

No. 68052-8-I

---

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

---

MELISSA COOLEY

Petitioner/Appellant,

vs.

ARMANI SADETTANH

Respondent/Respondent,

---

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

---

**BRIEF FOR APPELLANT**

John S. Stocks, WSBA # 21165  
 Jeffrey R. Caffee, WSBA #41774  
 VAN SICLEN, STOCKS & FIRKINS  
 Attorney for Appellant  
 721 45<sup>th</sup> Street NE  
 Auburn, WA 98002  
 (253) 859-8899  
*Attorney for Melissa Cooley*

W554 King County Courthouse  
 Seattle, Washington 98104  
 (206) 205 -0580

FILED  
 COURT OF APPEALS DIV I  
 STATE OF WASHINGTON  
 2012 JUN -8 PM 1:52

 ORIGINAL

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**..... iv

**I. SUMMARY OF CASE AND APPEAL** ..... 1

**II. ASSIGNMENTS OF ERROR** ..... 2

**III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**..... 2

**IV. STATEMENT OF THE CASE** ..... 3

    4.1 Statement of Procedure..... 3

    4.2 The 2008 Order of Child Support Income Tax Exemptions Provision..... 5

    4.3 All Facts and All Reasonable Inferences From the Division of Child Support Records Establish that Mr. Sadettanh was “Not Current” as of December 31, 2010..... 6

    4.4 Court Rulings..... 7

    4.5 Condition Precedent for the Tax Exemption Allocation to the Father ..... 9

    4.6 In 2009, Armani Sadettanh Accumulates Arrears and takes the 2009 Tax Exemption in Violation of the Order of Child Support ..... 10

    4.7 The Arrears of \$128.24 Began in September 2010 and was Not Paid Until January 31, 2011 ..... 12

    4.8 The Lower Court Permits Mr. Sadettanh to take the 2010 Tax Exemption as the Arrears was *De Minimis*..... 14

**V. LEGAL AUTHORITY**..... 16

    5.1 Standard of Review..... 16

A.	The Trial Court’s Finding of Fact Regarding the Arrearage is Reviewed on a Substantial Evidence Basis.....	16
B.	The Trial Court’s Decision to Grant a <i>De Minimis</i> Exception and Failure to Provide Remedy for Appellant is Reviewed <i>De Novo</i> .....	17
C.	The Trial Court’s Failure to Find Contempt and Failure to Award Attorney’s Fees is reviewed for Abuse of Discretion.....	18
5.2	<u>Tax Exemptions are Elements of Child Support</u> .....	20
5.3	<u>There Existed Arrears in the Amount of \$128.24 that was Not Paid Until January 31, 2011</u> .....	23
5.4	<u>“Current” is Synonymous With “No Arrears” and There is No Statutory Provision to Allow Substantial Compliance</u> .....	24
5.5	<u>The Arrears was Not <i>De Minimis</i> and There is No Provision Permitting a <i>De Minimis</i> Deficiency</u> .....	29
5.6	<u>Notice is Not a Requirement for Enforcing Provisions of an Order of Child Support</u> .....	31
5.7	<u>Child Support is a Non-Delegable Duty</u> .....	32
<b>VI.</b>	<b>CONCLUSION</b> .....	33
	<b>UNPUBLISHED OPINIONS</b> .....	Enclosed

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page</b>
<i>Carroll v. Junker</i> , 79 Wn.2d 12, 482 P.2d 775 (1971) .....	18
<i>Gilbert H. Moen Co. v. Island Steel Erectors, Inc.</i> , 128 Wash. 2d 745, 912 P.2d 472 (1996) .....	32
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997) .....	18
<i>In re Marriage of Maccarone</i> , 54 Wn.App. 502, 774 P.2d 53 (1989) .....	23
<i>In re Marriage of Peterson</i> , 80 Wash.App. 148, 906 P.2d 1009, (Wash.App. Div. 1,1995) .....	20
<i>In re Marriage of Sanborn</i> , 55 Wn.App. 124, 777 P.2d 4 (1989) .....	19
<i>King v. Snohomish County</i> , 146 Wn.2d 420, 47 P.3d 563(2002) .....	17
<i>Kruger v. Kruger</i> , 37 Wn.App. 329, 679 P.2d 961 (1984) .....	23
<i>Marriage of Davisson</i> , 131 Wn.App. 220, 126 P.3d 76, rev. denied, 158 Wn.2d 1004, 143 P.3d 828 (2006) .....	18, 19
<i>Marriage of Humphreys</i> , 79 Wn.App. 596, 903 P.2d 1012 (1995).....	18
<i>Marriage of James</i> , 79 Wn.App. 436, 903 P.2d 470 (1995) .....	18
<i>Marriage of Rideout</i> , 150 Wn.2d 337, 77 P.3d 1174 (2003) .....	16
<i>Martinez v. Miller Industries, Inc.</i> , 94 Wn.App. 935, 974 P.2d 1261 (1999) .....	16
<i>Richardson on Behalf of Lanier v. Junious</i> , 134 Misc.2d 148, 509 N.Y.S.2d 759 (N.Y.Fam.Ct.,1986) .....	25
<i>Rzemieniewska-Bugnacki v. Bugnacki</i> , 51 A.D.3d 1029, 859 N.Y.S.2d 467 (N.Y.A.D. 2 Dept.,2008) .....	24

<b>Cases Not for Publication</b>	<b>Page</b>
<i>Pope v. Larmey</i> , 2010 WL 363833 (Ariz.App. Div. 1) (Ariz.App. Div. 1,2010) .....	29
<i>Rohr v. Williams</i> , 2007 WL 4696807 (Ohio App. 7 Dist.) (Ohio App. 7 Dist.,2007) .....	25, 26

**Constitutions, Statutes, and Rules**

RCW 2.24.050 .....	5
RCW 7.21.010(1) .....	19
RCW 26.09.....	27
RCW 26.18.010 .....	1, 27
RCW 26.18.030 .....	27
RCW 26.21A .....	27
RCW 26.26 .....	27
RCW 74.20 .....	27
RCW 74.20A .....	27
R.C. 3119.82 .....	25
R.C. 3121.01(B).....	26

## **I. SUMMARY OF CASE AND APPEAL**

This is a case about unpaid child support. The public policy in our State is for timely, adequate payment of child support. 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.

Father’s child support payments in this case were untimely and inadequate, resulting in monthly overdue amounts (“arrear”). He was not current in his child support payments (i.e., “he was behind”) at the end of the year 2010 (this fact cannot be disputed on this record). As a result, pursuant to the parties’ Order of Child Support, father was not permitted to claim the child in that year, and the mother was then permitted to do so.

Violating the court order, Mr. Sadettanh (father/respondent below) claimed the child for the 2010 tax year despite being behind as of December 31, 2010. A contempt motion was brought by the mother, petitioner/appellant Melissa Cooley, which in part sought to remedy the father’s violation (not for being behind, but for violating the tax exemption provision that dictated what was to occur if father was behind).

The court, however, declined to apply the mandatory remedy and forgave Mr. Sadettanh for his violation, which unfairly benefitted him and

prejudiced the mother. Here, on appeal, petitioner/appellant seeks a ruling that this decision was an abuse of discretion. Appellant seeks a ruling as follows: (a) reversal of the decision below, (b) remand for entry of a judgment for the damages caused by father's violation, and (c) attorney's fees and costs for the underlying motion and this appeal.

## **II. ASSIGNMENTS OF ERROR**

2.1 The trial court abused its discretion by finding that it could not determine if the father was current by December 31, 2010.

2.2 The trial court abused its discretion by creating a couple of novel exceptions to the law of the case doctrine.

2.3 The trial court erroneously failed to remedy the improperly claimed tax exemption by father in 2010.

2.4 The trial court erroneously denied petitioner's motion for contempt.

2.5 The trial court erroneously denied petitioner's motion for attorney's fees.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

3.1 Whether it is an abuse of discretion for the court to make a finding that Mr. Sadettanh was "current" as of December 31, 2010 when there was no evidence, let alone reasonable inferences from any evidence, which would support this finding?

3.2 Whether it is an abuse of discretion when the court ruled that the paying parent did not violate the express provision, but also when the court justified excusing the father by citing unexpressed provisions or exceptions to the language of the court order?

3.3 Whether it is an error of law for the court to ignore the law of the case, which provided a specific remedy when the father was behind on child support on December 31 of his claiming tax year?

3.4 Whether it is an abuse of discretion for the court to create a warning requirement about the father's arrears, which is inconsistent with the court order in question?

3.5 Whether it is an abuse of discretion to deny petitioner's request for attorney's fees when the enforcement of child support provides for attorney's fees to parties who prevail in child support matters?

#### **IV. STATEMENT OF THE CASE**

##### **4.1 Statement of Procedure.**

On June 3, 2008, the King County Superior Court entered an Order of Child Support in the matter of Melissa Sadettanh (aka "Melissa Cooley") and Armani Sadettanh for the support of their common child Kaloni Sadettanh. (CP 1-12). The order required respondent Mr. Sadettanh to make a monthly transfer payment to appellant Melissa Cooley in the amount of \$476.32. (CP 3-4). The parties elected to have the father

submit his child support payments through the Washington State Support Registry (WSSR) and the Division of Child Support/Department of Social and Health Services (DCS/DSHS). (CP 1-12).

From August 1, 2008 until December 31, 2010, Mr. Sadettanh was habitually behind on his court ordered child support obligation. He often accumulated a negative balance each month (referred to as back support owed or "arrear"). In fact, during one particularly egregious payment span, he was behind for thirteen (13) out of seventeen (17) months. (CP 151). In September 2010, Mr. Sadettanh once again began accruing arrears by failing to pay some or all of his mandatory child support. (CP 151). At the end of 2010, Mr. Sadettanh was not current on his child support obligation for that year. (CP 151). Mr. Sadettanh had arrears of at least \$128.24 and payment on arrears was not received until January 31, 2011. (CP 151).

The Order of Child Support states that Mr. Sadettanh is permitted to claim the income tax exemption in even years "so long as he is current in his child support obligation in that year." (CP 5). The arrears as of December 31, 2010, in the amount of \$128.24, was accruing over the course of several months, therefore Mr. Sadettanh knew (or should have known) that he did not qualify for the tax exemption in 2010. Everyone

knew he was behind. Nonetheless, Mr. Sadettanh filed his 2010 tax return claiming their dependent child. (CP 15-36).

On August 24, 2011, Melissa Cooley brought a Motion for Order to Show Cause re: Contempt against Mr. Sadettanh for his violation of 3.17 of the Order of Child Support, as he was not eligible for the 2010 tax exemption of their minor child. (CP 15-36). At the hearing, on September 19, 2011, the commissioner denied the request to hold Mr. Sadettanh in contempt stating that Mr. Sadettanh's arrears was very small. (RP 11-12). The petitioner timely filed for revision on September 29, 2011 and a revision hearing pursuant to RCW 2.24.050 was held on November 17, 2011. The trial court affirmed the commissioner's decision, reasoning that Mr. Sadettanh's arrears was *de minimis* both in value and in delay.

#### **4.2 The 2008 Order of Child Support Income Tax Exemptions Provision.**

The provision relevant to this appeal 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) (emphasis added).

The provision does not address what happens when the father gets close and almost meets the deadline. The provision does not mention it is acceptable if Mr. Sadettanh is only a "*de minimis*" amount behind.

Finally, this provision does not state that a father must first get a warning about his arrears that he already knows (or should know) about. Instead the provision is clear and unambiguous – he only shall claim the child in even years under one condition: “he is current in his child support obligation in that year.”

**4.3 All Facts and All Reasonable Inferences From the Division of Child Support Records Establish that Mr. Sadettanh was “Not Current” as of December 31, 2010.**

According to DSHS/DCS, Mr. Sadettanh was not current as of December 31, 2010. (CP 146-56). According to Melissa Cooley, Mr. Sadettanh was not current as of December 31, 2010. As evidence of Mr. Sadettanh’s arrears (“running negative balance”), petitioner submitted two (2) separate documents proving he was not current on December 31, 2010 and proving he did not become current until a month after his child tax exemption eligibility deadline. Mr. Sadettanh did not settle his arrears until January 31, 2011.

The first document is labeled by DSHS/DCS as the “Case Payment History”. (CP 146-56). The second document is referred to as the “Debt Calculation with running balance.” (CP 146-56). The authenticity, accuracy, and contents of these exhibits were not challenged in any way by the father, and it is doubtful he could have challenged them anyway.

The DCS Debt Calculation showed that Mr. Sadettanh maintained a negative “Running Balance” of \$128.24 in December 2010 that was not resolved until January 31, 2011. (CP 151). The DCS Case Payment History shows that the arrears were not made “current” until a month after the deadline. (CP 147).

Interestingly, when failing to hold Mr. Sadettanh in contempt and/or granting the other remedy sought by the mother (i.e., enforcement of the court order), the court noted on the record that “The father’s on notice, however, after this hearing,” and continued, “he needs to proactively be on top of this or he will not be entitled to the exemption in future years.” (RP 11-12). In response, Petitioner argued, and argues here, that Mr. Sadettanh was already on notice, as is every litigant by virtue of the court’s order; and the father here already needed to be proactive and “on top of this.” Why does he need an additional warning in 2011 that he better be proactive in future years, when he was already under the law of the case – the Order itself. Mr. Sadettanh and his attorney signed the Order of Child Support containing the law of his case under section 3.17 on June 3, 2008.

#### **4.4 Court Rulings**

At the September 19, 2011 contempt hearing, the commissioner ratified the father’s violation of Section 3.17 by letting Mr. Sadettanh keep

the 2010 tax exemption (i.e., not requiring him to amend his tax return), and found that the child support deficiency was *de minimis*. (RP 11). The mother never argued that father was in contempt for being late on his December 1, 2010 obligation, where facts relating to the amount and timing of the payment may be relevant.

The court also did not assess the harm caused by this violation to the mother, i.e., she was unable to claim the exemption on her return, which she was entitled to do under the law of the case. Additionally, the commissioner stated that, despite the records provided by the Division of Child Support, the commissioner was unable to determine whether the arrears was paid in December 2010 or January 2011. (RP 11). This erroneous statement cannot be supported by any facts on this record. Instead, it appears this “decision” by the court stemmed from confusion created only by respondent’s oral argument where his attorney tried to argue that DSHS/DCS was responsible for the delayed payment. (RP 4, 11). First, it is Mr. Sadettanh’s non-delegable duty to ensure timely child support payments. Second, Mr. Sadettanh had arrears that had been building for months. Finally, Mr. Sadettanh had was given an extra 15-day grace period to be able to claim the tax exemption because the actual due date for child support was December 15, 2010. (CP 1-12).

On revision, the trial court upheld the commissioner's decision on similar grounds and adopted the order signed by the commissioner. (CP 134-35). The trial court made similar findings, and additionally reasoned that not only were the arrears *de minimis*, but Mr. Sadettanh was not warned of the arrears. Mother's response was that he does not have to have an extra warning that does not exist in the written order, nor in any case law.

This appeal was timely pursued by the mother, Melissa Cooley seeking to correct the error of law committed below when the court denied petitioner's Motion for Revision. There is no authority to support a *de minimis* exception argument. There is no authority to support a "notice/warning" argument. Moreover, there was no evidence to support a factual finding that Mr. Sadettanh's arrears payment of \$128.24 was made at any time prior to January 31, 2011. Thus, the Court did not have discretion to ignore (or abused its discretion when ignoring) the record and conclude that Mr. Sadettanh was current as of December 31, 2011.

#### **4.5 Condition Precedent for the Tax Exemption Right.**

The tax exemption is a valuable right that the parties can utilize. As part of the child support obligation, Mr. Sadettanh was permitted to take the tax exemption for the dependent child in even years only if a

specific condition was met by the father only. Section 3.17, page 5 of 7, the court made this ruling:

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.

Order of Child Support (CP 1 – CP 12) (emphasis added)

The tax exemption was structured in the manner provided precisely to ensure or create an incentive for Mr. Sadettanh to make sure that he was current in his child support obligation. Although not necessary here, one could argue he loses the right to claim the exemption if he was not current at any time during the year. In this case, however, that interpretation is not necessary because in 2010, he was behind in child support through and until the next year.

So, if he wanted the financial benefit of claiming the dependent child, then without exception, he was required to be current on all child support obligations by December 31, 2010.

**4.6 In 2009, Armani Sadettanh Accumulates Arrears and takes the 2009 Tax Exemption in Violation of the Order of Child Support.**

To show his bad faith, disobedience, the record also shows that Mr. Sadettanh wrongfully took the exemption the year before also. In August 2009 Mr. Sadettanh began accumulating arrears on his child support obligation. (CP 146-56). From August 2009 – October 2009, Mr.

Sadettanh made no payments on his child support obligation. (CP 150). By December 2009, Mr. Sadettanh had accumulated \$1,110.91 in arrears on in child support obligations. (CP 150).

In January 2010, Melissa Cooley was eager to file her 2009 tax return and claim her dependent child as she anticipated a tax refund of \$2,110.00. (CP 58). The Order of Child Support provided the 2009 tax exemption benefit (an odd year) to Melissa Cooley regardless of whether any arrears existed or not. (CP 5). The 2009 tax refund would have been helpful to the mother as she was having to re-budget due to the arrears caused by Mr. Sadettanh (over \$1,000.00 behind on child support). (CP 150). Despite this knowledge, in January 2010, Mr. Sadettanh filed his 2009 tax return claiming their dependent child, another violation of the Order of Child Support. (CP 58).

On February 1, 2010, Melissa Cooley filed her 2009 tax return. (CP 58). Melissa Cooley's tax return was subsequently rejected by the IRS for a duplicate social security number because, unbeknownst to her, Mr. Sadettanh had already claimed their dependent child. (CP 58). Melissa Cooley was then forced to file an amended tax return, without the dependent child tax exemption and, rather than receiving a \$2,110.00 refund, Melissa Cooley had to pay \$15.00 to the IRS. (CP 58). Thus, Mr. Sadettanh denied Melissa Cooley an additional \$2,125.00 in child support

benefits in 2010 (the 2009 tax return) as required by the Order of Child Support. (CP 58).

On February 16, 2010, approximately two weeks after Melissa Cooley's tax return was rejected, Mr. Sadettanh made a large child support payment of \$1,271.05. (CP 148). Despite having the full benefit of Melissa Cooley's tax exemption for the 2009 tax year, Mr. Sadettanh wasted no time in accumulating additional arrears in 2010. (CP 151). By March of that year (March, 2010), Mr. Sadettanh had arrears that continued through May 2010 and by the end of the year, there was still an amount due. (CP 151).

**4.7 The Arrears of \$128.24 Began in September 2010 and was Not Paid Until January 31, 2011.**

The Order of Child Support obligated Mr. Sadettanh to make monthly child support payments of \$476.32. (CP 3). The final six months of Mr. Sadettanh's child support payments in 2010 were made as follows.

In July 2010, Mr. Sadettanh had no arrears and payments for that month totaled \$476.32. (CP 148).

In August 2010, Mr. Sadettanh had no arrears and payments for that month totaled \$476.32. (CP 148).

In September 2010, Mr. Sadettanh made two payments of \$219.84, totaling \$439.68 for the month. (CP 148). This is \$36.64 less than the monthly child support due. He is \$36.64 in arrears. (CP 148).

In October 2010, Mr. Sadettanh made two payments of \$219.84, totaling \$439.68 for the month. (CP 148). This is \$36.64 less than the monthly child support payment. He is now \$73.28 in arrears. (CP 148).

In November 2010, Mr. Sadettanh made two payments of \$219.84, totaling \$439.68 for the month. (CP 148). This is \$36.64 less than the monthly child support payment. He is now \$109.92 in arrears. (CP 147-48).

In December 2010, Mr. Sadettanh made one payment of \$219.84 and another payment of \$238.16, totaling \$458.00 for the month. (CP 147-48). This is \$18.32 less than the monthly child support payment. He is now \$128.24 in arrears. (CP 147).

There were no other payments made during the final six (6) months of 2010. (CP 147-48). In January 2011, Mr. Sadettanh made three child support payments. (CP 147).

On January 3, 2011, Mr. Sadettanh made a payment of \$238.16, one-half of his January 2011 child support obligation. (CP 147). That payment was not applied to the arrears, but instead, in accordance with the

laws of Washington State, to the current child support obligation for that month. (CP 147, 151).

On January 14, 2011, Mr. Sadettanh made a second payment of \$238.16, one-half of his January 2011 child support obligation. (CP 147). Again, that payment was not applied to the arrears, but instead to cover the current child support obligation. (CP 147, 151).

On January 31, 2011, Mr. Sadettanh made his third payment for the month, which was in the amount of \$128.24. (CP 147). This payment was then applied to the arrears as his January 2011 monthly child support obligation had been paid. (CP 147, 151). Mr. Sadettanh was no longer in arrears. (CP 147, 151).

**4.8 The Lower Court Permitted Mr. Sadettanh to Take the 2010 Tax Exemption, Justifying its decision under a *De minimis exception*.**

On August 24, 2011, Melissa Cooley brought a Motion for Order to Show Cause re: Contempt. (CP 15-36). Mr. Sadettanh admitted that he should not have taken the 2009 tax exemption. (CP 40-42). The benefit of the 2009 tax exemption was not provided to petitioner/appellant Melissa Cooley until after September 19, 2011; nearly 20 months after Mr. Sadettanh wrongfully took the 2009 tax exemption. (CP 69-73).

The main issue remaining before the court on September 19, 2011 was whether Mr. Sadettanh wrongfully took the 2010 tax year exemption.

(CP 15-36). Melissa Cooley directed the court to the Division of Child Support records that documented Mr. Sadettanh's payments. (CP 146-56). Additionally, Melissa Cooley provided the 2008 Order of Child Support which did not have any provision for "substantial" compliance with regard to the condition precedent to the father taking any tax exemption that year. This was tantamount to concluding that there was "substantial" compliance as to the sole question of whether Mr. Sadettanh was "current" on his child support obligation. (CP 1-12).

Mr. Sadettanh argued that the \$128.24 child support deficiency was *de minimis* and he should be allowed to take the 2010 tax exemption. (CP 40-42). Based on Mr. Sadettanh's argument, the court ratified his conduct (as he already took the exemption) reasoning that his 2010 deficiency was *de minimis*. (CP 69-73). Appellant here concedes that a "de minimus" argument may be relevant when considering a motion seeking to hold him in contempt for being late that month, but the motion brought in this case was not about him underpaying (3.5 of the Order), nor was it about being tardy (3.9 of the Order), but was instead about violating the tax exemption allocation requirement under 3.17. The Superior Court denied revision and accepted the commissioner's order. (CP 134-35).

## **V. LEGAL AUTHORITY**

### **5.1 Standard of Review.**

#### **A. The Trial Court's Finding of Fact Regarding the Arrears are Reviewed on a Substantial Evidence Basis.**

The trial court's findings of fact can only be upheld if they are supported by "substantial evidence." In family law cases, that standard applies even when the trial court based its ruling on written submissions rather than live testimony. *Marriage of Rideout*, 150 Wn.2d 337,351,77P.3d 1174 (2003).

In our case, the trial court was required to make a finding on one question, i.e., was he current in his child support in 2010? There is no evidence, let alone "substantial evidence," any finding that Mr. Sadettanh was current. The Division of Child Support records revealed evidence that Mr. Sadettanh did have arrears as of December 31, 2010 that went unpaid until January 31, 2011. Consequently, the trial court's finding of fact that Mr. Sadettanh was current at the close of 2010 is not supported by "substantial evidence." Therefore, the trial court's decision must be reversed.

**B. The Trial Court's Decision to Grant a *De Minimis* Exception and Failure to Provide Remedy for Appellant is Reviewed *De Novo*.**

The trial court's conclusions of law are reviewed *de novo*. *King v. Snohomish County*, 146 Wn.2d 420,423-24, 47 P.3d 563(2002). The trial court's decision, which: (1) afforded Mr. Sadettanh a "*de minimis*" exception to the requirement of being current, and (2) failed to provide a remedy to Appellant/Petitioner Melissa Cooley, are questions of law that do not depend on extrinsic evidence. Therefore, *de novo* review is appropriate. See *Martinez v. Miller Industries, Inc.*, 94 Wn.App. 935, 943, 974 P.2d 1261 (1999).

Here, there is no basis a *de minimis* exception when the law of the case stated only so long as he is current. Such an exception is contrary to the delineated public policy of the State of Washington. Moreover, the failure to provide a remedy, as provided in the Order of Child Support, was inappropriate and effectively worked to unjustly modify the Order of Child Support to the detriment of appellant Melissa Cooley. For example, if the Order said, instead, the following: "...so long as he is only \$150 (or less) overdue and cures the arrears within 31 days after the end of the year," then he can claim the exemption. Therefore, the trial court's decision must be reversed.

**C. The Trial Court's Failure to Find Contempt and Failure to Award Attorney's Fees is Reviewed for Abuse of Discretion.**

A trial court's decision on contempt is reviewed for abuse of discretion. *Marriage of Davisson*, 131 Wn.App. 220,224, 126 P.3d 76, rev. denied, 158 Wn.2d 1004, 143 P.3d 828 (2006); *Marriage of James*, 79 Wn.App. 436, 439-40, 903 P.2d 470 (1995). Abuse of discretion is generally defined as discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *Carroll v. Junker*, 79 Wn.2d 12,482 P.2d 775 (1971). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (citations omitted).

Findings of contempt are reviewed with greater scrutiny than most family law rulings. "In reviewing a contempt finding we look for facts constituting a plain order violation and strictly construe the order." *Davisson*, 131 Wn. App. at 224, citing *Marriage of Humphreys*, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995). "Contempt of court is defined

in part as intentional disobedience of a lawful court order." *Id.* at 599, citing RCW 7.21.010(1).

Here, the Court must strictly construe the Order of Child Support's provision regarding income tax exemptions, Section 3.17. The Division of Child Support records indicate that the arrears was not paid until January 31, 2011, which was 31 days after the end of the year, and 46 days after the due date. Strictly construing this order, the decision by the court below regarding contempt must be reversed because the father was behind and not current "in that year." (CP 1-12).

Attorney fee awards under chapter 26 RCW rest within the discretion of the trial court. Thus, the trial court's decision is reviewed for an abuse of discretion – was the decision based on unreasonable or untenable grounds. *In re Marriage of Sanborn*, 55 Wn.App. 124, 130, 777 P.2d 4 (1989).

Here, the court below did not grant the requested attorney's fees as the contempt action for the 2010 tax exemption was denied. Therefore, attorney's fees should have been granted because it was Mr. Sadettanh's disobedience of the Order of Child Support which necessitated the contempt proceedings and attorney's fees.

Therefore, the decisions of the trial court deserve to be reversed.

## **5.2 Tax Exemptions are Elements of Child Support.**

Tax exemptions for dependent children are considered an element of child support. *In re Marriage of Peterson*, 80 Wash.App. 148, 156, 906 P.2d 1009, 1013 (Wash.App. Div. 1,1995). In *Peterson*, the court was presented with the issue of the characterization of the dependent child tax exemption. *Id.* at 155-56. The appellant, John Peterson, asserted that the trial court lacked authority to modify the tax exemption award in a child support modification proceeding as the issue was not before the court. Peterson based this argument on two premises: (1) the tax exemption was a marital property issue; and, (2) the tax exemption could only be altered pursuant to a petition to modify the parenting plan. The Court of Appeals found no merit in either of Peterson's arguments. Instead, the court found that the tax exemption for the dependent child is an element of child support. *In re Marriage of Peterson*, 80 Wash.App. 148, 156, 906 P.2d 1009, 1013 (Wash.App. Div. 1,1995). The court based this finding on the premise that a child's best interests are served when the financial situations of the parents are maximized. Thus, the tax exemption for the dependent child becomes an element of the child support obligations between the parents.

In our case, Mr. Sadettanh's conduct during the end of 2010 and beginning of 2011 maximized his financial situation by effectively getting

to avoid falling behind and then taking the exemption for himself (increasing his refund by over \$2,000), but also damaged, or minimized the mother's financial situation by causing an arrears for her to deal with , causing her to have to file twice because her tax return was rejected, and receiving \$2,100 less in a refund. The tax exemption provision directly relates to Mr. Sadettanh's child support obligation.

Both parents are required to fully support minor children. IF they do, they do receive a financial, tax benefit. Tax breaks for parents include the ability to file as head of household, claiming exemptions for dependents, and being allowed tax credits and payments. The more dependents one may claim, the higher the tax credit will be for exemptions, thus lowering taxable income and taxes due. Also, parents who can claim a child dependent receive an Earned Income Credit (increases with more qualifying children) and additional child tax credits. When one party violates the tax exemption provision, it has the negative effect of costing the other party thousands of dollars. Here, Mr. Sadettanh's unauthorized taking of the 2009 tax exemption directly relates to the 2010 tax exemption as it offset a major deficit in Mr. Sadettanh's contributions to his child support obligations.

By willfully violating the Order of Child Support and taking the 2009 tax exemption, Mr. Sadettanh received a windfall of some

undisclosed amount (to date, Mr. Sadettanh has refused to disclose this tax information). However, there is indirect evidence that he received a tax refund shortly after he filed in January or February 2010. Mr. Sadettanh made a payment to DCS of \$1,271.05 on or about February 16, 2010 to catch up on his arrears stemming back to 2009. Additionally, the record supports the fact that he filed before February 5, 2010, because Melissa Cooley found out about her rejected return prior to that date.

The net result of Mr. Sadettanh's actions was that Melissa Cooley's substantial tax benefit for 2009 was taken by Mr. Sadettanh and used to "catch up" on his child support payments in the amount of \$1,271.05. In doing so, the net effect of Mr. Sadettanh's "catch-up" payment was a negative for Melissa Cooley as she lost a tax return of \$2,125.00 in 2010 (the anticipated tax return for the 2009 tax year).

Ultimately, by the end of 2010, Mr. Sadettanh owed appellant Melissa Cooley \$128.24 (in transfer payment arrears) plus \$2,125.00 (in income tax exemption benefits) for a total of \$2,253.24 in child support arrears. Mr. Sadettanh did not remedy the 2009 tax exemption taken from appellant Melissa Cooley until after September 19, 2011 (when Melissa Cooley was forced to seek contempt on the 2009 tax exemption).

This should not be allowed. Otherwise, the failure to include the income tax exemption within the obligation of child support creates an

incentive for permitting improper claims of the tax exemptions, especially when it is used as a method of “catching up” on child support obligations. Therefore, the \$2,125.00 must be included as a child support obligation and considered a portion of the child support obligation arrears as of December 31, 2010.

**5.3 There Existed Arrears in the Amount of \$128.24 that was Not Paid Until January 31, 2011.**

Even if the Court does not include the 2009 tax exemption (totaling \$2,115.00) as part of the child support obligation, there can be no dispute that Mr. Sadettanh held an arrears of \$128.24 as of December 31, 2010 that was not paid until January 31, 2011.

When an obligor has arrears, the application of a payment received is different than when an obligor is current. 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, Mr. Sadettanh’s payments in January 2011 could not be applied to any arrears until his entire child support obligation for January 2011 was paid.

Here, the Division of Child Support records indicate that, as of the close of 2010, Mr. Sadettanh had arrears of \$128.24. The arrears were not

paid until the third payment of the month, made on January 31, 2011. On the Case Payment History, there are three payments shown for Mr. Sadettanh in January 2011. The payments on January 3<sup>rd</sup> and January 14<sup>th</sup> of 2010 were applied towards the January 2011 child support obligation. The Division of Child Support properly allocated Mr. Sadettanh's child support payments as required by Washington law. There can be no dispute that there was, at the very least, arrears of \$128.24 as of December 31, 2010 that was not paid until January 31, 2011.

**5.4 "Current" is Synonymous With "No Arrears" and There is No Statutory Provision to Allow Substantial Compliance.**

The Order of Child Support states that the father, Mr. Sadettanh, "shall claim the child in even years so long as he is current in his child support obligation in that year." (CP 1-12).

The Washington State Courts have not directly addressed the meaning of the term "current" as it relates to child support obligations. There are two schools of thought when it comes to the meaning of "current," best exemplified in New York and Ohio. New York courts have addressed this issue and have equated "current" to mean the obvious, "no arrears." *Rzemieniewska-Bugnacki v. Bugnacki*, 51 A.D.3d 1029, 1030, 859 N.Y.S.2d 467, 468 (N.Y.A.D. 2 Dept.,2008) (father failed to establish that he was current in his support obligation, with no arrears);

*Richardson on Behalf of Lanier v. Junious*, 134 Misc.2d 148, 150, 509 N.Y.S.2d 759, 761 (N.Y.Fam.Ct.,1986) (Since respondent was current in his payments there can be no arrears).

However, Ohio courts have taken the approach that “current” does not necessarily mean “no arrears.” *Rohr v. Williams*, 2007 WL 4696807, 3 (Ohio App. 7 Dist.) (Ohio App. 7 Dist.,2007). In *Rohr*, the court faced a similar provision that stated the obligor shall take the tax exemption “so long as he remains current in his child support obligation.” *Id.* at 4. The word “current” was a major contention point. *Id.* The court struggled with whether “current” was synonymous with “no arrears.”

The *Rohr* court looked to the Revised Code of Ohio, R.C. 3119.82, which accounted for the designation of dependent child tax exemptions. *Id.* Specifically, R.C. 3119.82 stated:

If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the children and, with respect to orders the court modifies, reviews, or reconsiders, the payments for child support are substantially current as ordered by the court for the year in which the children will be claimed as dependents.

R.C. 3119.82.

In *Rohr*, the modifier “substantially” meant that “current” did not equate to “no arrears” as at least some level of arrears could be present an

and an obligor could still be “substantially current.” *Id.* For example, if an obligee owed \$1,000.00 per month in child support and was \$0.01 in arrears at the end of the year, the obligee would be substantially current in child support.

The court then considered the definition of “default” under R.C. 3121.01(B) which stated a default 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.” *Id.*

The *Rohr* court, because of the statutory provisions of the Revised Code of Ohio, held that “current” meant “not in default” as defined by R.C. 3121.01(B). *Id.* at 5.

Here, the Court should adopt the approach that aligns with Washington State law, public policy, the plain language of the Order of Child Support and hold that “current” is synonymous with “no arrears.”

First, unlike the Revised Code of Ohio, Washington State does not have a statutory provision allowing an obligor to be substantially current rather than actually current when designating tax exemptions. The Revised Code of Ohio presented a unique situation caused by legislative action in regards to tax exemptions. The absence of a similar provision in Washington requires that the Court look to the plain language of the Order of Child Support.

Second, the plain language of the Order of Child Support, and common sense, favor the interpretation that “current” is synonymous with “no arrears.” One cannot be current in his or her child support obligation and, simultaneously, be behind on child support obligations; these are mutually exclusive. By definition, once an obligor has fallen behind on child support obligations, creating arrears, he or she is no longer “current.” Again, this ignores the other interpretation favorable to the mother here that he must be current throughout the year – “in that year.”

Moreover, Mr. Sadettanh cannot retroactively insert the term “substantially” into the Order of Child Support. As is, the Order of Child Support does not leave room for exceptions or substantial compliance.

Finally, the public policy of the State of Washington is strongly in favor of the timely and adequate payment of child support. The Washington State legislature has found that “there is an urgent need for vigorous enforcement of child support and maintenance obligations, and that stronger and more efficient statutory remedies need to be established to supplement and complement the remedies provided in chapters 26.09, 26.21A, 26.26, 74.20, and 74.20A RCW.” RCW 26.18.010. Moreover, the legislature has intended for child support enforcement statutes to be liberally construed to assure that all dependent children are adequately supported. RCW 26.18.030.

Any finding that permits an obligor of child support to have arrears, in any amount, yet still be considered “current” in his or her support obligation would be contrary to Washington State’s need for the vigorous enforcement of child support obligations. It would create a nebulous *de minimis* exception that would chill obligees from exercising tax exemption provisions and from pursuing contempt for failure to pay child support for fear that a commissioner or judge would make a discretionary finding that the obligor’s child support deficiency was only *de minimis*. This *de minimis* determination would certainly vary from commissioner/judge to commissioner/judge even on the same case. As a result, obligees would be faced with the reality that it would simply not be cost effective to enforce an order requiring no arrears for a claim of the tax exemption.

Therefore, “current” must be synonymous with “no arrears” to comport with the Washington State legislature’s public policy statement that “there is an urgent need for vigorous enforcement of child support.” Obligees will only be able to vigorously enforce child support obligations if “current” is equated with “no arrears.”

**5.5 The Arrears was Not *De minimis* and There is No Provision Permitting a *De minimis* Deficiency.**

The arrears in this case were not *de minimis*. While Washington Courts have not addressed what constitutes *de minimis* in the child support context, other jurisdictions have.

In *Pope v. Larmey*, the father (obligor) was not permitted to take the tax exemption for that calendar year as he was not current in his child support obligation. 2010 WL 363833, 4 (Ariz.App. Div. 1) (Ariz.App. Div. 1,2010). The father argued that the \$167.00 child support deficiency was *de minimis* and should be entitled to take the tax exemption. *Id.* The Arizona State Court of Appeals disagreed, finding that arrears of \$167.00 in child support could not reasonably be considered *de minimis*. *Id.*

Here, the \$128.24 arrears is not *de minimis*. Putting aside that any inquiry into whether someone is current or not does not open the door to valuing the amount or sufficiency of the arrears, the arrears were not *de minimis*. When considering the cost of caring for a child, \$128.24 is a significant amount of money that can provide for many essentials, including several weeks' worth of food or clothes for the school year. If compared to Mr. Sadettanh's monthly support obligation of \$476.32, the deficiency was more than 25%, or approximately eight (8) days' worth of basic care needs for the child. Again, the contempt issue was not whether

the father timely and fully paid, but whether taking the exemption despite not being current in that year was a violation of the order.

Additionally, this court must reject Mr. Sadettanh's other argument that the time delay in paying the arrears was *de minimis* as he was, at most, 31 days late.

First, such an argument ignores the reality that Mr. Sadettanh was, in reality, five (5) months late in paying his arrears. In September 2010, Mr. Sadettanh began another run of accruing arrears on his child support obligations. This arrears was not paid and continued to accumulate until January 31, 2012.

Second, such an argument ignores the purpose of a child support obligation. The purpose of child support is for the parents to share in the costs of the basic needs of a child. If the obligor parent is a month late on child support, it has an impact on the obligee's ability to budget and provide for the basic needs of their child. For example, the obligee parent cannot tell the landlord that he or she was only a little behind and late on rent without fear of possible eviction. The obligee parent cannot partially pay for groceries at the store and then pay the rest the following week. A utility bill not paid for several weeks (here, his obligation was due in full on December 15, 2010) puts parents in a potential bind.

Finally, the Order of Child Support is clear, “the father shall claim the child in even years so long as he is current in his child support obligation in that year.” There is no provision in the Order of Child Support or Washington Statute allowing Mr. Sadettanh to “catch-up” on child support in the following tax year to claim he was current in the previous year. Mr. Sadettanh knew the deadline and had accrued arrears for five (5) months prior to paying his child support obligation current.

Had Mr. Sadettanh hypothetically paid the arrears on December 31, 2010, would the clause “so long as he is current in his child support obligation in that year,” mean that he qualifies? One could argue he was still not “current ... in that year” and not qualify. That is, the condition precedent to claiming the exemption is not qualified with “so long as he is current ... in that year, or at least cures not being current in that year by catching-up by December 31.”

Accordingly, there can be no finding that Mr. Sadettanh’s arrears or delay was *de minimis*. The court below must be reversed.

**5.6 Notice is Not a Requirement for Enforcing Provisions of an Order of Child Support.**

If the court permits a party to avoid contempt and go unpunished for violating a court order, then the flood gates would open to repeated claims that one who violates a court order has one free pass. It is

presumed that every party has notice of a court order upon the signing of that court order. Here, Mr. Sadettanh, with legal counsel, signed and approved the entry of the order of Child Support on June 3, 2008. (CP 1-12). The order itself is proof of that notice and no further notice is required under Washington law. The fact that the court indulged any defense that he would be in violation of the order only if he was warned is not supported by authority.

**5.7 Child Support is a Non-Delegable Duty.**

In the State of Washington, the obligation of a parent to support their children is a non-delegable duty.

There are certain duties which are not delegable. *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). A party cannot delegate away a duty imposed by public policy; for example, a general contractor may not delegate away its general duty to ensure safety on a worksite. *Id.*

Here, the public policy of the State of Washington is strongly in favor of the timely and adequate payment of child support. It would be contrary to public policy to permit an obligor parent to delegate his or her child support obligations without consequence. The child support obligation is imposed by public policy and cannot be delegated.

## VI. CONCLUSION

The plain language of the 2008 Order of Child Support does not allow Armani Sadettanh to claim a tax exemption unless he is current in his child support obligation. Mr. Sadettanh was not current in his child support obligation on December 31, 2010 as he was at least \$128.24 in arrears. There is no exception or *de minimis* provision in the Order of Child Support allowing substantial compliance in place of actual compliance.

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 arguments that an obligor parent was “close enough.” Paying within 45 days of the deadline may have mitigated the effect of being late, but the question is not whether Mr. Sadettanh should have been held in contempt for being late, but whether he should have been held in contempt for violating the tax exemption condition precedent. Moreover, obligor parents should not be permitted to benefit from taking tax exemptions, in violation of court orders, to “catch up” on a child support obligation.

Therefore, the Court should hold that the trial court was in error, and/or abused its discretion, requiring this court to reverse the decisions

below. The case should be remanded for entry of a judgment for the damages caused by father's violation, and an award attorney's fees and costs for the underlying motion and this appeal.

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



John S. Stocks, WSBA No. 21165  
Jeffrey R. Caffee, WSBA No. 41774  
Attorneys for Appellant  
721 45<sup>th</sup> Street N.E.  
Auburn, WA 98002  
(253)859-8899  
[jstocks@vansiclen.com](mailto:jstocks@vansiclen.com)  
[jcaffee@vansiclen.com](mailto:jcaffee@vansiclen.com)  
[www.vansiclen.com](http://www.vansiclen.com)

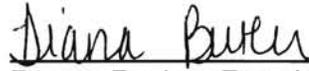
## CERTIFICATE OF SERVICE

I certify that I caused one copy of the foregoing 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:**

Andrea L. Schiers  
Curran Law Firm  
555 W. Smith St.  
Kent, WA 98032

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

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

Not Reported in P.3d, 2010 WL 363833 (Ariz.App. Div. 1)  
 (Cite as: 2010 WL 363833 (Ariz.App. Div. 1))

**H**

Only the Westlaw citation is currently available.

Court of Appeals of Arizona,  
 Division 1, Department E.  
 In re the Marriage of Michael V. POPE, Petitioner/Appellee,  
 v.  
 Krystal D. LARMEY, f/n/a Krystal D. Pope, Respondent/Appellant.

No. 1 CA-CV 09-0007.  
 Feb. 2, 2010.

West KeySummaryChild Support 76E ↪141

76E Child Support

76EIV Amount and Incidents of Award

76Ek141 k. Tax Consequences. Most Cited

Cases

Internal Revenue 220 ↪3297

220 Internal Revenue

220V Income Taxes

220V(I) Deductions

220V(I)1 In General

220k3294 Deduction for Personal Exemptions

220k3297 k. Children. Most Cited

Cases

Father was not authorized to claim children as exemptions on tax return, as he failed to pay his child support obligation in full by the end of the year. Father and mother had two children together, for whom father was required to pay \$167.00 per month to mother as child support. However, father failed to pay child support one of the months as required.

Appeal from the Superior Court in Maricopa County; Cause Nos. DR 2000-19822; DR 2000-019959; The Honorable Carey Snyder Hyatt, Judge. AFFIRMED IN PART; VACATED IN PART.

Joel L. Brand, Phoenix, Attorney for Appellant.

Janice M. Palmer, Chandler, Attorney for Appellee.

**MEMORANDUM DECISION**

HALL, Judge.

\*1 ¶ 1 Krystal D. Larmy (Mother) appeals from the trial court's order that she sign certain tax forms to allow Michael V. Pope (Father) to claim tax exemptions for their children. For the reasons that follow, we affirm the trial court's order in part and vacate it in part.

**FACTS AND PROCEDURAL HISTORY**

¶ 2 The facts relevant to the issue on appeal are as follows. Mother and Father married on May 3, 1992. During the course of their marriage, the parties had two children. On November 8, 2000, Father filed a petition for dissolution.

¶ 3 As part of the parties' dissolution decree, entered October 20, 2003, the trial court ordered Father to pay Mother \$167.00 per month in child support. The trial court also ordered:

that Father may claim the minor children ... as tax exemption[s] every year until such time as [Mother] obtains fulltime employment. At that time, Father shall claim both children every even-numbered year and [the parties' son] every odd-numbered year. Father shall claim the tax exemption[s] so long as he remains current with his child support obligations at the end of each calendar year.

¶ 14 On October 12, 2004, Mother filed a petition to modify custody and parenting time. In a signed minute entry entered May 11, 2005, the trial court changed the parties' custody status from joint to sole custody in favor of Mother. On June 22, 2005, however, the trial court denied Mother's request to modify child support, finding "the evidence does not show a change in circumstances which are substantial and continuing." Soon thereafter, Mother filed a motion for reconsideration, which the trial court denied.

¶ 15 On March 17, 2006, Mother filed another request to modify child support. After a hearing, the trial court ordered that Father pay Mother \$969.93 per month in child support, commencing April 1, 2006. As to the tax exemptions for the children, the trial court

Not Reported in P.3d, 2010 WL 363833 (Ariz.App. Div. 1)  
(Cite as: 2010 WL 363833 (Ariz.App. Div. 1))

ordered that Father would have the tax exemption for the parties' son every year and the tax exemption for the parties' daughter every even year so long as he "has paid all child support and arrears ordered for the year by December 31 of that year."

¶ 6 On September 17, 2008, Father filed a motion requesting that the trial court compel Mother to sign the necessary tax forms to allow him to take the parties' children as exemptions on his taxes. As explained in the motion, Father claimed the children as tax exemptions in his 2005, 2006, and 2007 income tax returns pursuant to the terms of the court's order. Father also stated that he is current in his child support obligations. The Internal Revenue Service (IRS), however, disallowed the exemptions for those years because Mother also claimed the children as tax exemptions.

¶ 7 On October 16, 2008, Mother filed a response to Father's motion.<sup>FN1</sup> Mother argued that: (1) Father's motion failed to comply with procedural rules; (2) Father's failure to timely request that Mother sign IRS Form 8332<sup>FN2</sup> constituted "a waiver of the exemption[s]"; (3) Father's request "should be denied by the equitable defense of laches"; and (4) Father had been in arrears in the amount of \$167.00 since September 2006, permitting Mother to take the exemptions in 2006 and 2007 pursuant to the court order.

<sup>FN1</sup>. For reasons that are unclear, Mother's filed response was not included in the record submitted on appeal. Mother has attached the response to her reply, however, and it was clearly filed with the trial court and considered by the court in its ruling. Therefore, to the extent Father argues that Mother waived any challenge to his motion by failing to respond, his argument is without merit.

<sup>FN2</sup>. Form 8332 is the Release of Claim to Exemption for Child by Custodial Parent Form.

\*2 ¶ 8 In its October 28, 2008 signed minute entry, the trial court initially found that oral argument on the matter was "unnecessary" because "the issues ha[d] been thoroughly briefed." The court then stated:

[E]ven taking the facts set forth in [Mother's] Response as true, [Father] is entitled to relief. The fact

that [Father] may have belatedly filed his tax returns or belatedly requested the appropriate forms be signed by [Mother] does not void his entitlement to the court-ordered tax exemptions. Moreover, [Mother's] claim that [Father] is in arrears of his child support obligation for the subject years is irrelevant (in view of the fact that [Mother's] claimed arrears amount is minute). Therefore,

IT IS ORDERED granting [Father's] motion and directing [Mother] to sign the appropriate tax forms to allow [Father] to claim the court-ordered tax exemptions for the years 2005, 2006, and 2007....

IT IS FURTHER ORDERED that [Father] shall pay any balance on his monthly arrears payments due for the subject tax years, which pursuant to the Response to the instant motion is \$167.00 for the year 2006, on or before November 28, 2008.

¶ 9 Mother timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(C) (2003).

#### DISCUSSION

¶ 10 On appeal, Mother first argues that the trial court erred by ruling on Father's motion without holding an evidentiary hearing. As support for her claim, Mother relies on Marco v. Superior Court, 17 Ariz.App. 210, 496 P.2d 636 (1972).

¶ 11 In Marco, a court commissioner entered an order restraining each party from "annoying or molesting" the other, but permitting the parties to continue residing in the same home. *Id.* at 211, 496 P.2d at 637. Soon thereafter, each party filed a petition with the court claiming that the other had violated the restraining order. *Id.* Without holding a hearing, the trial court entered an order permitting the husband to remain in the residence and requiring the wife to vacate the premises within two days. *Id.* at 211-12, 496 P.2d at 637-38. The wife's attorney objected, arguing that the trial court's ruling was based solely on hearsay allegations contained in the petitions rather than proper evidence. *Id.* at 212, 496 P.2d at 638. On appeal, we held that the trial court denied the wife's right to due process by entering an injunction without permitting her "to have a hearing on the matter, cross-examine the witnesses and present evidence to the court." *Id.*

Not Reported in P.3d, 2010 WL 363833 (Ariz.App. Div. 1)  
(Cite as: 2010 WL 363833 (Ariz.App. Div. 1))

¶ 12 Mother contends that, as in *Marco*, she was denied her right to due process. We disagree.

¶ 13 Unlike *Marco*, Mother did not request the opportunity to present evidence. Instead, she argued that Father's motion was "subject to summary dismissal based on [her] response." More importantly, however, this is not a case in which the trial court essentially made a credibility determination based on conflicting pleadings. Rather, here, the trial court accepted all of Mother's statements as true, but determined Father was nonetheless entitled to relief. Because Mother never requested a hearing and the trial court accepted all of her statements as true, we cannot say that the trial court erred by ruling on Father's petition without holding a hearing and allowing her to present evidence.

\*3 ¶ 14 Next, Mother argues that the trial court erred "by not allowing the defense of laches" to apply to her taking the 2005 <sup>FN3</sup> tax exemption. She further argues that this defense is such a "fact intensive" inquiry that it requires a hearing. Under the circumstances, we disagree.

FN3. Mother only raises this claim as to the 2005 tax exemption and we therefore do not consider it as to any other year.

¶ 15 As to the 2005 tax exemption, no material facts are in dispute. Pursuant to the trial court's October 6, 2003 order, Father was permitted to claim both the parties' children as tax exemptions every year until Mother "obtain[ed] fulltime employment" and then both children every even year and their son every oddnumbered year thereafter, "so long as he remains current with his child support obligations at the end of each calendar year." Mother has not alleged that Father is in arrears for any child support owed in 2005 and Father has stated that he has paid his child support obligations in full. Nonetheless, in contravention of the trial court's order, Mother claimed the parties' children as tax exemptions in 2005.

¶ 16 "It is a cardinal rule of equity that [one] who comes into a court of equity, seeking equitable relief, must come with clean hands," *MacRae v. MacRae*, 57 Ariz. 157, 161, 112 P.2d 213, 215 (1941), although "[t]he application of the 'clean hands' doctrine rests in the sound discretion of the trial court." *Manning v. Reilly*, 2 Ariz.App. 310, 314, 408 P.2d 414, 418

(1965). In light of Mother's clear violation of the trial court's order allocating the tax exemptions between the parties, the court did not abuse its discretion in denying her laches defense.

¶ 17 Finally, Mother argues that the trial court erred by finding Father's failure to pay \$167.00 in child support in 2006 was "minute" and therefore did not negate Father's right to claim the tax exemptions according to the court's ordered schedule.

¶ 18 We review a child support order for an abuse of discretion. *Cummings v. Cummings*, 182 Ariz. 383, 385, 897 P.2d 685, 687 (App.1994). A court abuses its discretion when "it commits an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or 'the record fails to provide substantial evidence to support the trial court's finding.'" *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, 50, ¶ 27, 156 P.3d 1149, 1155 (App.2007) (quoting *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982)). We review a trial court's interpretation of the Arizona Child Support Guidelines (Guidelines), A.R.S. § 25-320 app. (2007), de novo. *Clay v. Clay*, 208 Ariz. 200, 202, ¶ 5, 92 P.3d 426, 428 (App.2004).

¶ 19 In her response to Father's motion, Mother claimed that he failed to pay \$167.00 in child support in 2006 but acknowledged that he was otherwise current. In his motion, Father asserted that he had paid his child support obligations in full.<sup>FN4</sup>

FN4. Mother asserts that Father was alerted of the deficiency during his cross-examination at an August 4, 2006 hearing. A record of the hearing is not contained in the appellate record.

¶ 20 As reflected in the payment record attached to Mother's response, Father failed to pay \$167.00 in 2006. He consistently paid his monthly child support obligation of \$167.00 through June of that year, and then, after the trial court ordered that the child support award be modified to \$969.93 per month, retroactive to April, Father paid \$5,151.58, making his child support payments \$167.00 short through September 2006.

\*4 ¶ 21 Pursuant to Section 27 of the Guidelines,

Not Reported in P.3d, 2010 WL 363833 (Ariz.App. Div. 1)  
(Cite as: 2010 WL 363833 (Ariz.App. Div. 1))

“[t]he allocation of the exemptions shall be conditioned upon payment by December 31 of the total court-ordered monthly child support obligation for the current calendar year and any court-ordered arrearage payments due during that calendar year for which the exemption is to be claimed.” When these conditions are met, “the custodial parent shall execute the necessary Internal Revenue Service forms to transfer the exemptions.” *Id.* “If the noncustodial parent has paid the current child support, but has not paid the court-ordered arrearage payments, the noncustodial parent shall not be entitled to claim the exemption.” *Id.*

¶ 22 The Guidelines do not provide a de minimis exception to the full payment requirement and, even if the Guidelines provided such an exception, the failure to pay one month of child support could not reasonably be considered minute. Thus, applying the Guidelines here, Father was not authorized to claim the parties' children as exemptions in 2006 because he failed to pay his child support obligation in full by the end of that year and the trial court abused its discretion in finding otherwise. Contrary to Mother's claim, however, Father was permitted to claim the parties' children as exemptions pursuant to the court's ordered schedule in 2007 because he had paid his child support in full that year and Mother failed to pursue a court order for the 2006 arrearage. ¶ 23 Therefore, Father was authorized to claim the parties' children as exemptions in 2005 and 2007 pursuant to the ordered schedule, but was not permitted to claim the children as exemptions in 2006. Father requests an award of his attorneys' fees on appeal pursuant to A.R.S. § 25-324 (Supp.2009). In our discretion, we deny his request.

#### CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's order in part and vacate it in part.

CONCURRING: SHELDON H. WEISBERG, Presiding Judge, and JOHN C. GEMMILL, Judge.

Ariz.App. Div. 1,2010.  
Pope v. Larmey  
Not Reported in P.3d, 2010 WL 363833 (Ariz.App. Div. 1)

END OF DOCUMENT

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 Plaintiff-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

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.))

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.

FN1. 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-

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.))

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. Oblige be ordered to execute the necessary forms, including IRS Form 8332, to facilitate the taking of the exemption by the Obligor."

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.))

{¶ 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

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.))

(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. *Blake-more 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.

Ohio App. 7 Dist., 2007.  
Rohr v. Williams  
Not Reported in N.E.2d, 2007 WL 4696807 (Ohio App. 7 Dist.), 2007 -Ohio- 7207

END OF DOCUMENT