

MICHIGAN COURT OF APPEALS

Butler v. Butler, 80 Mich. App. 696

265 N.W.2d 17 (1978) · No. No. 28389 · Decided January 23, 1978

SUMMARY

The Michigan Court of Appeals reviewed a contempt judgment against a parent who failed to pay child support arrearages. The court held that physical ability to work is not, by itself, sufficient to support civil contempt, but affirmed because the trial court also found that the plaintiff had failed to make a diligent effort to obtain employment and comply with the support order. The court affirmed the 30-day jail sentence suspended upon payment toward the arrearage.

CASE DETAILS

|                       |                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Michigan Court of Appeals                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Bashara, J.; J.H. Gillis, P.J.; H.L. Heading, J.                                                                                                                                                                                 |
| JURISDICTION          | Michigan                                                                                                                                                                                                                         |
| DECIDED               | January 23, 1978                                                                                                                                                                                                                 |
| DOCKET                | No. 28389                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Plaintiff appealed an order finding him in civil contempt for failing to make child support payments required by a divorce judgment and sentencing him to 30 days in jail, suspended upon payment of \$300 toward the arrearage. |
| PRECEDENTIAL VALUE    | Published Michigan Court of Appeals opinion                                                                                                                                                                                      |
| PARTIES               | Butler, plaintiff v. Butler, defendant                                                                                                                                                                                           |

TOPICS

- child support
- family law procedure
- remedies
- appellate procedure

PRACTICE AREAS

- family law
- child support
- civil contempt
- appellate procedure

QUESTIONS PRESENTED

1. Whether a civil-contempt judgment for failure to pay child support may be sustained when the contemnor is physically able to work but the trial court must also determine whether he made a diligent effort, or reasonably endeavored, to obtain the means to comply with the support order.
2. Whether the trial court properly found plaintiff in contempt and imposed a suspended jail sentence after considering his medical condition and lack of demonstrated employment efforts.

## HOLDINGS

1. Physical ability to work is not, standing alone, a sufficient basis for sustaining civil contempt for failure to make child support payments. The court must inquire into whether the alleged contemnor has sufficient ability, or could acquire sufficient ability through due diligence, to comply with the support order.
2. The contempt judgment was proper because the trial court considered plaintiff's efforts to comply, found that his arthritis did not eliminate all employment opportunities, allowed additional time before sentencing, and found that plaintiff had neglected or refused to exercise due diligence to obtain the ability to pay.

## KEY QUOTATIONS

*“Civil contempt is a coercive remedy, designed to induce compliance with a court order by imposing the threat of incarceration until the contemnor renders that compliance.” (700)*

*“However, if the alleged contemnor has made a diligent effort to obey the court's order, but is unable to acquire the requisite means for compliance, no amount of coercive force applied in a civil contempt proceeding will alter that state of circumstances.” (700)*

## FACTUAL BACKGROUND

Plaintiff owed \$9,025 in child support and had not engaged in gainful employment for four or five years. His only stated income was public assistance, and he claimed arthritis while appealing an adverse disability determination. The trial court found that his condition did not prevent all employment and that he had not shown what efforts he made to obtain work or why he could not secure employment.

## PROCEDURAL HISTORY

The trial court found a child-support arrearage of \$9,025 and held plaintiff in contempt. After initially appearing without counsel, plaintiff appeared with counsel at sentencing and moved to set aside the contempt judgment, presenting medical evidence concerning his arthritis; the trial court denied the motion and imposed the suspended jail sentence. The Michigan Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Sword v. Sword, 399 Mich. 367, 249 N.W.2d 88 (1976)
- Sword v. Sword, 59 Mich. App. 730, 229 N.W.2d 907 (1975)

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