

SUPREME COURT OF NEBRASKA

State on behalf of Mariah B. & Renee B. v. Kyle B.

298 Neb. 759 (2018) · No. S-16-1142 · Decided January 26, 2018

SUMMARY

The Nebraska Supreme Court reviewed a civil contempt order against a father for failing to pay court-ordered child support. The court held that the statutory presumption of contempt, together with the evidence, supported the finding of willful noncompliance, but explained that a purge amount must be within the contemnor’s present ability to pay to remain coercive rather than punitive. The appeal was affirmed.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	January 26, 2018
DOCKET	S-16-1142
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kyle B. appealed a district court order finding him in civil contempt for failure to pay child support and imposing a suspended 60-day jail sanction subject to a payment-based purge plan.
STANDARD OF REVIEW	In a civil contempt proceeding seeking remedial relief, legal issues are reviewed de novo, factual findings for clear error, and the determination of contempt and the sanction for abuse of discretion. Ability to pay the purge amount is reviewed for clear error; whether the facts establish a due process violation is reviewed as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kyle B. v. State of Nebraska on behalf of Mariah B. and Renee B., minor children

TOPICS

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QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that Kyle willfully disobeyed the child support order.
2. Whether a valid child support order established evidence or a presumption of Kyle's ability to pay the ordered support.
3. Whether the purge plan required payments beyond Kyle's present ability to pay and therefore imposed an impermissible punitive sanction in a civil contempt proceeding.
4. Whether the district court's failure to make an express finding regarding Kyle's present ability to comply with the purge order constituted plain error.

HOLDINGS

1. The district court did not clearly err in finding Kyle in willful civil contempt. Civil contempt requires intentional disobedience with knowledge of the violated order, and the statutory rebuttable presumption of contempt for delinquent child support encompasses willfulness.
2. In a child-support contempt proceeding, a valid child support order is evidence of the parent's ability to pay the amount ordered, and a guideline-based support order carries a presumption of correctness that may be rebutted by evidence of changed circumstances.
3. A purge amount in a civil contempt order must be within the contemnor's present ability to pay within the period specified. A present inability to comply is a defense to incarceration, and a sanction becomes punitive if the contemnor lacks the ability to purge the contempt.
4. The contemnor bears both the burden of production and the burden of persuasion to establish present inability to comply with a civil contempt purge order. The showing requires evidence that the contemnor exhausted available assets and borrowing opportunities and could not obtain the funds necessary to comply.

KEY QUOTATIONS

“For the punishment to retain its civil character, the contemnor must, at the time the sanction is imposed, have the ability to purge the contempt by compliance and either avert punishment or, at any time, bring it to an end.” (772)

“Contemnors in civil contempt must carry the keys of their jail cells in their own pockets.” (772)

“A past ability to comply with an order does not show a present ability to purge the contempt.” (773)

FACTUAL BACKGROUND

Kyle B. was adjudicated the father of two children and ordered to pay \$230 per month in child support based on an earning capacity of \$8 per hour for 40 hours per week. He made no payments and was \$2,551.59 in arrears when the contempt hearing occurred. Kyle testified that he was unemployed, disabled, and unable to pay, but provided no financial records, medical documentation, employment records, or evidence that he had exhausted assets or borrowing opportunities. The district court found that he had the ability to pay, held him in willful civil contempt, and imposed a suspended jail sanction conditioned on specified monthly payments.

PROCEDURAL HISTORY

The district court established Kyle as the biological father of Mariah B. and Renee B. and ordered him to pay \$230 per month in child support. After he made no payments and accrued \$2,551.59 in arrears, the court found him in willful civil contempt and ordered a suspended 60-day jail sentence conditioned on payment of current support and arrears. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hossaini v. Vaelizadeh, 283 Neb. 369, 808 N.W.2d 867 (2012)
- Sickler v. Sickler, 293 Neb. 521, 878 N.W.2d 549 (2016)
- Novak v. Novak, 245 Neb. 366, 513 N.W.2d 303 (1994)
- Smeal Fire Apparatus Co. v. Kreikemeier, 279 Neb. 661, 782 N.W.2d 848 (2010)
- D'Angelo v. Guarino, 88 So. 3d 683 (La. App. 2012)
- In re Interest of Noelle F. & Sarah F., 3 Neb. Ct. App. 901, 534 N.W.2d 581 (1995)
- Faaborg v. Faaborg, 254 Neb. 501, 576 N.W.2d 826 (1998)
- State on behalf of A.E. v. Buckhalter, 273 Neb. 443, 730 N.W.2d 340 (2007)
- Sylvis v. Walling, 248 Neb. 168, 532 N.W.2d 312 (1995)
- United States v. Armstrong, 781 F.2d 700 (9th Cir. 1986)
- Arbor Farms v. GeoStar Corp., 305 Mich. App. 374, 853 N.W.2d 421 (2014)
- Reed v. Reed, 265 Mich. App. 131, 693 N.W.2d 825 (2005)
- In re Wilson, 879 A.2d 199 (Pa. Super. 2005)
- Polli v. Vina, 557 So. 2d 55 (Fla. App. 1990)
- State v. Masilko, 226 Neb. 45, 409 N.W.2d 322 (1987)
- State v. Reuter, 216 Neb. 325, 343 N.W.2d 907 (1984)

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