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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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MELISSA COOLEY

Petitioner/Appellant,

vs.

ARMANI SADETTANH

Respondent/Respondent,

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APPEAL FROM KING COUNTY SUPERIOR COURT  
DOCKET # 07-3-05540-5 KNT

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**REPLY BRIEF FOR APPELLANT**  
**(Corrected Cover Sheet)**

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 ORIGINAL

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## **I. REPLY STATEMENT OF THE CASE**

This is a case not just about contempt, but also about enforcement of unambiguous child support provisions. Respondent Sadettanh's opening statement that this "is a case about contempt – intentional disobedience of a lawful court order" understates the scope of the appeal and ignores both RCW 26.18.160 and the intent of the legislature.

When child support payments are untimely, there are enforcement remedies available to the other parent, including the loss of the right to claim the child tax exemption in that year. When the legislature addressed statutory consequences for a parent who fails to pay child support, it mentioned the timeliness of payments -- **Intent -- 1997 c 58**: "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments... ." RCW 74.20A.320 (statute addressing license suspension as one consequence) (emphasis added).

In this case, the 2008 Order of Child Support, signed by Respondent Armani Sadettanh, included an enforcement remedy if he failed to make timely and adequate child support payments. CP 1-12. The enforcement remedy for not being current was not only contempt, but in this case, it included the potential forfeiture of the tax exemption for that tax year. (See 3.17, CP 1-12). Contempt is a separate and distinct possibility for violation of a court order. RCW 7.21.010. The enforcement

remedy outlined in the Order of Child Support is independent of contempt. CP 1-12. The enforcement remedy must be granted regardless of a finding of contempt. RCW 26.18.040.

Respondent continues to assert that the enforcement remedy is predicated on the finding of contempt, which requires him to ignore the plain language of the relevant section of the Order of Child Support – i.e., 3.17. Contempt is not a pre-requisite to a remedy and there is no provision requiring a finding of contempt prior to granting the requested remedy. CP 1-12. It is a remedy-based policy, and an enforcement remedy may be granted without a finding of contempt. RCW 26.18.040.

Contempt of court under RCW 7.21.030 seeks to coerce compliance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform. RCW 7.21.010.

Appellant urged the trial court to make a finding of contempt, and the record supports a reversal on this alone. Separate from that, the trial court ignored the enforcement remedy. Thus, a finding of contempt for violating section 3.17 of the Order of Child Support is not required for enforcement, and the contempt may supplement, but is not mutually exclusive, of the remedy of enforcement under RCW 26.18 *et seq.*

Finally, Appellant did not seek contempt against Mr. Sadettanh for being behind in support as of “the end of the year”, although she rightfully

could have, but instead, she relied on the enforcement remedy of how the 2010 child tax exemption should be applied when there is no dispute that the father did not fulfill the condition precedent of his ability to claim the exemption. Before Judge Darvas and in Respondent's brief, Respondent *admits* that arrears were carried over from 2010 into January 2011.<sup>1</sup> However, instead of accepting responsibility for the late payments and for not being current, Respondent has claimed that his child support obligation was "largely out of his control."

## **II. ARGUMENT IN REPLY**

### **2.1 The Obligation in Question here is not the Obligation to Timely Pay Child Support, but to Comply with the Unambiguous Language of Section 3.17 of the Order of Child Support Regarding Tax Exemptions.**

As predicted, Respondent has emphasized an alleged good faith compliance with the payment obligation of child support under section 3.5 of the Order of Child Support, which requires timely payment to be made by the Respondent (not anyone else, including his employer). This case is not about whether Respondent was in contempt for not timely complying with his monthly support obligation by the 15th of each month under Section 3.5 (CP 3), but this case is instead about section 3.17 of the same

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<sup>1</sup> Respondent states in his brief, on page 14, "But DCS received a payment from his [Sadettanh's] employer of \$238.16 on the first working day of January 2011", continuing, "That amount more than satisfied the alleged arrears of \$128.24." Thus, Respondent accepts that the payment on 2010 arrears was not received until January 2011, although due on 15<sup>th</sup> of the prior month.

order, which addresses whether Respondent obeyed the unambiguous provisions surrounding the condition precedent to claiming the child as a tax dependent/exemption in 2010. Respondent repeatedly uses phrases characterized by self-serving speculation on a subject that is not before the court, such as:

- "...[he] believed he was complying with the order of child support"<sup>2</sup>
- "Sadettanh assumed he could take the income tax exemption"<sup>3</sup>
- "After consulting with counsel, Sadettanh learned Cooley was entitled to the tax exemption for that year, regardless of his belief"<sup>4</sup>
- "Sadettanh understood that the agency collected enough funds to maintain his support obligation"<sup>5</sup>
- "he believed his obligation was met at the end of 2010"<sup>6</sup>
- "Sadettanh believed he was following the order when [sic: he] took the 2010 exemption"<sup>7</sup>
- "... he also maintained his understanding that DCS collected sufficient funds from each paycheck to maintain his support obligation and he believed his obligation was current for that year when he took the exemption"<sup>8</sup>
- "He testified that he understood in good faith that he had met his obligation"<sup>9</sup>
- "He believed he was complying with the order when he took the 2010 exemption"<sup>10</sup>
- "he believed his obligation was satisfied at the end of 2010"<sup>11</sup>

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<sup>2</sup> See Br. of Respondent at 1.

<sup>3</sup> See Br. of Respondent at 4.

<sup>4</sup> See Br. of Respondent at 4.

<sup>5</sup> See Br. of Respondent at 4.

<sup>6</sup> See Br. of Respondent at 4-5.

<sup>7</sup> See Br. of Respondent at 5.

<sup>8</sup> See Br. of Respondent at 5.

<sup>9</sup> See Br. of Respondent at 13.

<sup>10</sup> See Br. of Respondent at 14.

<sup>11</sup> See Br. of Respondent at 14.

First, Respondent's belief is immaterial to the issue of enforcement. Appellant is entitled to the enforcement remedy as he failed to fulfill the condition precedent for claiming the 2010 tax exemption.

Second, from a policy standpoint, if those who are not in compliance with court orders are permitted to express that what they believed, assumed, or understood as a different understanding of the express language of the order (or they only understood after an attorney explained their obligations to them later), then there would be no enforcement of court orders. One could assert that he merely claimed the exemption because he "believed he could." Another could assert that she claimed the exemption because an attorney had not yet explained the language to her. This is tantamount to claiming ignorance of the law.

As to Respondent's belief that he was complying with the Order of Child Support, he states, "...Cooley offered no evidence to the contrary,"<sup>12</sup> Respondent attempts, without citation to authority, to create a burden on Appellant's part to show that Respondent believed he was not complying. This is not the standard under section 3.17. The language does not state that Respondent may claim the exemption in even years, "so long as he believes he is current in that year." Section 3.17 is clear that Respondent may only claim the tax exemption in even years, "so long as

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<sup>12</sup> See Br. of Respondent at 1, 14.

he is current in that year.” His belief is not material. He wasn’t current and he was not entitled to the 2010 tax exemption. Appellant has no obligation to prove Respondent believed or disbelieved that he fulfilled the condition precedent of section 3.17 when the record conclusively establishes that he was not current. Respondent claims that the record created confusion or was unclear -- "both tribunals noted those [DCS] records were unclear."<sup>13</sup> Although Appellant may concede the judicial officers below were confused by the records, the parties and counsel were not because the record was clear. Respondent cannot claim he did not know he was not current at the end of 2010, and his attorney stated that it “appeared from his case payment history that, in fact, there was a small arrearage... ." RP Nov. 18, 2011 at 16-17.

Respondent claims that there was no evidence to the contrary (referring to him not being current) belies the record.<sup>14</sup> However, Respondent is in sole possession of his pay stubs. Respondent can review how much is taken out each month and is the first to be notified of the amount deducted. He is the only person who can add up whether \$472.32 was applied in any given month unless he shares all of his pay stubs with opposing party. Respondent claims there was no citation to the record, but

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<sup>13</sup> See Br. of Respondent at 14.

<sup>14</sup> See Br. of Respondent at 15.

the record is undisputed that Respondent was not current in that year; as seen in the Case Payment History, CP 147, and Respondent's counsel's own admission before Judge Darvas.<sup>15</sup> RP Nov. 18, 2011, at 16-17.

**2.2 Respondent is not Entitled to Retroactive Application of Child Support Payments Under WAC 388-14A-5001(3).**

Respondent *wants* the Order of Child Support to read:

*“The mother shall claim the child in odd years and the father shall claim the child in even years so long as **all child support payments are withdrawn from his paycheck to cover his child support obligation by the end of that year.**”*

Respondent requests that this Court apply the payment received on January 3, 2011 retroactively to the date of withdrawal from his paycheck. This argument is devoid of reason as: (1) child support is not considered paid upon withholding by an employer, and (2) the child support allocation rules require that the January 3, 2011 payment be applied to the January 2011 obligation rather than the arrears carried over from 2010.

**A. Child Support is Only Deemed Paid When Received.**

Child support is only considered paid once it is received by DCS. WAC 388-14A-5001(3). Respondent asks this Court to disregard the fact that his child support payment was not received until January 3, 2011 and,

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<sup>15</sup> Respondent's counsel stated, "And that's pursuant to whatever the Division of Child Support tells his employer to withhold from his pay and send to them. So he didn't know that at the end of 2010 it appeared from his case payment history that, in fact, there was a small arrearage. I mean, as the commissioner found, it was a *de minimis* arrearage."

instead, allow his January 3, 2011 payment to be deemed a retroactive payment to the prior month when it was presumably withdrawn from his paycheck. WAC 388-14A-5001 is clear and unambiguous on this issue:

DCS distributes support collections based on the date of collection. DCS considers the date of collection to be the date that DCS receives the support collection, no matter when the money was withheld from the noncustodial parent.

WAC 388-14A-5001.

WAC 388-14A-5001 addresses the issue of when child support payments are deemed “received.” Here, child support payments are applied to an obligor’s support obligation based on the date of collection, regardless of when the funds were withheld from the obligor.

Respondent’s January 3, 2011 payment was received on January 3, 2011 and distributed according to that date. CP 151. Thus, as required by the rule in *Maccarone*, it was applied to the January 2011 child support obligation, not the arrears. *In re Marriage of Maccarone*, 54 Wn. App. 502, 774 P.2d 53 (1989); *Kruger v. Kruger*, 37 Wn. App. 329, 679 P.2d 961 (1984). There is no Washington authority that would permit the retroactive application of child support payments contrary to the statutory provisions outlined in WAC 388-14A-5001.

Respondent points to the Ohio State Supreme Court’s decision in *Rohr v. Williams* to support his assertion that payment should be deemed

“received” once it is taken from his paycheck. 2007 WL 4696807, 5 (Ohio App. 7 Dist.) (Ohio App. 7 Dist., 2007). However, reliance on *Rohr* requires the rejection of the child support payment collection and distribution structure of WAC 388-14A-5001(3) and the creation of “new law” regarding payments to and distributions by DCS. Moreover, it ignores the fact that for Respondent to be “current”, he had to pay on time by December 15, 2010; the final payment due in that tax year.

Respondent knew the DCS collection and distribution rules and should have taken the simple step of sending DCS a check in December 2010 to ensure his arrears was remedied so that he was current. An even better solution for Respondent would have been to send DCS a check back in September 2010 when he was provided documentation, via paycheck withholdings, that his child support payments were inadequate. Respondent chose to do neither and the enforcement remedy and contempt sanctions are the necessary consequences.

Assuming, *arguendo*, that the Court is inclined to accept Respondent’s date of withholding argument, then he still was not current as of December 15, 2010, which was the final due date for Respondent’s child support payments in 2010. Again, on the 2008 Order of Child Support, Respondent’s payment schedule required payment of child support on the 1<sup>st</sup> and 15<sup>th</sup> of each month. CP 4. Thus, any payments after

December 15, 2010 are late payments for child support in 2010 as such a payment would necessarily be past due. Respondent cannot be both late in payment and “current.” Section 3.17 does not give Respondent, until the end of the year, to ensure that he timely paid and can be deemed current.

Moreover, there is no evidence to support Respondent’s counsel’s contention that the January 3, 2011 payment must have been withheld in December 2010. Arguments of Respondent’s counsel are not evidence. *State v. Perkins*, 97 Wn.App. 453, 983, P.2d 1177 (1999). Respondent’s counsel focus on the explanation of the DCS collection procedure is not evidence. *Id.* Also, there is no support for concluding he relied on this "evidence" when making his decision to claim the 2010 tax exemption.

**B. The January 3, 2012 Payment Cannot be Applied to the Arrears.**

The payment received on January 3, 2011 cannot be applied to the arrears; it must first be applied to the current support obligation (January 2011 child support). When an obligor has arrears, child support payments are allocated first to any current obligation, and then to the oldest, unexpired obligation and interest thereon. *In re Marriage of Maccarone*, 54 Wn.App. 502, 504-05, 774 P.2d 53 (1989); *Kruger v. Kruger*, 37 Wn.App. 329, 332-33, 679 P.2d 961 (1984). Thus, Respondent’s payment

on January 3, 2011 could not be applied to any arrears until his entire child support obligation for January 2011 was paid.

Respondent's request that the Court apply the \$238.16 January to the 2010 arrears ignores this rule in *Maccarone. In re Marriage of Maccarone*, 54 Wn. App. 502, 774 P.2d 53 (1989); *Kruger v. Kruger*, 37 Wn. App. 329, 679 P.2d 961 (1984). The payment received on January 3, 2011 must first be applied to the current January 2011 obligation. All subsequent payments must be applied to January 2011 until that current month's obligation is satisfied. Only then may payments be applied to any arrears. Thus, the payments on January 3<sup>rd</sup> and January 14<sup>th</sup>, 2011 must be applied towards the January 2011 child support obligation. Only the January 31, 2011 payment of \$128.24 can be applied to the arrears as the current month's obligation was then and only then satisfied by the first two January 2011 payments. Therefore, a request that payments received be retroactively applied to the date of withholding should be rejected.

### **2.3 Respondent is Entitled to the Enforcement Remedy Based on Respondent's Admission of Late Payment.**

Appellant should be entitled to the enforcement remedy based on Respondent's admission that an arrears on 2010 child support was carried over into January 2011.<sup>16</sup> Respondent admits that there was an arrears

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<sup>16</sup> See Br. of Respondent at 14; RP Nov. 18, 2011, at 16-17.

carried from 2010 into January 2011, stating, “DCS received a payment from his employer of \$238.16 on the first working day of January 2011,” and continues “that amount more than satisfied the alleged arrears of \$128.24.” Additionally, Respondent’s counsel admitted before Judge Darvas that, based on the Case Payment History, “there was a small arrearage.” RP Nov. 18, 2011, at 16-17. This admission is dispositive when determining whether Appellant is entitled to the enforcement remedy which would provide her with the 2010 tax exemption.

As a result of Respondent’s untimely payment, and in accordance with the 2008 Order of Child Support, Appellant is entitled to the enforcement remedy providing her with the 2010 child tax exemption.

**2.4 A Bright Line Rule is Necessary to Ensure the Vigorous Enforcement of Child Support Obligations.**

A bright line rule is necessary to ensure the vigorous enforcement of child support obligations. A temporal *de minimis* exception, much like the monetary *de minimis* exception, creates a nebulous standard that would chill obligees from exercising tax exemption provisions and from pursuing contempt for improper taking of tax exemptions for fear that a commissioner or judge would make a discretionary finding that the obligor’s late payments were merely *de minimis*. This *de minimis* determination would certainly vary depending on who the judicial officer

was. Two days late would be acceptable for one commissioner, while five days late might be acceptable for another. Obligees would be subject to a roulette wheel of *de minimis* exceptions. As a result, obligees would be faced with the reality that it would simply not be cost effective to enforce an order. Obligor would not be encouraged to make timely and adequate child support payments, but instead, do just enough to give obligees pause about enforcing a court order.

**2.5 Respondent Cannot Rewrite the Order of Child Support to Insert a Contempt Pre-Requisite to the Enforcement Remedy.**

Respondent would like to rewrite the Order of Child Support four years after signing it. The Order of Child Support, section 3.17 states:

“The mother shall claim the child in odd years and the father shall claim the child in even years so long as he is current in his child support obligation in that year.” CP 5.

Respondent *wants* the Order of Child Support to read:

“The mother shall claim the child in odd years and the father shall claim the child in even years so long as he is current in his child support obligation in that year *and there is no finding of contempt.*”

Respondent argues that he does not have to comply with the court ordered remedy absent a finding of contempt, beginning his brief, “This case is about contempt.” According to Respondent’s logic, if he “accidentally” took the 2010 tax exemption, and there was no finding of contempt, he would not have to provide the remedy of returning or

otherwise compensating Appellant for the 2010 tax exemption. This is neither logical nor supported by the law of the case or Washington State authority.

Respondent cannot rewrite the 2008 Order of Child Support because he does not like the result. Paragraph 3.17 of the Order of Child Support is a decree by the court, which is the "law of the case" until modified. The law of the case doctrine, in summary, states that one cannot modify the "language of a court order" and must abide by its orders until and only if modified. If the court orders it, it is much like the legislature making a law the parties have to follow. Parties are bound by the court order, or "law of the case," in addition to any legislative remedies available to the parties.

The 2008 Order provides the enforcement remedy without regard to whether contempt is found. Thus, even if this Court finds no error regarding the issue of contempt, Respondent remains bound to the terms and conditions of the Order, which provides an enforcement remedy to the Appellant, i.e., compensation for the lost 2010 tax exemption benefit.

**2.6 Respondent Cannot Delegate his Duty of Child Support to his Employer or the State of Washington.**

Respondent cannot delegate his duty to ensure timely and adequate child support payments to escape accountability. Respondent deftly

implies that his employer and the State of Washington are ‘at fault’ as the “the payment [received on January 3, 2011] must have been withdrawn from his pay in December 2010.” In advancing this argument, Mr. Sadettanh advocates for the delegation of his duty of ensuring timely child support payments to another entity so that he may avoid accountability. However, this is a nondelegable duty imposed by the State of Washington.

Respondent cannot delegate his child support duty as it is imposed by public policy. *Gilbert H. Moen Co. v. Island Steel Erectors, Inc.*, 128 Wash. 2d 745, 912 P.2d 472 (1996) (contractor's duty to provide safe workplace is nondelegable). Here, the public policy of the State of Washington is strongly in favor of the timely and adequate payment of child support. RCW 26.18.010. The Washington State legislature has found that “there is an urgent need for vigorous enforcement of child support ... obligations, and that stronger and more efficient statutory remedies need to be established ... .” RCW 26.18.010. It would be contrary to public policy to permit an obligor to delegate child support obligations and evade accountability, or claim his lack of timely, current payments was due to a system put in place to collect and register child support.

Respondent cites RCW 26.23.060 (2) (3) and claims that Division of Child Support (DCS) collects the support amount, and thus, the

obligation is "largely out of Sadettanh's control."<sup>17</sup> However, RCW 26.23 et. seq. does not permit Respondent to side-step his obligation, nor does anything cited by respondent permit him to delegate this duty -- the duty to be current in that year -- to anyone other than the Respondent himself.

The sections before .060 of Chapter RCW 26.23, should be examined in this context as well. RCW 26.23.045 merely provides that Division of Child Support (DCS), Washington state support registry (WSSR), shall provide support enforcement services; it does not state that DCS relieves Respondent (or any other obligor of child support) of remaining current in any particular year. That is, providing support enforcement services is not tantamount to taking over the obligation for Respondent to be current in a particular year.

Permitting an obligor parent to point the blame at DCS for his failure to remain current would nullify the enforcement statutes for those who are facing a child support payment scenario of payments that are not current. That is, Appellant would have no remedy to seek contempt or enforcement against DSHS-DCS for not keeping Respondent current.

Respondent's position encourages the delegation of child support obligations to a third party, in all cases, to limit and avoid liability and accountability. For example, one could justify his "lack of current

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<sup>17</sup> See Br. of Respondent at 3.

payment” if one assigned the duty to a financial institution to withdraw payments and ensure payments were made to obligees. If problems arise, obligees are then tasked with the burden of making inquiries to the financial institution, sifting through mounds of paperwork, and dealing with administrative hurdles in an effort to determine “who is responsible for late payments, inadequate payments, or failures to pay.” This process would be required whenever an obligee wanted to enforce an order of child support to ensure that the obligee did his or her due diligence in determining the ‘at fault’ party for the child support payment issue; thereby protecting the obligee from sanctions for bringing a meritless motion before the court.

Thus, obligees would be faced with additional procedural and financial hurdles when enforcing child support orders. This is contrary to the Washington State legislature’s finding of an “urgent need for vigorous enforcement of child support.” The delegation of child support obligations to third parties only serves to discourage obligees from enforcing child support and encourage obligors to avoid and delay payment of child support. There is a need in the State of Washington for the “vigorous enforcement of child support,” and Respondent’s self-serving position only frustrates public policy.

It was Respondent's duty to keep track of his withholdings to ensure that all child support payments are timely and adequate made. It was Respondent's duty to notice that his withholdings declined from \$476.32 in August 2010 to \$439.68 in September 2010, thereby creating the arrears that continued into January 2011. It was Respondent's duty to ensure that a child support payment was made to DCS if he wanted to claim that he was current in that year. This information was not hidden from Respondent; in fact, he was the first to be put on notice when he received his paycheck. Any delay or deficiency by his employer is directly attributable to Respondent.

Respondent claims that the adequate and timely payment of child support was "largely out of Sadettanh's control." This is the exact problem and lack of accountability the Washington State legislature identified when it found, "there is an urgent need for vigorous enforcement of child support." Obligor of child support cannot be allowed to have that obligation "largely out of their control." Obligor must be held accountable for child support obligations as the financial support of children in Washington is of great public concern.

There was nothing stopping Respondent from keeping track of his child support payments. There was nothing stopping Respondent from writing a check to DCS in December 2010 to cover the arrears. Most

importantly, there was nothing stopping Respondent from asking DCS an accounting of his payments *prior to* taking the 2010 tax exemption. If Respondent had done his due diligence prior to taking the 2010 tax exemption, he would have discovered that his arrears were not paid until January 31, 2011.

Respondent's continued claims of ignorance place him in a compromising position. Respondent claims that he just assumed that he was current on his child support and he believed that he was entitled to the 2010 tax exemption. In making this assumption, Respondent necessarily admits that he made absolutely no effort to determine whether he was permitted to take the 2010 tax exemption. Self-imposed plausible deniability is not a defense to contempt or the enforcement remedy.

Regarding contempt, Respondent *willfully* refused to make any effort to determine whether he was entitled to the 2010 tax exemption. This failure to act is a willful action. This is akin to an obligor asserting the plausible deniability defense, as the obligor never reviewed the order, to a contempt motion for failure to pay child support. Plausible deniability to a willful failure to act that does not immunize Respondent from a finding of contempt. If this were an acceptable defense, obligors of child support would be encouraged to make no effort to even review an order of child support or any documentation regarding payments of child support.

If contempt sanctions were sought by an obligee, an obligor could rest easy knowing that no sanction would be imposed because he or she made no effort to understand his or her obligations and the status of that obligation month to month. The public policy of the State of Washington directly conflicts with such excuses by obligors of child support.

As for the enforcement remedy, it is required regardless of the finding of contempt. Respondent's claimed ignorance is immaterial to the enforcement remedy. Respondent's failure to stay current in his child support obligation for 2010 is the sole pre-requisite to the corresponding enforcement remedy of section 3.17.

### **2.7 Commissioner's Dicta was not a Change to the Law of the Case.**

Although only tangential to the issues at hand, Respondent spends some time referencing Commissioner Sassaman's dicta, including a statement that Respondent is on notice and he must assure that he is "fully paid as of the end of the year."<sup>18</sup> The actual law of the case is stated under Section 3.17 of the 2008 Order of Child Support -- "so long as he is current in that year." CP 5. The Order of Child Support does not say, "so long as he is current by the end of that year." Thus, Respondent does not have until December 31, 2010 to become current in his support obligation because December 15, 2010 is the final payment date for that tax year.

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<sup>18</sup> See Br. of Respondent at 6.

Either way, Respondent was not current as of 12/15/10 of that year, nor was he current as of 12/31/10 of that year.

**2.8 Respondent's Motion to Strike Should be Denied.**

Respondent's Motion to Strike deserves to be denied as the 2009 tax exemption is relevant. In fact, Respondent acknowledges that the trial court reviewed all of the materials submitted to the commissioner in a *de novo* review hearing.<sup>19</sup>

First, Respondent cannot, on one hand, proclaim that Appellant "offered no evidence" to substantiate a willful violation, then on the other, state that the "2009 exemption is not relevant to the item on review." Respondent has repeatedly stated that there was no evidence of willful conduct. However, Respondent's taking of the 2009 tax exemption shows a pattern and practice of taking the exemption regardless of the clear rules spelled out in the Order. Despite unambiguous language for the odd year exemption, he claimed the 2009 tax exemption in violation of the Order.

Respondent's prior willingness to disregard the Order of Child Support, and then quickly claim ignorance, is evidence to show knowledge on Respondent's part. Respondent has claimed ignorance of his child support obligation and the amount of money his employer was taking out of his paychecks. However, Respondent received this information every

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<sup>19</sup> See Br. of Respondent at 7.

time he earned a paycheck. Respondent cannot claim ignorance time after time and not expect that the prior claims of ignorance will not be used to show that Respondent was not ignorant of the Order of Child Support or the status of his child support payments and obligation.

Second, Respondent states, “the discussions of the 2009 exemption are replete with factual assertions that are either not supported by the record citation.” Yet, Respondent makes no effort to identify a single instance. For example, Respondent claims that Appellant has made factual statements devoid of record citations on page 11 of Appellant’s Brief. However, each factual statement has a corresponding record citation.

Finally, Respondent argued below, and now argues before this Court, that his child support payments were greater than his child support obligation in 2010, stating, “DCS payment history revealed that Sadettanh had paid more in 2010 than the full support amount due for that year.” Respondent attempts to portray himself as being current in his child support obligation in 2010 – to paint a false picture that he was diligent and generous by paying more than what was required of him.

However, Respondent neglects to mention that the only reason he paid out more in 2010 was because Respondent was significantly behind on child support from 2009. Moreover, Respondent took the 2009 tax exemption that Appellant was entitled to and used his substantial tax

refund to “catch up.” In essence, Respondent attempts to use his 2009 arrears and 2009 tax exemption violation to support his argument that he was current and paid more than what was due for 2010. Therefore, Respondent’s Motion to Strike must be denied.

**2.9 Attorney’s Fees Request by the Respondent Must be Denied.**

Respondent seeks attorney's fees on appeal, citing to authority relating to "frivolous" appeals. The argument for attorney's fees for Respondent were argued and rejected below, and were not subject to revision or appeal. CP 78-98, 136-145. To raise the issue now, in response, is untimely as Respondent has had two previous opportunities to make such claims. If the reviewing court here assesses whether the appeal is frivolous, then Appellant submits that it is not.

The cases cited by Respondent deal with cases where the law was clear and the appellant ignored the facts in the record, or cases where the appellant failed to address the basis of the trial court's decisions. Under any of these cases, the distinction in this case makes a difference.

Here, the Appellant did address the trial court's reasoning and in fact, referred to it as flawed.<sup>20</sup> The record supports the conclusion that the Order of Child Support was violated, and whether intentional, there is an enforcement remedy available to the Appellant. Respondent does not

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<sup>20</sup> See Br. of Appellant at 2-3.

address RCW 26.18.160 nor address the enforcement remedy of section 3.17. Instead, Respondent understates the scope of the appeal and elects, as he must, to only focus on an argument (not a factual recitation) that the record was confusing to the tribunals and that he believed he complied. Therefore, Respondent's request for attorney's fees must be denied.

**2.10 Attorney's Fees Should be Awarded to Appellant for this Appeal and the Trial Court Work.**

Attorney's fees and costs are mandatory under RCW 26.18.160 and may also be awarded under RCW 26.09.140. RCW 26.18.160 states, "In any action to enforce a support ... order ..., the prevailing party is entitled to a recovery of costs, including ... reasonable attorney fees."

Here, regardless of the issue of contempt, Appellant is entitled to the remedy outlined in section 3.17 of the Order of Child Support. As this is an action to enforce the Order of Child Support, Appellant is entitled to an award of attorney's fees and costs of this action. An affidavit of fees and expenses are submitted with this brief.

**III. CONCLUSION**

The Washington State legislature public policy statement is clear, "there is an urgent need for vigorous enforcement of child support." For the children of the State of Washington to be adequately supported by non-residential parents, the enforcement of child support should not be

impeded by Mr. Sadettanh's excuse that child support payments were "largely out of his control."

There are two consequences for Mr. Sadettanh's violation of the 2008 Order of Child Support – (1) the enforcement remedy of providing Appellant with the benefit of the 2010 tax exemption, and (2) the contempt sanction. The \$2,110.00 represents the calculated loss to the mother of not being able to claim the tax exemption. The benefit of the bargain was unilaterally decided by Respondent when he chose to deprive the Appellant of the \$2,110.00 refund she would have had, but for the non-compliance of the Respondent.

Therefore, the Court reverse and remand for entry of the appropriate order. The trial court erred and/or abused its discretion. Entry of judgment in favor of the Appellant against the Respondent in the following amounts, \$2,110.00 for the lost 2010 tax exemption benefit, \$506.40 in interest, \$13,011.24 in attorney's fees, and \$1,116.90 costs.

RESPECTFULLY submitted this 7<sup>th</sup> day of August, 2012.



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## CERTIFICATE OF SERVICE

I certify that I caused one copy of the foregoing Reply Brief for Appellant to be served on the following parties of record and/or interested parties by ABC Legal Messenger, to the below named attorneys as follows:

**ATTORNEY FOR RESPONDENT:**

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DATED this 8<sup>th</sup> day August, 2012, at Auburn,  
Washington.

  
\_\_\_\_\_  
Diana Butler, Paralegal

# APPENDIX A

Not Reported in N.E.2d, 2007 WL 4696807 (Ohio App. 7 Dist.), 2007 -Ohio- 7207  
(Cite as: 2007 WL 4696807 (Ohio App. 7 Dist.))

**H**

CHECK OHIO SUPREME COURT RULES FOR  
REPORTING OF OPINIONS AND WEIGHT OF  
LEGAL AUTHORITY.

Court of Appeals of Ohio,  
Seventh District, Mahoning County.  
Elizabeth ROHR nka Chaplin, Plaintiff-Appellant,  
v.  
Blair WILLIAMS, Defendant-Appellee.

No. 06 MA 171.  
Decided Dec. 21, 2007.

Civil Appeal from Common Pleas Court, Juvenile  
Division, Case No. 92JI797.

Michael Partlow, Cleveland, OH, for Plain-  
tiff-Appellant.

Andrew Bresko, Youngstown, OH, Robert Price,  
Canfield, OH, for Defendant-Appellee.

VUKOVICH, J.

\*1 {¶ 1} Plaintiff-appellant Elizabeth Rohr nka Chaplin appeals the decision of the Mahoning County Juvenile Court finding her in contempt of a prior order regarding the federal income tax dependency exemption. The issues on appeal are whether the court properly interpreted its prior order, whether the order's language was clear or ambiguous, and whether appellant's action constituted contempt. For the following reasons, we reverse the trial court's suggestion that the prior order was unambiguous but affirm the trial court's interpretation of the order regarding all appealed tax years as a reasonable construction of the language at issue. We also reverse the contempt finding against appellant based upon our finding of ambiguity in the order violated.

*STATEMENT OF THE CASE*

{¶ 2} On December 8, 1992, appellant filed a complaint against obligor-appellee Blair Williams to establish paternity of her son who was born June 19, 1992. In mid-1993, paternity was established. On September 19, 1993, the referee recommended child support at \$555.08 per month retroactive to the child's

date of birth. Thus, obligor-appellee began his child support obligation with an arrearage in the amount of \$7,216.04. He was ordered to pay \$19.92 per month toward this arrearage. The referee's report also stated:

{¶ 3} "That Obligor be granted the right to claim the child as a Dependent for tax purposes commencing with tax year 1994 so long as he remains current in his child support obligation in any given tax year. Obligee be ordered to execute the necessary forms, including IRS Form 8332, to facilitate the taking of the exemption by the Obligor."

{¶ 4} On October 7, 1993, the juvenile court adopted the referee's report and recommendations. In 2000, the Mahoning County Child Support Enforcement Agency (CSEA) applied a \$4,446 tax refund intercept to obligor-appellee's arrearage leaving \$1,436.80. In March 2001, the court ordered obligor-appellee's employer to transmit any expected lump sum payment over \$150 up to the amount of the arrearage, which was said to be \$1,331.92.

{¶ 5} In June 2001, obligor-appellee's child support obligation was increased to \$646.43 per month. In April 2002, the court ordered obligor-appellee's employer to transmit any expected lump sum payment over \$150 up to the amount of the arrearage, which was said to be \$1,610.26 as of February 2002.

{¶ 6} On June 24, 2005, obligor-appellee filed a motion asking the court to require appellant to appear and show cause why she should not be held in contempt for failing to comply with the court's October 7, 1993 judgment regarding the dependency exemption. Obligor-appellee advised that appellant has failed to fulfill her obligation to execute the necessary federal income tax forms since the tax year 2001.

{¶ 7} Obligor-appellee attached a letter from the IRS advising that conditional court orders are not acceptable proof of the right to claim a dependency exemption and that he must thus receive a signed Form 8332 from appellant in order to claim his son. The IRS also advised obligor-appellee that if appellant would not sign the form, he should return to court and

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have the conditional phrasing removed from the entry. Thus, obligor-appellee asked the court to order appellant to complete the necessary forms and (in order to avoid future disputes) to delete from the conditional language: "so long as he remains current in his child support obligation in any given tax year."

\*2 {¶ 8} Appellant responded that she was not required to sign the past tax deductions over to appellee because he was not current in his child support obligation for the years in question. She cited the CSEA's arrearage tracking system, which informed her that an arrearage existed at the end of each relevant tax year.

{¶ 9} A hearing was held before the magistrate on December 2, 2005. Obligor-appellee informed the court that he is paid on the fifteenth and the last day of the month. (Tr. 10). A CSEA representative testified that he recently completed an audit concerning obligor-appellee's payments. He explained that the computer adds the new month's child support obligation on the first of the month. Thus, an obligor starts each month with an arrearage even though he is permitted to divide his payments according to how many paychecks per month are issued. (Tr. 10-11). He pointed out that a child support payment taken out of an obligor's paycheck issued on the last day of the month will not arrive at CSEA for some days later. As such, as far as the computer records are concerned, the obligor will always be behind at the end of the month and thus at the end of the tax year. (Tr. 11).

{¶ 10} The CSEA representative stated that obligor-appellee has been current with *his monthly* support obligation over the years. (Tr. 14, 16). He explained that although obligor-appellee had an arrearage at the end of 2001 in the amount of \$1,700, obligor-appellee began his child support obligation with an arrearage due to the nature and timing of those proceedings. (Tr. 12-13, 15-16). He also noted that after the main arrearage from the past was paid off at the beginning of 2002, the payments have all remained timely as far as the withdrawals from his paychecks. (Tr. 14). Thereafter, appellee's year end arrearage was primarily a "bookkeeping arrearage." (Tr. 17-18).

{¶ 11} The magistrate determined that obligor-appellee was not current in 2001 due to a year end arrearage in an amount more than the monthly support obligation amount. (Tr. 12). As for 2002, the magis-

trate found that the arrearage went down to \$1,100 in April, to \$624 in August (which is less than the monthly amount), and to \$296 by the end of the year. (Tr. 13). In 2003 and 2004, the audit never showed an amount higher than a one-month obligation. (Tr. 13-14). The magistrate concluded that due to the way obligor-appellee is paid, he will always have an arrearage on CSEA's books. (Tr. 20). The magistrate described this as a technicality because at the end of the tax years 2002, 2003 and 2004, the last portion of the payment had been taken from appellee's paycheck but merely had not arrived yet at CSEA from obligor-appellee's employer. (Tr. 21).

{¶ 12} On March 2, 2006, the magistrate filed a decision finding that obligor-appellee was not current in 2001 but was current in 2002, 2003 and 2004. The magistrate also found appellant in contempt for failing to permit obligor-appellee to take the deduction in the years he was current and sentenced her to three days in jail. The sentence was held in abeyance on the condition that she purge the contempt by complying with the prior order and by signing the forms necessary for obligor-appellee to take the exemption in 2002, 2003 and 2004.

\*3 {¶ 13} Although obligor-appellee's request for the 2001 deduction was denied, only appellant objected to the magistrate's decision.<sup>FN1</sup> Appellant alleged that obligor-appellee failed to prove by clear and convincing evidence that she breached any obligation placed upon her in the prior order. She asked the trial court to review the audit analysis summary generated by CSEA, which admittedly shows obligor-appellee was in arrears for 2002, 2003 and 2004. A transcript of the magistrate's hearing was ordered for the court's review.

<sup>FN1</sup>. Obligor-appellee did not appeal the trial court's interpretation regarding the 2001 arrearage even though it was the result of his initial arrearage and was not due to his failure to remain current in the payments for that tax year.

{¶ 14} On September 28, 2006, the juvenile court heard the matter. Appellant argued that any arrearage showing on the books at the end of the year means that obligor-appellee was not current for purposes of the court's 1993 order. She contended that the 1993 judgment entry did not contemplate substantial com-

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pliance but rather required evaluating whether there existed a recorded arrearage at the end of the year. She also urged that she was not in contempt because she relied on the arrearage shown on the books.

{¶ 15} Obligor-appellee countered that his payments were current at the end of each tax year at issue and that he was never advised of a delinquency. CSEA's attorney essentially asked the court to determine whether "current" for purposes of the tax deduction entry is synonymous with "no arrearage on the books." (Tr. 9). This attorney advised that no one in the system is ever completely without an arrearage when they are paid twice a month and that very few cases are at zero balance at the end of the month due to this computer program. (Tr. 9-10). It was declared that CSEA would not have determined that obligor-appellee was in default because the state law requires an obligor to be more than one month in arrears before there exists a deficiency. (Tr. 10).

{¶ 16} On October 2, 2006, the juvenile court adopted the magistrate's decision and purported to incorporate such decision by reference. Appellant filed timely notice of appeal. This court ordered appellant to obtain a proper final appealable order as the juvenile court may not merely adopt the magistrate's decision without defining the parties' rights and obligations. On December 20, 2006, the juvenile court complied and entered a conforming judgment reiterating the magistrate's recommendations.

#### ASSIGNMENT OF ERROR NUMBER ONE

{¶ 17} Appellant's first assignment of error contends:

{¶ 18} "THE TRIAL COURT ERRED, AS A MATTER OF LAW, BY ORDERING THAT THE APPELLEE WAS ENTITLED TO THE CHILD SUPPORT DEDUCTION FOR THE YEARS OF 2002, 2003, AND 2004."

{¶ 19} Appellant claims that the court retroactively modified the 1993 order to deal with the situation where an arrearage exists but is the result of how the pay period falls. She disputes that the court simply enforced its prior order because the prior order had no exception for situations when the arrearage was from past years or was the result of administrative problems in receiving payments. Appellant urges that the language of the 1993 judgment entry is clear and subject

to only one reasonable interpretation: if an arrearage exists, obligor-appellee is not entitled to the dependency exemption.

\*4 {¶ 20} A court can modify a child support order, including the right to the dependency exemption. However, it cannot do so retroactively in the absence of certain circumstances not alleged to exist here. See, e.g., *Hakhamaneshi v. Shabana*, 7th Dist. No. 00CO36, 2001-Ohio-3292. See, also, *Walker v. Walker*, 151 Ohio App.3d 332, 2003-Ohio-73 ¶ 19, 21, citing *R.C. 3119.83*. The trial court here did not purport to modify the judgment entry. Rather, the court endeavored to interpret and apply the entry. As aforementioned, appellant argues that the court's interpretation was improper and thus actually constituted a retroactive modification.

{¶ 21} If the words and language used in a judgment or decree are free of ambiguity and doubt and appear to express clearly and plainly the sense intended, there is no need to resort to other means of interpretation. *In the Matter of Blake* (Dec. 11, 1986), 7th Dist. No. 85-J-36. "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph two of syllabus. If the terms of the court order are deemed unambiguous, then we apply normal rules of construction and review the matter de novo. *Oliver-Pavkovich v. Pavkovich*, 7th Dist. No. 02CO222, 2003-Ohio-6718, ¶ 16.

{¶ 22} An ambiguous order is one that is unclear or indefinite and is subject to more than one rational interpretation. *Contos v. Monroe County*, 7th Dist. No. 04MO3, 2004-Ohio-6380, ¶ 15. If the language is ambiguous, then the trial court has broad discretion when clarifying that ambiguous language. *Oliver-Pavkovich*, 7th Dist. No. 02CO222 at ¶ 16.

{¶ 23} At issue is the interpretation of the following portion of the court's order: "That Obligor be granted the right to claim the child as a Dependent for tax purposes commencing with tax year 1994 so long as he remains current in his child support obligation in any given tax year. Obligee be ordered to execute the necessary forms, including IRS Form 8332, to facilitate the taking of the exemption by the Obligor."

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{¶ 24} The word “current” is the parties' major contention point. Appellant equates it with having no arrearage according to CSEA computer records both at the end of and during the year. As obligor-appellee pointed out below, the word “arrearage” is not used in the court order. As CSEA explained, they distinguish between a technical computer bookkeeping arrearage and a default or deficiency. Default is statutorily defined as “any failure to pay under a support order that is an amount greater than or equal to the amount of support payable under the support order for one month.” R.C. 3121.01(B). See, also, R.C. 3119.82 (when reviewing child support, court is to determine if support is substantially current before allocating exemption to obligor).

\*5 {¶ 25} Here, obligor-appellee did not owe more than one month's support at the end of the tax years 2002, 2003 and 2004. Since the law provides for payments to be made by employer withholding, as long as a payment is withdrawn from an obligor's paycheck as required, that obligor is current. Delays by the employer in sending or child support in processing are not attributed to the obligor for purposes of whether or not he is current. Thus, obligor-appellee would factually be considered current at the end of each tax year.

{¶ 26} This leads to a discussion of the issue regarding 2002, where the arrearage was not just a year end bookkeeping arrearage. That is, the court found that in 2003 and 2004, not only did obligor-appellee owe less than one month of support at the end of the year, but he also never owed more than one month throughout the year, (with such amount due being attributable to the withholding system). (Tr. 13-14). However, such was not the situation for 2002. Although by year's end, he was current as defined above, a court order shows that obligor-appellee had an arrearage over \$1,600 in February 2002 and testimony revealed that he still owed \$1,100 in April 2002. (Tr. 13).

{¶ 27} As such, we must determine whether the 1993 entry requires the obligor to be current at the end of each month or merely at the end of the year and whether it was a rational interpretation for the trial court to use the end of the year mark as the relevant gauge of appellant's child support status as “current.” The order's use of the phrase “remains current in his

child support obligation in any given tax year” supports a conclusion that if the obligor is current at the end of the tax year, he is in compliance. Said conclusion is a reasonable interpretation of the entry.

{¶ 28} However, to “interpret” language, as we were forced to do here, presupposes conflicting ways to read and understand the words scrutinized. Accordingly, we must differ with the trial court that the language at issue here was plain, unambiguous, clear as to what point in time an obligor must remain current or as to how a bookkeeping arrearage is judged. Thus, we reverse any implication that the order was unambiguous but uphold the trial court's interpretation as a reasonable construal of the ambiguities at issue. This holding affects the result of the next assignment of error as well.

#### ASSIGNMENT OF ERROR NUMBER TWO

{¶ 29} Appellant's second assignment of error provides:

{¶ 30} “THE TRIAL COURT ERRED, AS A MATTER OF LAW, AND ABUSED ITS DISCRETION BY FINDING THE APPELLANT IN CONTEMPT OF COURT.”

{¶ 31} Civil contempt of court is often imposed for the disobedience of a court order. See Windham Bank v. Tomaszczyk (1971), 27 Ohio St.2d 55. See, also, R.C. 2705.05 (disobedience of or resistance to a lawful order of a court). The court has both statutory and the inherent ability to punish for such contempt. Zakany v. Zakany (1984), 9 Ohio St.3d 192, 194. In civil contempt, punishment is remedial or coercive and is for the benefit of the complainant. Brown v. Executive 200, Inc. (1980), 64 Ohio St.2d 250, 253-254. Prison sentences are conditional as the contemnor carries the keys of his jail cell in his own pocket by performing as the court ordered. *Id.*

\*6 {¶ 32} Almost all courts, including this one, require clear and convincing evidence in civil contempt cases. See Spickler v. Spickler, 7th Dist. No. 01CO52, 2003-Ohio-3553, ¶ 46. See, also, Dudley, Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts (1993), 79 Va.L.Rev. 1025, 1032, fn. 23. However, it is not a defense for the alleged contemnor to claim there was no intent to violate the court's order; rather, state of mind is irrelevant. Pugh v. Pugh

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(1984), 15 Ohio St.3d 136, 139, citing *Windham*, 27 Ohio St.2d at 58. See, also, *McComb v. Jacksonville Paper Co.* (1949), 336 U.S. 187, 191 (absence of willfulness is no defense to civil contempt). This is because the purpose of civil contempt is to ensure the court's dignity and the uninterrupted and unobstructed administration of justice. *Pugh*, 15 Ohio St.3d at 140, citing *Windham*, 27 Ohio St.2d at paragraph two of syllabus.

{¶ 33} We review a trial court's finding of contempt for an abuse of discretion. *State ex. rel. Ventrone v. Birkel* (1981), 65 Ohio St.2d 10, 11. An abuse of discretion means that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 34} First, appellant points to her arguments from assignment of error number one and urges that she did not disobey a prior court order. In the alternative, appellant argues that she had no notice of the meaning of the court's prior order regarding the dependency exemption and thus should not be held in contempt. She states that if the language is vague and subject to interpretation, then contempt is improper.

{¶ 35} Obligor-appellee reiterates his arguments from above. He also responds that the prior order clearly commanded appellant to execute the forms necessary for appellee to take the exemption. He concludes that the court did not act unreasonably, arbitrarily or unconscionably in sanctioning appellant with contempt.

{¶ 36} This court has declared that “[a] party cannot be found in contempt if the contempt charge is premised on a party's failure to obey an order of the court and the order is not clear, definite, and unambiguous and is subject to dual interpretations.” *Contos*, 7th Dist. No. 04MO3 at ¶ 15, citing *Chilcote v. Gleason Const. Co.* (Feb. 6, 2002), 5th Dist. No. 01COA01397; *Collette v. Collette* (Aug. 21, 2001), 9th Dist. No. 20423; *Marysville v. Wilson* (July 20, 1994), 3d Dist. No. 14-94-8; *Smith v. Smith* (Jan. 13, 1994), 10th Dist. No. 93AP-958; *In re Contempt of Gilbert* (Dec. 16, 1993), 8th Dist. Nos. 64299, 64300. We also held:

{¶ 37} “A trial court cannot impose contempt sanctions on a party if the party cannot know whether or not its actions violate the trial court's order. Merely

because the trial court knew what its order meant does not mean the parties knew what the order meant.” *Id.* at ¶ 24.

\*7 {¶ 38} Thus, although general arguments that the alleged contemnor lacked intent or misunderstood the court order are invalid defenses, *where the trial court's order is subject to more than one reasonable interpretation, contempt is not the proper remedy.* CSEA reported an arrearage for 2002, 2003 and 2004, and appellant relied on this report in determining whether obligor-appellee was current. Her interpretation was not violative of any plain language of the 1993 entry.

{¶ 39} As stated in the prior assignment, the dispositive language was ambiguous. Consequently, the contempt finding is reversed. We note that this ruling does not relieve appellant from complying with the trial court's order to sign the proper forms for past years. If she disobeys that order, she can indisputably be held in contempt. Moreover, she can no longer rely on the specific ambiguities resolved herein to avoid contempt in the future.

{¶ 40} In conclusion, the trial court's judgment interpreting the 1993 entry is reversed in part and affirmed in part. Specifically, we disagree with any suggestion that the language at issue is unambiguous; however, we adopt the trial court's holding as a reasonable interpretation of an ambiguous entry. The trial court's judgment of contempt is thus reversed as it is not proper to hold a party in contempt of an ambiguous order.

DONOFRIO, J., concurs.

WAITE, J., concurs.

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