

Civil Contempt Cases*

Homecare of Va., Inc. v. Jones, 2004 Va. App. LEXIS 178 (April 20, 2004)

Court of Appeals of Virginia (Unpublished)

Issue Relevant to Contempt: Whether the circuit court had sufficient evidence and the authority to find Jones in contempt and sentence him to incarceration until he purged himself.

Background:

- The Dept. Of Social Services denied a renewal license to Homecare of Virginia, Inc., an assisted living facility operated by Jones.
- The Dept. later sought and was granted an injunction to prevent Jones from operating without a license, and the court ordered Jones to reduce the number of residents to three.
- A show cause was issued against Jones alleging his failure to comply with the injunction.

Jones Argued: He challenged the sufficiency of the evidence supporting the finding of contempt.

Circuit Ct Held: The court found Jones in contempt, sentencing him to six months of incarceration or until he purged himself by moving all but three residents.

COA Held: The circuit court properly held Jones in contempt and permissibly imposed a period of incarceration to compel him to comply with the court's order.

RULE: Willful disobedience to any lawful . . . order of court is contempt and . . . punishable as such.

RULE: A trial court has the authority to hold an offending party in contempt for acting in bad faith or for willful disobedience of its order.

International Union, United Mine Workers of America v. Covenant Coal Corp., 12 Va.App. 135 (1991)

Court of Appeals of Virginia

ISSUE: Whether the circuit court fines were proper coercive fines in a civil matter designed to force compliance with the court's injunction, or whether the fines were a criminal sanction imposed to vindicate the court's authority.

Background:

- Coal companies were seeking injunctions against various unions for violating Virginia right to work laws.
- On multiple occasions, the circuit court issued temporary injunctions prohibiting the unions from interfering with the coal companies' facilities.
- After alleged violations of the injunction, the companies filed numerous show causes against the unions and the individuals involved.

Unions Argued: The fines were criminal contempt fines rather than civil contempt fines, and they were denied constitutional protections afforded to criminal defendants.

Companies Argued: The fines were coercive in nature and hence still civil contempt fines.

Circuit Court Held:

- At the first civil show cause hearing, the court found the unions were in contempt and fined each union 50k with 25K suspended on the condition that going forward, the unions would comply with the injunction. The court directed these fines to be paid to the Commonwealth.
- In a second civil show cause hearing regarding additional alleged violations, the court found the unions again were in contempt. The court ordered the unions to pay additional fines, including a 175k fine and a 75k fine, and it reinstated the 25k suspended fines, with all of these fines payable to the Commonwealth. Further, the court expressly conveyed it was not applying the criminal burden of proof, of beyond a reasonable doubt, asserting this was because it was not a criminal matter.

COA Held: The circuit court held the penalties imposed were criminal, and the circuit court could not impose criminal penalties without utilizing the “beyond a reasonable doubt standard.”

3 DISTINCT RULES:

- Criminal contempt proceeding > based on either affirmative or prohibitive injunctions: a court may utilize 1) determinate prison sentences and 2) unconditional fines.
- Civil contempt proceeding > based ONLY on an affirmative injunction: a court may utilize 1) determinate prison sentences WITH a purge clause and 2) compensatory fines.
- Civil contempt proceeding > based ONLY on a prohibitive injunction: a court may utilize 1) compensatory fines.

RULE: Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.

RULE: (In civil matters) Relief in the form of imprisonment is remedial if the defendant stands committed unless and until he performs the affirmative act, and (In criminal matters) it is punitive if the sentence is limited to imprisonment for a definite period.

RULE: Criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings, including the requirement that the offense be proven beyond a reasonable doubt.

Koons v. Crane, 72 Va. App. 720 (2021)

Court of Appeals of Virginia

Issue Relevant to Contempt: Whether a party's intent to violate a court order is relevant for a finding of civil contempt.

Background:

- Wife filed a show cause based on Husband's failure to comply with financial obligations in their Final Decree.
- Husband did not appear at the initial hearing and later attempted, unsuccessfully, to make a special appearance due to claims of defective service.
- Husband had never updated his address listed in the Final Decree as his residence.

Husband Argued: He should not be found in contempt because his violations of the Final Decree were not willful, but rather due to his alleged financial inability to pay.

Circuit Court Held: Willfulness is not a required element to find Husband in civil contempt of the order. Nonetheless, the court found Husband willfully violated numerous court-ordered obligations without justification.

COA Held: Upheld the circuit court's ruling.

RULE: In a civil show cause hearing, the moving party need only prove that the offending party failed to comply with an order. Once the movant proves noncompliance, the burden is on the obligor to provide justification for the failure to comply.

Leisge v. Leisge, 224 Va. 303 (1982)

Supreme Court of Virginia

Issue Relevant to Contempt: Whether a civil contempt proceeding requires the element of *mens rea* or the specific intent to violate a court order.

Background:

- The parties were engaged in an interstate custody battle regarding their daughter.

- Originally, a Virginia court awarded primary physical custody to Wife.
- Husband was granted visitation. During a visit with his daughter, in New Mexico, Husband claimed he observed concerning issues regarding his daughter and sought an emergency custody order in New Mexico. Wife then obtained a temporary order from a Virginia court barring father from pursuing further relief in New Mexico and directing him to return the daughter. The next day, the New Mexico court granted Husband temporary custody, despite knowledge of Virginia's prior orders.
- Husband refused to return the child to Wife.
- The Virginia court then found Husband to be in contempt and sentenced him to imprisonment with a purge clause and a fine of \$500 fine, per day, until he complied with the Virginia order and brought their daughter back.
- Eventually, Wife was able to retrieve their daughter, and Husband later appeared before the Virginia court.

Husband Argued:

- That a prior custody order was void, and, thus, he could not be in contempt.
- That he did not possess the *mens rea* or the specific intent to violate the court order.
- That the amount the circuit court ordered to reimburse Wife was not based upon the evidence establishing these were incurred and reasonable.

Circuit Ct Held:

- The circuit court previously had addressed the custody order and declared it to be valid.
- Husband's *mens rea* is not a necessary element in a civil contempt proceeding.
- The circuit court remitted the fine it previously had imposed but ordered a suspended sentence of 90 days conditioned upon good behavior and obeying the Court's orders.
- The court ordered Husband to pay \$25,000 to Wife for attorney fees and costs, which it deemed was reasonable and less than her total costs.

COA Held: It affirmed the circuit court's ruling.

RULE: Initially, a court must decide whether it is a civil or criminal contempt proceeding.

RULE: The absence of willfulness does not relieve a party from a finding of civil contempt.

Mills v. Mills, 70 Va. App. 362 (2019)

Court of Appeals of Virginia

Issue Relevant to Contempt: Whether the court improperly imposed criminal contempt sanctions in a civil contempt proceeding.

Background:

- Husband filed a motion for show cause alleging Wife violated several sections of their Separation Agreement which was incorporated in the Final Decree.
- The relevant sections of the Agreement are: (1) Wife was to maintain particular terms of her life insurance policy, (2) the parties were to alternate who would claim the youngest child on their taxes each year, and (3) the parties would foster love, affection, and respect between the children and both parents, and refrain from doing anything to interfere with the love and affection of the children of the other party.

Wife Argued: The circuit court erred in classifying its contempt findings as civil rather than criminal, and, in doing so, the court failed to provide the procedural safeguards required to protect her due process rights.

Circuit Held:

- (1) Wife in contempt regarding the life insurance policy: Wife withdrew the cash value of the policy and ceased paying its premiums.
 - a. Sanction: Wife ordered to obtain a new life insurance policy within 30 days.
- (2) Wife in contempt regarding the taxes: Wife claimed the child dependency tax exemption during Husband's year, in violation of the PSA.
 - a. Sanction: Wife ordered her to pay husband \$1,066, which the court found represented the damages incurred by Husband.
- (3) Wife in contempt regarding interfering with love and affection: Wife intentionally had interfered with the love, affection, and respect of the children for Husband.
 - a. Sanction: Wife imposed a fine of \$1,000 to prevent further violations. The fine was suspended but conditioned upon no future violations.

COA Held:

- (1) Affirmed
- (2) Affirmed
- (3) Reversed; Held the circuit court erred by imposing a criminal sanction in what it maintained was a civil proceeding

RULE: In general, a person found in civil contempt can avoid any sanction imposed by simply providing the relief to which the other party was entitled; in contrast, in cases of criminal contempt, the punishment, whether fine or imprisonment, is deemed to be criminal if it is determinate and unconditional.

RULE: In determining whether a contempt proceeding is civil or criminal, the classification of the underlying proceeding from which the contempt arises is not dispositive because criminal contempt may arise from and be tried within a civil proceeding.

RULE: It is not the fact of punishment, but rather its character and purpose, that often serve to distinguish between the two classes of contempt cases (civil and criminal).

Analysis:

- (1) Wife in contempt regarding the life insurance policy: wife withdrew the cash value of the policy and ceased paying its premiums.
 - a. Sanction: Wife ordered to obtain a new life insurance policy within 30 days.
 - b. **COA: The sanction is permissible because it was wholly remedial for the benefit of the injured party. It restored Husband to a position he would have been in had Wife not violated the PSA.**
- (2) Wife in contempt regarding the taxes: Wife claimed the child dependency tax exemption during Husband's year, in violation of the PSA.
 - a. Sanction: Wife ordered her to pay husband \$1,066, which the court found represented the damages incurred by Husband.
 - b. **COA: The sanction is permissible because it was wholly remedial for the benefit of the injured party. It restored Husband to a position he would have been in had Wife not violated the PSA.**
- (3) Wife in contempt regarding interfering with love and affection: Wife had intentionally interfered with the love, affection, and respect of the children for Husband.
 - a. Sanction: Wife imposed a fine of \$1,000 to prevent further violations. The fine was suspended but conditioned upon no future violations.
 - b. **COA: This was a criminal sanction because its primary purpose was punitive rather than remedial. The sanction addressed wrongful past conduct, not a compensatory fine, and further, it required Wife to pay the fine to the court, not Husband.**

Powell v. Ward, 15 Va. App. 553 (1993)

Court of Appeals of Virginia

Issues Relevant to Contempt:

- **Issue 1:** Whether a court must grant a trial by jury in a contempt proceeding.
- **Issue 2:** Whether there are different procedural requirements a court must adhere to if it transforms from a civil contempt proceeding to a criminal contempt proceeding.

Background:

- Appellants were anti-abortion activists
- Appellants were convicted of criminal contempt for violating a permanent injunction that prohibited them from unlawful interference with the operations of an abortion clinic. The injunction was designed to keep the demonstrators on or beyond the public sidewalk and to enjoin them from trespassing onto the clinic's private property.

ISSUE 1:

Appellants Argued: Their criminal contempt finding must be reversed because they were denied their right to jury trial.

Circuit Court Held: Appellants did not have the right to a trial by jury trial under the circumstances of their case.

COA Held: Upheld the circuit court's ruling

RULE: Courts are clothed with the power to punish contempt and must be authorized to exercise it without referring to the issues of fact or law ... to a jury, if the punishment is limited to petty contempt, with a penalty not exceeding six months.

Analysis: The circuit court sentenced Appellants to thirty days in jail. Since the punishment was limited, they were not entitled to a trial by jury.

ISSUE 2:

Appellants Argued: The actions were not in contempt of the injunction, and further, if they were, the circuit court imposed criminal contempt sanctions in a civil contempt proceeding.

Circuit Court Held:

- The circuit court essentially conducted a criminal contempt trial and disclosed this to Appellants at the close of the evidence.
- The court found them in contempt.

COA Held:

- The circuit court should have clearly articulated the criminal nature of the proceedings at the earliest possible moment. Thereafter, the court should have substituted the Commonwealth as the party to prosecute this action. This operates to ensure that the defendants are afforded all their Constitutional rights.
- The lack of notice to Appellants of the transformation substantially prejudiced them.

RULE: A circuit court should have clearly articulated the criminal nature of the proceedings at the earliest possible moment.

RULE: In a criminal contempt proceeding, the defendant is presumed to be innocent, his guilt must be proven beyond a reasonable doubt, and he cannot be compelled to testify against himself; a criminal contempt proceeding is between the public and the defendant and is not a part of the original cause.

Street v. Street, 24 Va. App 14 (1997)

Court of Appeals of Virginia

Issue Relevant to Contempt: Whether the circuit court acted improperly by not allowing Husband to present evidence of his defense.

Background:

- The parties' Final Decree ordered Husband to pay Wife child support and spousal support.
- After entry of the Final Decree, Husband closed his carpet installation business because he purported it was not making money, and he began employment with another company making substantially less than at the time the Final Decree was entered.
- Wife filed a show cause against Husband regarding non-payment.
- During two separate show cause hearings, Husband's counsel attempted to present evidence, including a witness, regarding his alleged inability to pay as a proposed justification to the contempt. The circuit court would not allow Husband's counsel to present this evidence at either hearings.
- While the show cause matter was pending, Husband filed a motion to amend/reduce his support. This motion was denied.

Husband Argued: The circuit court erred in not allowing him to present evidence.

Circuit Ct Held: The court held Husband in contempt for willfully violating the support orders and jailed him until he made a substantial payment toward the arrearage and filed a written plan outlining his future compliance with the order. During a review hearing, the court released him from jail, but ordered him to file a second better plan. At the final hearing, the court entered an order finding Husband in contempt.

COA Held: The circuit court erred when it refused to allow Husband to call witnesses to prove that he was unable to pay his court-ordered support obligations. Further, depending upon the evidence Husband presented, he may not have been found in contempt depending upon the court applying the correct standard in its analysis.

RULE: A defendant charged with out-of-court (plenary) contempt must be given the opportunity to present evidence of their defense, including the right to call witnesses. The due process clause of the Fourteenth Amendment requires that alleged contemnors have a reasonable opportunity to meet the charge of contempt by way of defense or explanation . . . they have their right to their day in court.

RULE: A payor spouse who is unable to pay his support obligations due to a good faith, voluntary reduction in income is unlikely to have his support obligations modified under *Antonelli*, but this same payor spouse cannot be found in contempt unless the evidence shows that the reduction in his income was also contumacious as set forth in *Laing*.

Walker-Duncan v. Duncan, 2004 Va. App. LEXIS 26 (January 20, 2004)

Court of Appeals of Virginia (Unpublished)

Issue Relevant to Contempt: Whether a party's claim that a civil contempt finding is in violation of their Thirteenth Amendment right against involuntary servitude.

Background:

- A GAL was appointed by the circuit court in the midst of a contentious divorce.
- The court entered an order requiring both parties to pay equally the GAL's invoice and that the court would "grant judgment" if it was not paid within thirty days.
- The GAL filed a show cause against Wife due to non-payment.

Wife Argued:

- She argued the circuit court should enter a judgment against her rather than use the court's contempt power, particularly due to her not having funds to pay the invoice.
- She argued that an order of civil contempt would violate the Thirteenth Amendment's proscription against involuntary servitude, citing a case both that was criminal in nature, unlike her own civil case, and also which addressed the subject matter of continued confinement after serving the sentence.

Circuit Ct Held: The court found appointing the GAL was essential to the case, that Wife has the ability to pay the GAL's fee, and that Wife is in civil contempt and may purge the contempt by paying the fee.

COA Held:

- The circuit court could find her in contempt after determining she failed to comply with an order.
- Wife's Thirteenth Amendment claim was not applicable because she was not a criminal defendant nor did her matter involve continued confinement after serving a sentence.

RULE: In a show cause civil hearing, the moving party need only prove that the offending party failed to comply with an order of the trial court. The offending party then has the burden of proving justification for his or her failure to comply.

Winn v. Winn, 218 Va. 8 (1977)

Supreme Court of Virginia

Issue Relevant to Contempt: Whether Husband's actions actually constituted contempt of the order.

Background:

- The parties entered into a Settlement Agreement, which was incorporated into their Final Decree.

- The Agreement/Final Decree included a provision regarding health insurance, specifically, “Husband agrees that he will maintain for a period of two years from the execution of this Agreement the present group hospitalization policy carried on the Wife through the Traveler’s Insurance Company, or a similar policy containing substantially the same benefits . . .”
- At all times pertinent to this controversy, Husband maintained in full force and effect the Travelers policy mentioned in the Agreement.
- On one occasion following the divorce, Wife was treated, and Travelers paid her claim for benefits.
- On a later occasion, Wife was treated, and Travelers refused to pay her claim when it discovered her divorce had become final.
- Wife filed a show cause against Husband alleging he failed to comply with the order.

Husband Argued: He asserts he did not fail to comply with the order in that the order provided two options (maintaining the Traveler’s policy or securing another policy). He asserted he chose to maintain the Traveler’s policy and Wife cannot complain now because he did not make another choice which might have guaranteed payment of benefits after she got a divorce.

Wife Argued: Husband failed to comply with the order in that the Agreement should be interpreted, as the circuit court interpreted it, to carry out the intent of the parties, that after the divorce, Wife should be protected by hospitalization insurance.

Circuit Ct Held: Husband failed to comply with the order and entered a judgment ordering Husband to repay Wife for the amount of the uncovered claim.

COA Held: Reversed; Husband was not in contempt of any provision in the order.

RULE: As a general rule, before a person may be held in contempt for violating a court order, the order must be in definite terms as to the duties thereby imposed upon him, and the command must be expressed rather than implied.

***For ease of reference, not all quotations herein are noted/cited/exact. We take no credit for any such quotations and encourage you to look to the original text for exact quotations.**