

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CIVIL ACTION**

**K. L. N.,  
Former wife,**

**vs.  
D. N.**

**Case No. 00 DR 0000 N**

**Former husband,**

**Respondent's address:**

**D. N., Respondent  
(Address omitted)**

**AMENDED FINAL JUDGMENT OF INDIRECT CRIMINAL CONTEMPT**

This matter came before the court at trial on 8/22/2011 under Rule 3.840 on the Order to Show Cause dated 7/6/2011 and today, 10/17/2011, for sentencing. It is ordered:

1 Verdict and Findings The court adjudicates the respondent guilty of indirect criminal contempt. The court finds beyond a reasonable doubt that the respondent willfully violated the child support order in the Final Judgment filed 7/8/2009, as follows:

*In the Final Judgment dated 7/8/2009 the respondent was ordered to pay child support of \$570 every month on the first day of every month. There is an arrearage in child support. The arrearage as of 7/2/2011 is \$6,762.23. The respondent paid a single payment of \$100 on the child support obligation between 4/2/2011 and 7/2/2011. The respondent is presumed able to pay the monthly installment of \$570 every month, as ordered.*

The respondent D. N. is presumed able to pay the child support ordered, F.S. §61.14(5) and *Bowen v. Bowen*, 471 So.2d 1274 (Fla. 1985), currently and as it accrued in the past. He has not rebutted the presumption for the months between 4/2/2011 and 7/2/2011 when he failed to pay the support.

On the contrary, his own testimony and evidence showed that he had money to pay some expenses for the child but he did not pay these sums toward the child support that was ordered. Further, through the civil contempt proceeding, as the former husband testified today, he was forced to pay the balance of his bank accounts, \$8,127.35, toward the child support obligation, which he paid to the depository on or about 7/14/2011. He testified today that he paid \$800 a month for a storage unit for some months before 4/2/2011, but he said he is now "four months" in arrears on the rent for that storage unit.

So, his own evidence shows that he had the ability to pay sums toward the child support obligation of \$570 a month between 4/2/2011 and 7/2/2011 but he willfully decided to pay other creditors instead, which is direct evidence that demonstrates willful contempt of the order to pay child support. So, his evidence did not demonstrate that he lacked the ability to pay the child support for the months that he failed to pay the support as charged in the Order to Show Cause. Rather, it showed that he had the ability.

The failure to pay the child support for any month in the past amounts to a willful violation of the prior child support order in the Final Judgment filed 7/8/2009 to pay child support of \$570 every month.

The court finds that the respondent D. N. had the ability to pay the child support in the past but he willfully failed to pay the support as ordered.

2 Mitigation Evidence or Argument The court advised the respondent of the court's judgment and inquired if the defendant had any cause why sentence should not be pronounced and the court afforded the respondent an opportunity to present evidence or argument in mitigation of sentence. The respondent appeared and showed cause why sentence should not be pronounced. He made evidence and argument in mitigation. The Case History for the depository record in this case is in evidence. The court has considered the respondent's evidence in mitigation.

3 Sentence **The sentence of the court is that the respondent shall serve 120 days in the Lee County Jail. The respondent is remanded immediately into the custody of the sheriff to begin serving this sentence.**

Done and ordered in Fort Myers, Lee County, Florida, this \_\_\_\_\_

R. Thomas Corbin, Circuit Judge

### CERTIFICATE OF SERVICE

I CERTIFY a copy of this Order was furnished by U.S. mail this \_\_\_\_\_ , 2011.

- (1) petitioner & former wife, K. L. N., by hand delivery in court this date;
- (2) respondent & former husband, by hand delivery in court this date;
- (3) , Esq., counsel for the former wife;
- (4) , Esq., counsel for the former husband.

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By Dorina Soumastre, Judicial Assistant  
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