

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: CIVIL CONTEMPT IN CHILD SUPPORT
MATTERS – PROCEDURES UPON ARREST
ON WRIT OF BODILY ATTACHMENT

ADMINISTRATIVE
ORDER
NO. 12.6

WHEREAS, the procedures to be used for civil contempt in child support matters are governed by Fla. Fam. L. R. 12.615; and

WHEREAS, Fla. Fam. L. R. 12.615 provides for the issuance of a Writ of Bodily Attachment, with a purge amount, under certain circumstances; and

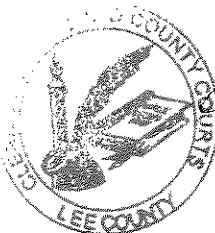
WHEREAS, Fla. Fam. L. R. 12.615 requires that, upon arrest on a Writ of Bodily Attachment, the alleged contemnor be brought before the court within 48 hours for a determination of the alleged contemnor's present ability to pay the purge amount, but does not specifically identify the judicial officer before whom the alleged contemnor is to be brought; and

WHEREAS, the five counties of the Twentieth Judicial Circuit vary in resources, both judicial and staffing, and require different procedures so as to ensure that alleged contemnors are not detained more than 48 hours after arrest on a Writ of Bodily Attachment before being brought before a judicial officer;

It is therefore, **ORDERED**, by the authority vested in me as Chief Judge of the Twentieth Judicial Circuit of Florida under Fla. R. Jud. Admin. 2.215, that the attached procedures for Lee County, Collier County, Charlotte County, Hendry County and Glades County are approved for implementation.

DONE AND ORDERED in chambers in Fort Myers, Lee County, Florida, this 19th day of Feb., 2014.

I certify this document to be a true and correct copy of the record on file in my office,
Linda Doggett, Clerk Circuit/
County Court, Lee County, FL
Dated: History - New.
By: MKS 2/20/14
Deputy Clerk



Jay B. Rosman
Jay B. Rosman
Chief Judge

STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD
This 20th Day of Feb, 2014 Recorded In Circuit
Book 58 Page 3-23 and Record Verified.
LINDA DOGGETT By MKS
Clerk Circuit Court Deputy Clerk

FILED 15:51 ON FEB 20 2014
CLERK OF CIRCUIT COURT
2014 FEB 20 AM 11:36
BY D.C.

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TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURTS
LEE COUNTY JUSTICE CENTER
1700 MONROE STREET
FORT MYERS, FLORIDA 33901
TEL. (239) 533-1700
FAX (239) 533-1701

**- Civil Contempt in Family Law Child Support Matters -
Procedures to be used after Arrest on Writ of Bodily Attachment
- LEE COUNTY -**

The procedures used for civil contempt in child support matters are governed by Fla. Fam. L. R. 12.615, a copy of which is attached hereto. The premise is that when a person is initially ordered by the trial court, in the normal course of proceedings, to pay a specific amount of child support, it is thereafter presumed that the person has the ability to do so. A motion for civil contempt is the mechanism used to address the failure of a party to comply with an order to pay child support. Proper notice of the hearing on the motion for civil contempt must be served on the alleged contemnor.

It is at the hearing on the motion for civil contempt that the person's ability to pay becomes relevant; civil contempt is not intended to serve as punishment, but rather is intended to compel compliance – before a person can be found to be in civil contempt, a finding must be made that the failure to pay the court-ordered child support is willful and that the person has the present ability to pay and, therefore, “holds the keys to the jail cell.” The preeminent case explaining the process involving civil contempt in child support matters is Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985), a copy of which is attached hereto.

Motions for civil contempt may be heard by a trial judge or by a DOR Hearing Officer, depending upon the background of the case. If heard by a trial judge and the alleged contemnor appears and is found to be in civil contempt, the judge may remand the contemnor to jail with a purge amount. In such instances, subsection (f) of Rule 12.615 provides that “. . . at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.”

However, if the alleged contemnor fails to appear for the hearing on the motion for civil contempt scheduled before a trial judge, a Writ of Bodily Attachment, with a purge amount, may be issued by the trial judge in accordance with subsection (c)(2)(B) of Rule 12.615. Also, to the extent that the motion for civil contempt is heard by a DOR hearing officer, it is important to remember that a DOR hearing officer does not have the authority to remand persons into custody nor to issue Writs of Bodily Attachment. Rather, if the DOR hearing officer finds that the alleged contemnor has the ability to pay, or if the alleged contemnor fails to appear for the hearing, the DOR hearing officer can only make a recommended finding that the trial judge issue a Writ of Bodily Attachment, with a purge amount.

The below listed procedures are designed to address scenarios in which a Writ of Bodily Attachment has been issued and executed, in accordance with the above-paragraph. Once a Writ of Bodily Attachment has been executed, Rule 12.615 requires that the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful. The rule, however, does not specify the judicial officer before whom the alleged contemnor is to be brought, and, as a matter of practicality, it is not reasonable to presume that the alleged

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contemnor can be brought before the assigned trial judge within the limited 48 hour period required by the rule. The most logical and practical manner in which to ensure that the 48 hour deadline is met, is to have the alleged contemnor brought before the First Appearance Judge, one of which would be available every day, including weekends and holidays. The issue then is whether the First Appearance Judge is the appropriate judicial officer to be making the actual determination regarding the alleged contemnor's present ability to pay support and, if so, whether the alleged contemnor's failure to pay support is willful.

Having reviewed the procedures and methods utilized in other circuits throughout the State of Florida, and upon consultation with the Lee County Family Law Administrative Judge, the following guidelines have been approved by the Chief Judge for use within Lee County:

1. Upon arrest on a Writ of Bodily Attachment issued for failure to pay child support, the alleged contemnor may pay the purge amount stated in the Writ of Bodily Attachment and be released prior to First Appearance.
2. If the alleged contemnor does not pay the purge amount prior to First Appearance, the alleged contemnor shall be brought before the First Appearance Judge within 24 hours of arrest preferably, but in no instance more than 48 hours after arrest. The First Appearance Judge will be provided with a form "Order at First Appearance on Writ of Bodily Attachment for Nonpayment of Support" for the purpose facilitating the proceeding. A copy of the form "Order at First Appearance on Writ of Bodily Attachment for Nonpayment of Support" is attached hereto.
3. At First Appearance, the First Appearance Judge will inquire so as to confirm whether or not the purge amount has been paid and, if the purge amount has, in fact, been paid, the First Appearance Judge will order that the alleged contemnor be released from custody.
4. If the purge amount has NOT been paid, the First Appearance Judge has the following options:
 - (a) The First Appearance Judge may conduct a legally sufficient inquiry for the purpose of determining whether the alleged contemnor does or does not, in fact, continue to have the present ability to pay the purge amount or any part thereof.
 - (1) If the First Appearance Judge determines that the alleged contemnor does NOT have the present ability to pay any portion of the purge amount, the First Appearance Judge will order that the alleged contemnor be released from custody.
 - (2) If the First Appearance Judge determines that the alleged contemnor does, in fact, have the present ability to pay the purge amount, or a portion thereof, the First Appearance Judge will order that the alleged contemnor pay an amount which shall be specified in writing on the Order at First Appearance. The First Appearance Judge will also order that, if the specified amount remains unpaid and the alleged contemnor is not released from custody within 48 hours, the alleged contemnor shall be returned to the next scheduled First Appearance.

OR, ALTERNATIVELY,

(b) If Lee County Pretrial Services advises that the purge amount has, in fact, not been paid, the First Appearance Judge may order that the alleged contemnor be released from custody, AND, will issue a written order with a CONTROL DATE for appearance before a Family Court Judge for the purpose of determining the present ability to pay the purge amount. The Order at First Appearance will be generated and populated by Lee County Pretrial Services and presented to the First Appearance Judge. Prior to release, the alleged contemnor must sign a written acknowledgement at the bottom of the Order at First Appearance of having received a copy of the written order noticing the upcoming date of the appearance. A copy

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of the Order at First Appearance noticing the upcoming date of appearance shall be provided by the Clerk to the Domestic Violence Docket Specialist.

(1) The CONTROL DATE appearance will be scheduled on the rotating two-week "Domestic Violence/Order To Show Cause" docket. The Domestic Violence Unit (Family Division) will provide to the Clerk and to Lee County Pretrial Services a list of pre-scheduled "Order To Show Cause" court dates with a hearing time, the name of the presiding judge, and the assigned courtroom. This list will be used to schedule the CONTROL DATE for the alleged contemnor to appear in court before a Family Court Judge. The court date selected as a CONTROL DATE will be no less than four weeks and no more than six weeks from the First Appearance date.

(2) If an alleged contemnor released with a CONTROL DATE pays the purge amount prior to the scheduled upcoming date of appearance, the hearing may be cancelled and it may be removed from the docket. It shall be the responsibility of the alleged contemnor to ensure that the court file timely reflects the filing of proof of payment of the purge, with a copy to all parties and counsel of record, and that a courtesy copy of proof of payment of the purge is provided to the Domestic Violence Unit. The alleged contemnor's obligation to ensure that proof of payment of the purge is timely filed, with copies provided as describe above, is critical so as to avoid any confusion or inadvertent issuance of subsequent Writ of Bodily Attachment for failure to appear.

(3) Once released from custody with a CONTROL DATE, Domestic Violence Case Manager will monitor the case file so as to determine whether the file contains evidence of the purge amount having been paid prior to the scheduled upcoming date of appearance. If the file contains timely evidence of the purge amount having been paid, the Domestic Violence Case Manager will prepare a proposed Notice of Cancellation for judicial review, and if approved and the Notice of Cancellation is signed, the Domestic Violence Case Manager will notify all parties. If the alleged contemnor does pay the purge amount prior to the hearing, but does not timely file proof of such and does not timely provide notice, and has not been notified that the hearing has been cancelled, AND fails to appear at the hearing for the purpose of advising and providing proof to the Family Court Judge in person of the payment, it is possible that the Court's lack of knowledge or proof of payment will result in the issuance of a Writ of Bodily Attachment, due to no fault of the Court.

(4) During each rotating two-week "Domestic Violence/Order To Show Cause" docket, if any alleged contemnors are scheduled to appear before the Family Court Judge, a Domestic Violence Case Manager will be prepared to advise the Family Court Judge as to the current status as reflected by the case file.

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

Petitioner

vs.

Case No.

Respondent

ORDER AT FIRST APPEARANCE
ON WRIT OF BODILY ATTACHMENT FOR NONPAYMENT OF SUPPORT

The Respondent appeared before the Court on the Writ of Bodily Attachment, entered in this case, within 48 hours of arrest as required by Rule 12.615, Fla. Fam. L. R. Upon consideration, it is ordered as follows (Check the Box that Applies):

- The purge amount as it appears on the Writ of Bodily Attachment has been paid. The Respondent shall immediately be released from custody.
- The purge amount as it appears on the Writ of Bodily Attachment has NOT been paid, but the Court affirmatively finds that the Respondent does NOT have the present ability to pay the purge amount. The Respondent shall immediately be released from custody.
- The purge amount as it appears on the Writ of Bodily Attachment has NOT been paid, but the Court affirmatively finds that the Respondent does, in fact, have the present ability to pay \$_____. Upon payment of this amount, the Respondent shall be released from custody. If this amount remains unpaid and the Respondent is not released from custody within 48 hours, the Respondent shall be returned to the next scheduled First Appearance.
- The purge amount as it appears on the Writ of Bodily Attachment has NOT been paid. The Respondent shall be immediately released, but is **COMMANDED** to appear before the Honorable _____ at the Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, Courtroom _____, on the _____ day of _____, 20____, at 1:00 pm, for the purpose of a determination of whether the Respondent continues to have the present ability to pay the purge. If Respondent pays the purge amount prior to the above scheduled hearing, the Respondent must timely file proof of such with the Clerk of Court and shall provide a copy to the Domestic Violence Unit, Court Administration, 1700 Monroe Street, 3rd Floor, Fort Myers, Florida 33901. Upon filing proof of payment and upon timely receipt of the notice from Respondent, the hearing MAY be cancelled at the discretion of the presiding judge. However, unless Respondent receives written notice of cancellation of the hearing, the Respondent must appear even if the purge has been paid, for the express purpose of providing proof of payment.

If Respondent fails to appear at the above scheduled hearing (in the absence of a notice of cancellation), another writ of bodily attachment may issue for the Respondent's arrest.

ORDERED in Fort Myers, Lee County, Florida, this _____ day of _____, 20_____.

First Appearance Judge

I, Respondent, hereby acknowledge receipt of notice of the above scheduled hearing.

Respondent

Copies provided to Respondent, Petitioner, Jail, Control Date Judge, and Domestic Violence Docket Specialist.

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AMERICANS WITH DISABILITIES ACT - REQUEST FOR ACCOMMODATION
Please Use the Below Phone Number Only for the Purpose of Requesting an Accommodation
under the Americans With Disabilities Act

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Dolly Ballard, Operations Division Director, whose office is located at Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and whose telephone number is (239) 533-1771, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

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TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURTS
CHARLOTTE COUNTY JUSTICE CENTER
350 EAST MARION AVE
PUNTA GORDA, FLORIDA 33954

**- Civil Contempt in Family Law Child Support Matters -
Procedures to be used after Arrest on Writ of Bodily Attachment (Charlotte)**

1. Upon arrest on a Writ of Bodily Attachment issued for failure to pay child support, the contemnor may pay the purge amount stated in the Writ of Bodily Attachment and be released prior to First Appearance.
2. If the alleged contemnor does not pay the purge amount prior to First Appearance, the alleged contemnor shall be brought before the First Appearance Judge within 24 hours of arrest.
3. At First Appearance, the judge will inquire as to whether the purge amount has been paid and, if so, the judge will order that the alleged contemnor be released from custody.
4. If at First Appearance, the alleged contemnor advises that the purge amount has not yet been paid, the First Appearance Judge will order that the alleged contemnor be held in custody on the purge amount until posted, AND will be required to be returned to first appearance the following day (if not posted) for the purpose of determining the present ability to pay support and willfulness of the failure to pay support. The alleged contemnor may still pay the purge amount stated in the Writ of Bodily Attachment and be released prior to the scheduled review.
5. On the next day following the contemnors initial First Appearance, the alleged contemnor will be brought back before the First Appearance Judge, if the alleged contemnor has not yet paid the purge amount, the First Appearance Judge will conduct a hearing and inquire as to the ability of the alleged contemnor to pay the purge amount consistent with rule 12.615 using the attached form order entitled ORDER AT FIRST APPEARANCE ON WRIT OF BODILY ATTACHMENT (see attached order) and make the appropriate determination pursuant to the rule.
6. The order will be completed and filed with the first appearance clerk, with copies provided to the respondent, the jail, Attorney for the Department of Revenue, and the Judge Assigned to the case.

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TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE OFFICE OF THE COURTS
COLLIER COUNTY GOVERNMENT COMPLEX
3315 TAMIAMI TRAIL EAST
NAPLES, FLORIDA 34112
TEL. (239) 2528800

Operational Plan for Child Support Writs for Collier County

1. Upon arrest on a Writ of Bodily Attachment issued for failure to pay child support, the contemnor may pay the purge amount stated in the Writ and be released prior to first appearance.
2. If the contemnor does not pay the purge amount the case will be brought before a family law circuit court judge within 24 to 48 hours. Excluding weekends and holidays, jail records will immediately notify the judicial assistants for the assigned family law judiciary, the clerk of court supervisor and the criminal division director of all arrests for child support writs within a 24 hour period. The judicial assistant will schedule the hearing date and notify all parties. Both family law judges have committed to providing hearing time at 8:45 AM each weekday, providing it is not a holiday. Hearings will be conducted in Courtroom 3-4.
3. In the event a Writ of Bodily attachment is served on a Friday, Saturday or the day preceding a holiday and the contemnor does not pay the purge amount, jail records will place the case on the first appearance docket to be addressed by the first appearance judge. The first appearance judge will determine whether the contemnor continues to have the present ability to pay. If the contemnor has the present ability to pay the hearing will be concluded. If the court determines the contemnor no longer has the ability to pay the court has the discretion to order the release of the contemnor with a future court date scheduled before the family law judge or, the court may order the contemnor to remain incarcerated and brought before a family court judge. Any hearings requested following an arrest on Friday or Saturday are to be noticed for the following Tuesday morning at 8:45 AM. These hearings will be heard by the family law judges on their alternating juvenile week. If a contemnor is arrested on a writ the day preceding a court holiday, jail records will place the case on the first appearance docket and any subsequent hearing would be set before the family court judge within 48 hours.
4. Jail records will provide all judiciary assigned to the family law division a weekly printout of all persons arrested on a Writ of Bodily Attachment during that week to assure the statutory requirement has been met and the contemnor has been before the court within 24 hours.
5. The procedure will become effective February 17, 2014. A 60 day review will be held with all the stakeholders to discuss any necessary revisions.

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Twentieth Judicial Circuit of Florida
ADMINISTRATIVE OFFICE OF THE COURTS
HENDRY COUNTY COURTHOUSE
25 E. HICKPOCHEE AVE., LABELLE, FLORIDA 33935

Hendry County Circuit Court Procedure Addressing Arrests on Writs of Bodily Attachment for Failure to Pay Child Support

The procedures used for civil contempt in child support matters are governed by Fla. Fam. L. R. 12.615. The premise is that when a person is initially ordered by the trial court, in the normal course of proceedings, to pay a specific amount of child support, it is thereafter presumed that the person has the ability to do so. A motion for civil contempt is the mechanism used to address the failure of a party to comply with an order to pay child support.

It is at the hearing on the motion for civil contempt that the person's ability to pay becomes relevant; civil contempt is not intended to serve as punishment, but rather is intended to compel compliance – before a person can be found to be in civil contempt, a finding must be made that the failure to pay the court-ordered child support is willful and that the person has the present ability to pay and, therefore, “holds the keys to the jail cell.” The preeminent case explaining the process involving civil contempt in child support matters is Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).

Motions for civil contempt may be heard by a trial judge or by a DOR Hearing Officer, depending upon the background of the case. If heard by a trial judge and the alleged contemnor appears and is found to be in civil contempt, the judge may remand the contemnor to jail with a purge amount. In such instances, subsection (f) of Rule 12.615 provides that “. . . at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.”

However, if the alleged contemnor fails to appear for the hearing on the motion for civil contempt scheduled before a trial judge, a Writ of Bodily Attachment, with a purge amount, may be issued by the trial judge in accordance with subsection (c)(2)(B) of Rule 12.615. Also, to the extent that the motion for civil contempt is heard by a DOR hearing officer, it is important to remember that a DOR hearing officer does not have the authority to remand persons into custody nor to issue Writs of Bodily Attachment. Rather, if the DOR hearing officer finds that the alleged contemnor has the ability to pay, or if the alleged contemnor fails to appear for the hearing, the DOR hearing officer can only make a recommended finding that the trial judge issue a Writ of Bodily Attachment, with a purge amount.

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Once a Writ of Bodily Attachment has been executed, Rule 12.615 requires that the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful. Having reviewed the proposed procedure for the Lee County Family Court, and upon consultation with the Administrative Judge, the following is the procedure that currently in use in Hendry County Court to address Writs of Bodily Attachment issued for failure to pay child support:

1. Upon arrest on a Writ of Bodily Attachment issued for failure to pay child support, the contemnor may pay the purge amount stated in the Writ of Bodily Attachment and be released prior to First Appearance.
2. If the alleged contemnor does not pay the purge amount prior to First Appearance, the alleged contemnor shall be brought before the First Appearance Judge within 24 hours of arrest preferably, but in no instance more than 48 hours after arrest.
3. At First Appearance, the judge will inquire as to whether the purge amount has been paid and, if so, the judge will order that the alleged contemnor be released from custody.
4. If at First Appearance, the alleged contemnor advises that the purge amount has not yet been paid, the First Appearance Judge inquires as to the alleged contemnor's financial circumstances and their present ability to pay the purge amount. If the First Appearance Judge determines that the present financial circumstances of the alleged contemnors is insufficient to pay the purge amount, the alleged contemnor is released from custody and issued a Notice of Appearance for the next DOR Child Support Hearing Date. However, if the First Appearance Judge determines that the alleged contemnor's financial circumstances are sufficient to pay the purge amount, the alleged contemnor remains in custody and the First Appearance Judge issues a Notice of Appearance for the next DOR Child Support Hearing date. A copy of the written order noticing the upcoming date of appearance is sent to the Clerk's Office and the Program Assistant for the DOR Child Support Hearing Officer.
5. If the alleged contemnor pays the purge amount prior to the scheduled upcoming date of appearance, the hearing may be cancelled and it may be removed from the docket. However, it shall be the responsibility of the alleged contemnor to ensure that the court file reflects the filing of proof of payment of the purge. The Clerk's Office advises the Child Support Hearing Officer of the cases which the purge amount has been paid.

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Twentieth Judicial Circuit of Florida
ADMINISTRATIVE OFFICE OF THE COURTS
GLADES COUNTY COURTHOUSE
500 AVENUE J, SW., MOORE HAVEN, FLORIDA 33471

Glades County Circuit Court Procedure Addressing Arrests on Writs of Bodily Attachment for Failure to Pay Child Support

The procedures used for civil contempt in child support matters are governed by Fla. Fam. L. R. 12.615. The premise is that when a person is initially ordered by the trial court, in the normal course of proceedings, to pay a specific amount of child support, it is thereafter presumed that the person has the ability to do so. A motion for civil contempt is the mechanism used to address the failure of a party to comply with an order to pay child support.

It is at the hearing on the motion for civil contempt that the person's ability to pay becomes relevant; civil contempt is not intended to serve as punishment, but rather is intended to compel compliance – before a person can be found to be in civil contempt, a finding must be made that the failure to pay the court-ordered child support is willful and that the person has the present ability to pay and, therefore, “holds the keys to the jail cell.” The preeminent case explaining the process involving civil contempt in child support matters is Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).

Motions for civil contempt may be heard by a trial judge or by a DOR Hearing Officer, depending upon the background of the case. If heard by a trial judge and the alleged contemnor appears and is found to be in civil contempt, the judge may remand the contemnor to jail with a purge amount. In such instances, subsection (f) of Rule 12.615 provides that “. . . at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.”

However, if the alleged contemnor fails to appear for the hearing on the motion for civil contempt scheduled before a trial judge, a Writ of Bodily Attachment, with a purge amount, may be issued by the trial judge in accordance with subsection (c)(2)(B) of Rule 12.615. Also, to the extent that the motion for civil contempt is heard by a DOR hearing officer, it is important to remember that a DOR hearing officer does not have the authority to remand persons into custody nor to issue Writs of Bodily Attachment. Rather, if the DOR hearing officer finds that the alleged contemnor has the ability to pay, or if the alleged contemnor fails to appear for the hearing, the DOR hearing officer can only make a recommended finding that the trial judge issue a Writ of Bodily Attachment, with a purge amount.

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Once a Writ of Bodily Attachment has been executed, Rule 12.615 requires that the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful. Having reviewed the proposed procedure for the Lee County Family Court, and upon consultation with the Administrative Judge, the following is the procedure that currently in use in Glades County Court to address Writs of Bodily Attachment issued for failure to pay child support:

1. Upon arrest on a Writ of Bodily Attachment issued for failure to pay child support, the contemnor may pay the purge amount stated in the Writ of Bodily Attachment and be released prior to First Appearance.
2. If the alleged contemnor does not pay the purge amount prior to First Appearance, the alleged contemnor shall be brought before the First Appearance Judge within 24 hours of arrest preferably, but in no instance more than 48 hours after arrest.
3. At First Appearance, the judge will inquire as to whether the purge amount has been paid and, if so, the judge will order that the alleged contemnor be released from custody.
4. If at First Appearance, the alleged contemnor advises that the purge amount has not yet been paid, the First Appearance Judge inquires as to the alleged contemnor's financial circumstances and their present ability to pay the purge amount. If the First Appearance Judge determines that the present financial circumstances of the alleged contemnor are sufficient to pay the purge amount, the alleged contemnor remains in custody. The Judicial Assistant to the First Appearance Judge, who is also the Family Law Judge in Glades County, contacts the Department of Revenue and either facilitates the release of the alleged contemnor or schedules an emergency hearing before the DOR Child Support Hearing or the Family Law Judge depending on the most recent date available. The Judicial Assistant sends a copy of the written order noticing the upcoming date of appearance is sent to the alleged contemnor, the Department of Revenue, and the Clerk's Office.
5. If the alleged contemnor pays the purge amount prior to the scheduled upcoming date of appearance, the hearing may be cancelled and it may be removed from the docket. However, it shall be the responsibility of the alleged contemnor to ensure that the court file reflects the filing of proof of payment of the purge. The Clerk's Office advises the Child Support Hearing Officer or the Family Law Judge if the purge amount has been paid.

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Florida Family Law Rules of Procedure
Section I. Family Law Rules of Procedure

Rule 12.615. Civil Contempt in Support Matters

(a) **Applicability.** This rule governs civil contempt proceedings in support matters related to family law cases. The use of civil contempt sanctions under this rule shall be limited to those used to compel compliance with a court order or to compensate a movant for losses sustained as a result of a contemnor's willful failure to comply with a court order. Contempt sanctions intended to punish an offender or to vindicate the authority of the court are criminal in nature and are governed by Florida Rules of Criminal Procedure 3.830 and 3.840.

(b) **Motion and Notice.** Civil contempt may be initiated by motion. The motion must recite the essential facts constituting the acts alleged to be contemptuous. No civil contempt may be imposed without notice to the alleged contemnor and without providing the alleged contemnor with an opportunity to be heard. The civil contempt motion and notice of hearing may be served in accordance with Florida Rule of Judicial Administration 2.516 provided notice is reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings. The notice must specify the time and place of the hearing and must contain the following language: "FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE COURT ISSUING A WRIT OF BODILY ATTACHMENT FOR YOUR ARREST. IF YOU ARE ARRESTED, YOU MAY BE HELD IN JAIL UP TO 48 HOURS BEFORE A HEARING IS HELD." This notice must also state whether electronic recording or a court reporter is provided by the court or whether a court reporter, if desired, must be provided by the party.

(c) **Hearing.** In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision (c)(1) of this rule, the court shall,

(A) if the alleged contemnor is present, determine whether the alleged contemnor had the present ability to pay support and willfully failed to pay such support.

(B) if the alleged contemnor fails to appear, set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a writ of bodily attachment and direct that, upon execution of the writ of bodily attachment, the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

(d) **Order and Sanctions.** After hearing the testimony and evidence presented, the court shall enter a written order granting or denying the motion for contempt.

(1) An order finding the alleged contemnor to be in contempt shall contain a finding that a prior order of support was entered, that the alleged contemnor has failed to pay part or all of the support ordered, that the alleged contemnor had the present ability to pay support, and that the alleged contemnor willfully failed to comply with the prior court order. The order shall contain a recital of the facts on which these findings are based.

(2) If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys' fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law provided the order includes a purge provision as set forth in subdivision (e) of this rule.

(e) **Purge.** If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration for more than 48 hours to allow the contemnor a

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reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. The court then may issue a writ of bodily attachment. Upon incarceration, the contemnor must be brought before the court within 48 hours for a determination of whether the contemnor continues to have the present ability to pay the purge.

(f) Review after Incarceration. Notwithstanding the provisions of this rule, at any time after a contemnor is incarcerated, the court on its own motion or motion of any party may review the contemnor's present ability to comply with the purge condition and the duration of incarceration and modify any prior orders.

(g) Other Relief. Where there is a failure to pay support or to pay support on a timely basis but the failure is not willful, nothing in this rule shall be construed as precluding the court from granting such relief as may be appropriate under the circumstances.

CREDIT(S)

Added Oct. 29, 1998, effective Feb. 1, 1999 (723 So.2d 208). Amended Jan. 28, 1999, effective Feb. 1, 1999 (746 So.2d 1073); July 10, 2003, effective Jan. 1, 2004 (853 So.2d 303); Oct. 18, 2012, effective, nunc pro tunc, Sept. 1, 2012 (102 So.3d 505).

COMMENTARY

1998 Adoption. This rule is limited to civil contempt proceedings. Should a court wish to impose sanctions for criminal contempt, the court must refer to Florida Rules of Criminal Procedure 3.830 and 3.840 and must provide the alleged contemnor with all of the constitutional due process protections afforded to criminal defendants. This rule is created to assist the trial courts in ensuring that the due process rights of alleged contemnors are protected. A court that adjudges an individual to be in civil contempt must always afford the contemnor the opportunity to purge the contempt.

COMMITTEE NOTES

2012 Amendment. Subdivision (b) is amended to provide for service in accordance with Florida Rule of Judicial Administration 2.516.

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Supreme Court of Florida.
Eugenia BOWEN and the Florida Department of Health and Rehabilitative Services, Petitioners,
v.
Frankie L. BOWEN, Respondent.


No. 64906.
June 20, 1985.

Father was adjudged in contempt in the Circuit Court, Polk County, Randall G. McDonald, J., for failure to make child support payments, was sentenced to five months and 29 days in jail, and he appealed. The District Court of Appeal affirmed, but on rehearing, 454 So.2d 565, reversed and remanded. On State's application for review, the Supreme Court, Overton, J., held that: (1) correct procedure for establishing civil contempt in family support matter is as set forth herein, and (2) civil contempt proceeding against indigent father for failure to make child support payments was transformed into a criminal contempt proceeding when the judge, without regard to father's ability to purge himself of contempt by making \$966 payment, imposed imprisonment on the ground that father wrongfully used his resources for purposes other than making the court-ordered support payments; in such proceeding, appointment of counsel and other due process protections applied.

District Court of Appeal decision approved with directions.

Adkins, Acting C.J., dissented.

West Headnotes

[1] Contempt 93  24


93 Contempt

93I Acts or Conduct Constituting Contempt of Court

93k19 Disobedience to Mandate, Order, or Judgment

93k24 k. Ability to obey. Most Cited Cases

Purpose of civil contempt proceeding is to obtain compliance on the part of a person subject to an order of the court, and because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply, an ability which is his "key to his cell"; on the other hand, purpose of criminal contempt is to punish, with such proceedings being utilized to vindicate authority of the court or to punish for an intentional violation of court order.

[2] Constitutional Law 92  4494

92 Constitutional Law

92XXXVII Due Process

92XXXVII(G) Particular Issues and Applications


92XXXVII(G)25 Other Particular Issues and Applications

92k4492 Contempt

92k4494 k. Proceedings. Most Cited Cases

(Formerly 92k273)

Because criminal contempt proceedings are punitive in nature, potential criminal contemnors are entitled to the same constitutional due process protections afforded criminal defendants in more typical criminal proceedings. U.S.C.A. Const.Amend. 14.

[3] Contempt 93  81

93 Contempt

93III Punishment

93k81 k. Purging contempt after adjudication. Most Cited Cases

Incarceration for civil contempt cannot be imposed absent finding by the trial court that the contemnor has the present ability to purge himself of contempt; without present ability, for example, to pay support from some available asset, contemnor holds no key to the

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jailhouse door.

141 Child Support 76E ↪485

76E Child Support

76EIX Enforcement

76Ek481 Evidence

76Ek485 k. Presumptions. Most Cited Cases

(Formerly 134k311(2))

Divorce 134 ↪1118(3)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(G) Contempt

134k1118 Evidence

134k1118(3) k. Presumptions and burden of proof. Most Cited Cases

(Formerly 134k269(11))

In both civil and criminal contempt proceedings, a prior judgment establishing the amount of support or alimony to be paid creates a presumption that the defaulting party has the ability to pay that amount.

151 Child Support 76E ↪484

76E Child Support

76EIX Enforcement

76Ek481 Evidence

76Ek484 k. Burden of proof. Most Cited Cases

(Formerly 134k311(2))

Child Support 76E ↪485

76E Child Support

76EIX Enforcement

76Ek481 Evidence

76Ek485 k. Presumptions. Most Cited Cases

(Formerly 134k311(2))

Divorce 134 ↪1118(3)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(G) Contempt

134k1118 Evidence

134k1118(3) k. Presumptions and burden of proof. Most Cited Cases

(Formerly 134k269(11))

Divorce 134 ↪1119(5)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(G) Contempt

134k1119 Hearing

134k1119(5) k. Findings and verdict. Most Cited Cases

(Formerly 134k269(13))

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In civil contempt proceedings, in family support matter, defaulting party has the burden to come forward with evidence to dispel presumption, created by prior judgment establishing amount of support or alimony to be paid, that he has the ability to pay and has willfully disobeyed the court order; if contempt is found, trial judge must separately find that contemnor has present ability to pay the purge amount before incarceration can be imposed to obtain compliance with the court order; receding from *Faircloth v. Faircloth*, 339 So.2d 650.

[6] Child Support 76E ↪484

76E Child Support

76EIX Enforcement

76Ek481 Evidence

76Ek484 k. Burden of proof. Most Cited Cases

(Formerly 134k311(2))

Child Support 76E ↪485

76E Child Support

76EIX Enforcement

76Ek481 Evidence

76Ek485 k. Presumptions. Most Cited Cases

(Formerly 134k311(2))

Divorce 134 ↪1118(3)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(G) Contempt

134k1118 Evidence

134k1118(3) k. Presumptions and burden of proof. Most Cited Cases

(Formerly 134k269(11))

Divorce 134 ↪1118(4)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(G) Contempt

134k1118 Evidence

134k1118(4) k. Degree of proof. Most Cited Cases

(Formerly 134k269(11))

In criminal contempt proceedings in family support matter, movant has burden of establishing, beyond a reasonable doubt, that defaulting party willfully violated court order requiring payment of support or alimony; in meeting that burden, movant has benefit of presumption, created by prior judgment establishing the amount of support or alimony to be paid, that the defaulting party had the ability to comply with the court order.

[7] Child Support 76E ↪491

76E Child Support

76EIX Enforcement

76Ek488 Hearing

76Ek491 k. Counsel. Most Cited Cases

(Formerly 285k3.3(9))

Civil contempt proceeding against indigent father for failure to make child support payments was transformed into a criminal

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contempt proceeding when the trial judge, without regard to father's ability to purge himself of contempt by making \$966 arrearage payment, imposed imprisonment on ground that father had wrongfully used his resources for purposes other than making the court-ordered support payments; in such a proceeding, appointment of counsel and other due process protections were required; disapproving Waskin v. Waskin, 452 So.2d 999, U.S.C.A. Const. Amend. 14; West's F.S.A. RCrp Rules 3.830, 3.840.

*1275 Joseph R. Boyd and Susan S. Thompson of Boyd, Thompson & Williams and Chriss Walker, Dept. of Health and Rehabilitative Services, Tallahassee, for petitioners.

Robert T. Connolly and Michael A. Campbell, Florida Rural Legal Services, Inc., Bartow, for respondent.

Miriam E. Mason, Tampa, and N. David Korones, Clearwater, amicus curiae for the Executive Council to the Family Law Section of the Florida Bar.

OVERTON, Justice.

This is a petition to review Bowen v. Bowen, 454 So.2d 565 (Fla. 2d DCA 1984), in which the Second District Court of Appeal held that a civil contempt proceeding was transformed into a criminal contempt proceeding where the trial judge, without regard to the contemnor's ability to purge himself of contempt, imposed imprisonment for failure to pay child support on the ground that the contemnor wrongfully used his resources for purposes other than making the court-ordered support payments. The district court reversed the trial court's judgment, concluding that due process required the appointment of counsel and other due process protections in such a proceeding. We find conflict with Waskin v. Waskin, 452 So.2d 999 (Fla. 3d DCA 1984).^{FN1} For the reasons expressed, we agree with the district court that the record under review fails to establish that the respondent had the present ability to pay the arrearage and that, under the facts of this case, the respondent was improperly incarcerated for civil contempt. We recognize the need to explain our decisions in Faircloth v. Faircloth, 339 So.2d 650 (Fla.1976); Garó v. Garó, 347 So.2d 418 (Fla.1977); Pugliese v. Pugliese, 347 So.2d 422 (Fla.1977); Lamm v. Chapman, 413 So.2d 749 (Fla.1982); and *1276 Andrews v. Walton, 428 So.2d 663 (Fla.1983), and harmonize them with multiple district court decisions on this issue. In this opinion, we will attempt to clarify the law with respect to the use of civil and criminal contempt in family support matters.

FN1. We have jurisdiction. Art. V, § 3(b)(3), Fla. Const.

In the instant case, the petitioner Florida Department of Health and Rehabilitative Services (HRS) filed an action against the respondent, Frankie L. Bowen, to establish the amount of child support to be paid by the respondent to HRS in reimbursement for public assistance payments made to the respondent's estranged wife, Eugenia Bowen, also a petitioner in this cause. HRS obtained a default against the respondent. The circuit court judge entered an order of support in July, 1982, directing the respondent to pay \$163 monthly to HRS. When respondent failed to make the payments and to respond to an order to appear and show cause why he should not be held in contempt,^{FN2} a warrant was issued for his arrest. In December, 1982, the trial court held the respondent in contempt, found him financially able to make the support payments, and modified the prior order by directing him to make weekly payments of \$50 to HRS. The respondent again failed to make the payments and the court issued a second order for him to appear and show cause. This order warned that respondent was subject to imprisonment and/or fines if adjudged in contempt, and admonished him to bring "all proof you may have such as pay-stubs, income tax returns, doctor's statements, receipts, etc., to show why you have not made these payments."

FN2. We note that under rule 1.100(b), Florida Rules of Civil Procedure, civil contempt proceedings should be instituted by motion and notice of hearing. See form 1.982, Florida Rules of Civil Procedure. In matters involving criminal contempt, however, an order to show cause is mandatory.

Pursuant to the second order, the respondent presented evidence that he had been laid off from his \$140 per week job as a painter in May, 1982, due to a general cutback in the employer's work force; that despite a diligent search for employment, he remained unemployed until January 1, 1983, except for occasional yard work, for which he never earned more than \$25 per week; and that on January 21, 1983, he received a paycheck and tendered \$200 to HRS, which an HRS employee refused to accept until after the scheduled February 11, 1983, hearing. The record reflects that at the February 11 hearing, the trial judge informed respondent that he was free to present any evidence or witness on his own behalf, that respondent was not represented by counsel, and that respondent asked questions of an HRS representative, who testified that HRS employees are instructed to accept any payment tendered. Respondent was unable to name or describe the person whom he claimed had refused to accept the tendered payment. The trial judge informed respondent that he was \$916 in arrears in child support payments and asked how much he could pay at that point. Respondent stated that he could pay \$200.

In adjudicating respondent in contempt for failure to make the support payments, the trial judge found that respondent previously had the ability to comply with the support order, but had divested himself of that ability through his own fault or neglect designed to

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frustrate the intent or purpose of the order. The respondent was sentenced to five months and 29 days in jail with the provision that he could purge himself of contempt by paying the \$916 arrearage plus \$50 court costs. The trial court also found the respondent indigent for the purpose of an appeal to the district court of appeal.

In reversing the respondent's conviction and sentence, the district court noted that, although the record lacked "total clarity concerning [respondent's] inability to pay," the case came to it "on a finding that [respondent] was unable to pay and that his inability was his own fault." 454 So.2d at 567. It concluded that, because the trial court's order imposed incarceration on a finding that respondent wrongfully divested himself of the ability to pay, without a finding that respondent had the present *1277 ability to pay the purge amount, the contempt proceeding was criminal rather than civil in nature. Since the proceeding was criminal, the district court held that the judgment imposing incarceration could not be affirmed because respondent was not afforded the right to court-appointed counsel at the contempt hearing.

HRS seeks a reversal of that holding, contending that this Court's holding in *Faircloth* permits a judge to incarcerate a defaulting parent in a civil contempt proceeding upon a finding that the parent has divested himself of the ability to comply with the court's support order through his own fault or neglect designed to frustrate the order. HRS asserts that, under such circumstances, there is no need to show that the defaulting party has a present ability to purge himself of contempt and there is no right to counsel.

The respondent counters by asserting that a jail sentence unaccompanied by a purge condition that is within the power of the contemnor to accomplish is in fact a sentence for criminal contempt, requiring the application of full due process protections. He argues that *Faircloth* focused solely on the adjudicatory phase of the contempt hearing and did not address the requirements for a civil incarceration order after an adjudication of contempt. He asserts that our subsequent decisions in *Pugliese* and *Andrews* set forth the requirement that a civil contemnor must possess the present ability to purge himself of contempt before incarceration can be imposed.

[1][2][3] As this Court has previously stated, the purpose of a *civil* contempt proceeding is to obtain *compliance* on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply. This ability to comply is the contemnor's "key to his cell." *Pugliese*. The purpose of *criminal* contempt, on the other hand, is to *punish*. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court. *Andrews; Pugliese; Demetree v. State ex rel. Marsh*, 89 So.2d 498 (Fla.1956); *In re S.L.T.*, 180 So.2d 374 (Fla. 2d DCA 1965). Because this type of proceeding is punitive in nature, potential criminal contemnors are entitled to the same constitutional due process protections afforded criminal defendants in more typical criminal proceedings. *See Aaron v. State*, 284 So.2d 673 (Fla.1973); *see also Fla.R.Crim.P.* 3.830, 3.840. We continue to adhere to the view that incarceration for civil contempt cannot be imposed absent a finding by the trial court that the contemnor has the present ability to purge himself of contempt. Without the present ability to pay from some available asset, the contemnor holds no key to the jailhouse door.

Confusion concerning the requirement that a civil contemnor have the ability to purge has resulted from two separate statements in our *Faircloth* decision. In the first, we stated:

We hold a trial judge must make an affirmative finding that either (1) the petitioner presently has the ability to comply with the order and willfully refuses to do so, or (2) that the petitioner previously had the ability to comply, but divested himself of that ability through his fault or neglect designed to frustrate the intent and purpose of the order.

339 So.2d at 651. In the second, we expressly approved the following excerpt from Judge Robert Smith's dissenting opinion in *Faircloth v. Faircloth*, 321 So.2d 87, 94 (Fla. 1st DCA 1975):

Upon the affected party's failure to discharge his burden of proving that he is disabled to pay by reason of intervening factors not due to his own neglect or fault, the chancellor may find as a fact ... that any disability was self-induced. And on that finding the chancellor may order the defaulting party to pay or be imprisoned for his contemptuous refusal to do so.

339 So.2d at 652. To the extent these statements indicate that incarceration can be imposed upon a civil contemnor who lacks the ability to pay the purge amount, *1278 we recede from this language. Although we did not directly address in that opinion the purge requirement of a civil contempt proceeding, it is important to note that the *Faircloth* result establishes that a present ability to purge is a prerequisite to incarceration for *civil* contempt. In affirming the trial court's incarceration of Faircloth, the district court of appeal found the record reflected that Faircloth's inability to comply with the court order was caused by his own "neglect or misconduct," and noted that the record did not establish that Faircloth had the ability to pay the \$4,300 arrearage that had been fixed by the trial court as the purge amount. In the face of this holding, this Court quashed the district court's decision and directed that the case be remanded so that the trial court could make an "affirmative finding of ability if supported by the record or otherwise vacate the order of contempt." *Id.* at 653. The disposition in that case indicates clearly that incarceration cannot be imposed upon a civil contemnor for willfully failing to

comply with a court order unless the court first determines that the contemnor has the present ability to purge himself of contempt.

Consistent with the *Fairecloth* decision, in *Garo* we held that an order finding a husband in contempt for willful nonpayment of alimony was fatally defective in that it lacked specific findings regarding his ability to pay the amount due. In *Pugliese* we distinguished between the purposes of civil and criminal contempt, observing that notice must be given to a person who will be charged with criminal contempt. In holding in *Lamm* that HRS may utilize all remedies available to the custodial parent, including civil contempt proceedings, to enforce a parent's obligation to provide child support, we found that the record in that case was insufficient to establish the father's ability to pay the support. In *Andrews* we concluded that the evidence clearly supported the trial court's determination that the father had the ability to pay the ordered child support and held that

there are no circumstances in which a parent is entitled to court-appointed counsel in a civil contempt proceeding for failure to pay child support because if the parent has the ability to pay, there is no indigency, and if the parent is indigent, there is no threat of imprisonment.

428 So.2d at 666. We find the decisions of the First District in *Griffin v. Griffin*, 461 So.2d 251 (Fla. 1st DCA 1984); *Smith v. Miller*, 451 So.2d 945 (Fla. 1st DCA 1984); and *Ponder v. Ponder*, 438 So.2d 541 (Fla. 1st DCA 1983), and the Third District in *Robbins v. Robbins*, 429 So.2d 424 (Fla. 3d DCA 1983), to be fully consistent with these holdings. The decision of the Third District in *Waskin*, however, conflicts with the instant case. The petitioner in *Waskin* instituted a contempt proceeding against the respondent, her former husband, alleging he willfully disobeyed a court order for payment of alimony and support. The district court, in affirming the finding of contempt by the trial court, held that the trial court could properly imprison the respondent for civil contempt upon a finding that the respondent willfully violated the court order, without affirmatively finding that the respondent possessed the present ability to pay the purge amount. This holding is contrary to the law established by this Court as outlined above.

[4][5][6] To avoid confusion, we believe it appropriate to address the correct procedure for establishing civil contempt in family support matters. In these cases, the initial order or judgment directing a party to pay support or alimony is predicated on an affirmative finding that the party has the ability to pay. This initial judicial determination creates, in subsequent proceedings, a presumption that there is an ability to pay. In a civil contempt proceeding for failure to pay child support or alimony, the movant must show that a prior court order directed the party to pay the support or alimony, and that the party in default has failed to make the ordered payments. The burden of producing evidence then shifts to the defaulting party, who must dispel the presumption of ability to pay by demonstrating that, due to circumstances beyond his control which intervened since the time *1279 the order directing him to pay was entered, he no longer has the ability to meet his support obligations. The court must then evaluate the evidence to determine whether it is sufficient to justify a finding that the defaulting party has willfully violated the court order. Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order. If incarceration is deemed appropriate, the court must make a separate, affirmative finding that the contemnor possesses the present ability to comply with the purge conditions set forth in the contempt order. In determining whether the contemnor possesses the ability to pay the purge amount, the trial court is not limited to the amount of cash immediately available to the contemnor; rather, the court may look to *all assets* from which the amount might be obtained.

Although incarceration cannot be used as a means to seek compliance with the court order when the contemnor does not have the ability to purge himself of contempt, the court does have available other means to obtain compliance. If, for example, the defaulting party has willfully neglected his support obligations but no longer has a present ability to pay because he is unemployed, the court may direct him to seek employment through Florida State Employment Services and to report weekly until employment is secured, in addition to requesting the employment service to periodically report to the court on the status of his job search. If the party is employed but presently lacks funds or assets, the court may issue a writ directing his employer to garnish the party's salary in order to satisfy the alimony or child support obligations in accordance with section 61.12, Florida Statutes (Supp.1984), or may enter an income deduction order for payment of child support or alimony, pursuant to section 61.081 or 61.1301, Florida Statutes (Supp.1984). These alternatives to incarceration are examples and are not intended to limit the trial judge's discretion in obtaining compliance with a court order.

When the court believes that the defaulting party's conduct is such that it warrants punishment, a criminal contempt proceeding should be instituted. Criminal contempt proceedings are appropriate when it can be established that the party in default has continually and willfully neglected his support obligations, or has affirmatively acted to divest himself of assets and property. An indirect criminal contempt proceeding must fully comply with rule 3.840, Florida Rules of Criminal Procedure, and defendants are entitled to the appropriate due process protections, which may include court-appointed counsel. In such a proceeding, the movant must prove, beyond a reasonable doubt, that the defendant willfully violated the court order. The movant, however, has the benefit of the presumption that the defendant has had the ability to pay the ordered support or alimony by reason of the prior judicial determination. This presumption, of course, places the burden on the defendant to come forward with evidence to show that, due to circumstances beyond his control, he had no ability to pay. We reject the argument that this presumption improperly infringes upon a criminal contempt defendant's fifth

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amendment privilege. See *State v. Buchman*, 361 So.2d 692 (Fla.1978). This type of required response has been approved in other criminal matters. See § 812.022(2), Fla.Stat. (1983) (statutory inference that a person proved to be in possession of recently stolen property knew or should have known that the property was stolen); *Barnes v. United States*, 412 U.S. 837, 93 S.Ct. 2357, 37 L.Ed.2d 380 (1973) (upholding an inference essentially identical to § 812.022(2)).

[7] In the instant case, the record clearly supports the conclusion that the respondent did not have the present ability to pay the \$966 purge amount. The finding of the trial judge that the respondent was indigent for purposes of the appeal affirmatively establishes that the respondent was indigent and had no present ability to pay the purge amount.

*1280 In summary, we hold: (a) In both civil and criminal contempt proceedings, a prior judgment establishing the amount of support or alimony to be paid creates a presumption that the defaulting party has the ability to pay that amount. (b) In civil contempt proceedings, the defaulting party has the burden to come forward with evidence to dispel the presumption that he had the ability to pay and has willfully disobeyed the court order. In the event contempt is found, the trial judge must separately find that the contemnor has the present ability to pay the purge amount before incarceration can be imposed to obtain compliance with the court order. (c) In criminal contempt proceedings, the movant has the burden of establishing, beyond a reasonable doubt, that the defaulting party willfully violated the court order. In meeting this burden, the movant has the benefit of the presumption that the defaulting party had the ability to comply with the court order.

For the reasons expressed, we approve the decision of the district court of appeal with directions to remand this cause to the trial court for further proceedings consistent with this opinion.

It is so ordered.

ALDERMAN, McDONALD, EHRLICH and SHAW, JJ., concur.
ADKINS, Acting C.J., dissents.

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