

First, the court points out that this is not a moot issue. The court finds that the women remain subject to the orders of support and might again be subject to contempt proceedings for failing to fill out employment search forms. The court may therefore again be faced with the question of what conditions of purge may be imposed to enforce its order to fill out weekly employment search forms. See *Barrett*, at 259, 368 A.2d at 619, footnote 1.

As stated above, the Pennsylvania Supreme Court has held that the court must set conditions of purge with which it is convinced beyond a reasonable doubt, from the totality of the evidence before it, the contemnor has the present ability to comply. *Barrett*, at 262, 368 A.2d at 620. Contemnors argue that the condition that they obtain and maintain employment for three weeks was not within their

present ability to comply. The real issue can thus be phrased as follows: does the law require that the purge condition is a condition the contemnor must be able to achieve *immediately* and allow her to avoid serving the jail sentence altogether? After consideration of the purpose of civil contempt, the court holds that the law does not require this.

Civil contempt has as its dominant purpose enforcement of compliance with an order of court, for the benefit of the party in whose favor the order runs. *Marian Shop, Inc. v. Baird*, 448 Pa. Super. 52, 55, 670 A.2d 671 (1996). Civil contempt is meant to coerce compliance with the order by imposing a fine or imprisonment conditioned on obedience to the court's order. *Crozer-Chester Medical Center v. Moran*, 522 Pa. 124, 131, 560 A.2d 133 (1989). Thus, the civil contemnor may relieve herself of the sentence by obeying the order. *Id.* In contrast, criminal contempt punishes for past behavior, and imposes a certain term of imprisonment or a fine which the contemnor is powerless to escape by compliance. *Crozer-Chester Med. Center*, at 131-132. In order for the sanction to be coercive, the purge conditions must be such that the contemnor has the ability to comply with those conditions. However, this does not mean that the contemnor must be able avoid imprisonment altogether.

The United States Supreme Court, in defining the difference between civil and criminal contempt, has stated, in dicta, that "[t]he paradigmatic coercive, civil contempt sanction . . . involves confining a contemnor indefinitely until he complies with an affirmative command . . . Imprisonment for a fixed term similarly is coercive when the contemnor is given the option of earlier release if he complies." (emphasis added). *United Mine Workers v. Bagwell*, 512 U.S. 821, 129 L.Ed.2d 642, 652 (1994). In describing the purpose of civil contempt, the Pennsylvania Superior Court has said that "[c]ivil contempt has as its dominant purpose enforcement of compliance with an order of court, for the benefit of the party in whose favor the order runs. The contemnor may eventually purge him/herself by complying with the order." (citations omitted) *Marian Shop*, supra, at 55. In another case, a husband who had been found in contempt for failure to obey the court's order to pay his ex-wife's counsel fees, challenged the purge condition claiming he did not have the present ability to comply. *Sinaiko v. Sinaiko*, 445 Pa. Super. 56, 664 A.2d 1005 (1995). The court had found the husband to be in contempt and

sentenced him to 14 days imprisonment. The court allowed the husband to purge himself upon payment of the counsel fees, in the amount of nearly \$40,000. *Sinaiko*, at 64. Because the order was entered on a Friday afternoon, at 5.00 p.m., the husband argued that he could not purge himself since all the banks were closed at that time. *Id.*, at 66. He thus had to spend the weekend in jail. The court found that the condition imposed was not unreasonable: the husband's argument ignored the fact that husband had had ten months to comply with the order to pay the counsel fees, and that if he had done so prior to that Friday afternoon, he would not have been in that position. *Id.*, at 66.

In the underlying case, contemnors also had the ability to comply with the court's order to fill out employment search forms prior to the contempt proceeding. By obtaining and maintaining a full time job for three weeks, they were allowed to purge themselves. It is not required that they must have had the ability to immediately fulfill the purge condition. Rather, they were able to start fulfilling the purge condition by obtaining work through the work release program. Upon showing they could obtain and maintain a job, they could be released early.

Contemnors have provided the court with a case in which the court imposed a term of imprisonment with a condition of purge that the contemnors secure full time employment. *Wetzel v. Suchanek*, 373 Pa. Super. 458, 541 A.2d 761 (1988). In that case, the Pennsylvania Superior Court found that this condition of purge violated the rules of civil contempt. However, the facts in *Wetzel* can be distinguished from those in the underlying case. In *Wetzel*, the court ordered the contemnor to be incarcerated for 60 days, and allowed him to purge himself by finding full time employment. The Superior Court found that

[i]t would appear that, for this appellant, such a task was difficult enough while out of jail. Requiring him to secure employment while behind bars is tantamount to simply sentencing him to an unconditional 60 days imprisonment which would violate the rules of civil contempt.

Id., at 464, 541 A.2d at 764. In the underlying case, by contrast, the court did not simply order both contemnors to obtain full time employment while in prison without more; rather, the court provided

them with the means to obtain such employment by ordering them to secure a job through the prison work release system. Therefore, the facts are sufficiently different to say that the underlying purge condition was *not* tantamount to 60 days imprisonment. Instead, both women had very real options to obtain such employment and be released early.

The court, in imposing the condition to obtain and maintain full time employment for three weeks, fashioned appropriate conditions to ensure compliance with its order. If the court cannot put a person who is under a support obligation in jail for not *having* a job, and also cannot put a person in jail for not *looking* for a job, the court is like a stonemason without tools: the mason will rub his bare hands raw attempting to carve out the building stones from the rock. Without the ability to force a contemnor to comply with the order and attempt to find full time employment, the system might as well shut down. Every support obligor unwilling to pay support would simply refuse to work or seek work.

Contemnors were not able to provide the court with any other condition which could have been imposed to force them to comply with the court order. Instead, they suggest that the court must resort to indirect criminal contempt proceedings. However, that is not the answer. Punishing the contemnor for her behavior may protect the dignity of the court, but it does not aid the children in whose favor the support order was entered. The court's main purpose in ordering contemnors to fill out the weekly employment forms and attempt to obtain full time employment is solely to provide the children with the support to which they are entitled. Criminal contempt will not fulfill this purpose and therefore is not a satisfactory proceeding in these matters.

In order for a sentence to be truly coercive, the law governing civil contempt requires that the contemnors are able to fulfill the purge conditions imposed. It does not require, however, that they must be able to fulfill the condition *immediately*. Instead, a condition which allows an early release upon compliance with the order serves the coercive nature of civil contempt. Since both contemnors in this case had the ability to comply with the purge condition by starting to work through the work release program, and both could be released early

from the 60 day sentence upon fulfillment of the condition, the condition imposed was not unlawful.

ORDER OF COURT

September 30, 1997, the court having found that the conditions of purge it imposed upon Rebecca Trimmer and Sheila O'Donel were not unlawful, the court denies their petitions in habeas corpus.

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