

COMMONWEALTH COURT OF PENNSYLVANIA

Upper Augusta Township v. BMMA, LLC

Upper Augusta Township · No. 1373 C.D. 2021 · Decided October 23, 2025

SUMMARY

The Commonwealth Court of Pennsylvania held that a trial court improperly sentenced BMMA, LLC’s principal to 60 days’ incarceration for civil contempt without specifying a condition allowing him to purge the contempt. The court explained that a civil contempt order must state what the contemnor must do to obtain release, while a criminal contempt proceeding requires additional procedural safeguards. The court reversed the portion of the trial court’s order imposing the incarceration sentence.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Mary Hannah Leavitt, Senior Judge; Patricia A. McCullough, Judge; Lori A. Dumas, Judge
JURISDICTION	Commonwealth Court of Pennsylvania
DECIDED	October 23, 2025
DOCKET	1373 C.D. 2021
DISPOSITION	reversed
PROCEDURAL POSTURE	BMMA, LLC and its principal, Robert Gilligbauer, appealed the Court of Common Pleas of Northumberland County's order finding them in contempt and sentencing Gilligbauer to 60 days' incarceration.
STANDARD OF REVIEW	The Court reviews a court order to determine whether the trial court committed an error of law or abused its discretion.
PRECEDENTIAL VALUE	published
PARTIES	BMMA, LLC, Robert Gilligbauer v. Upper Augusta Township

TOPICS

- contempt
- remedies
- municipal law
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil contempt
- municipal zoning enforcement
- appellate procedure
- remedies

QUESTIONS PRESENTED

1. Whether the trial court erred or abused its discretion by sentencing Gilligbauer to incarceration for civil contempt without specifying a condition that would permit him to purge the contempt.
2. Whether, if the order was intended as criminal contempt, the trial court violated the required procedural safeguards for indirect criminal contempt, including notice and an opportunity to prepare and present a defense.

HOLDINGS

1. Before a contemnor may be incarcerated for civil contempt, the order must clearly state the condition that will permit the contemnor to purge the contempt and obtain release. The trial court's unconditional 60-day incarceration order was invalid because it contained no such condition.
2. The November 4, 2021 order could not be sustained as an order of indirect criminal contempt because Gilligbauer was not afforded the procedural safeguards required in a criminal contempt proceeding, including adequate notice and an opportunity to prepare and present a defense.

KEY QUOTATIONS

“A civil adjudication of contempt ‘coerces with a conditional or indeterminate sentence of which the contemnor may relieve himself by obeying the court’s order[.]’” (9)

“There is no air in this requirement. It is of no moment whether it is the first or fourth time the individual has been adjudged a contemnor.” (9)

“In the absence of a purge condition, ‘a commitment for civil contempt is improper.’” (10)

“Because BMMA was not afforded the procedural safeguards required in a criminal contempt proceeding, the order of November 4, 2021, cannot be sustained as an order of criminal contempt.” (11)

FACTUAL BACKGROUND

BMMA, a limited liability company operated by its sole member and manager Robert Gilligbauer, owned and operated a junkyard in Upper Augusta Township. The parties resolved earlier zoning-enforcement litigation through a court-approved stipulation requiring BMMA to install a fence, keep disabled vehicles away from the front of the property and adjoining highway, and inspect the property weekly. After repeated alleged violations and prior contempt findings, the trial court imposed a 60-day jail sentence on Gilligbauer without providing a condition by which he could purge the contempt.

PROCEDURAL HISTORY

Upper Augusta Township brought multiple civil enforcement and injunction proceedings against BMMA concerning violations of the Township's zoning ordinance and a court-approved stipulation requiring installation and maintenance of a fence and removal of disabled vehicles. After three prior contempt proceedings, the trial court held BMMA and Gilligbauer in contempt on November 4, 2021, ordered payment of \$500 and costs, and sentenced Gilligbauer to 60 days in jail without stating a purge condition. The trial court denied reconsideration,

and the Commonwealth Court stayed the incarceration pending appeal before reversing the incarceration portion of the order.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The portion of the Court of Common Pleas of Northumberland County's November 4, 2021 order sentencing Gilligbauer to 60 days of incarceration is reversed. No further remand instruction is stated.

CASES CITED

- North Strabane Township v. Majestic Hills LLC, 329 A.3d 87, 103 (Pa. Cmwlth. 2024)
- West Pittston Borough v. LIW Investments, Inc., 119 A.3d 415, 421 (Pa. Cmwlth. 2015)
- Borough of Slatington v. Ziegler, 890 A.2d 8, 11 n.1 (Pa. Cmwlth. 2005)
- Department of Environmental Protection v. Cromwell Township, Huntingdon County, 32 A.3d 639, 653 (Pa. 2011)
- Commonwealth v. Bowden, 838 A.2d 740, 760 (Pa. 2003)
- County of Fulton v. Secretary of Commonwealth, 292 A.3d 974, 1004, 1027 (Pa. 2023)
- Diamond v. Diamond, 792 A.2d 597, 600 (Pa. Super. 2002)
- Cecil Township v. Klements, 821 A.2d 670, 675 (Pa. Cmwlth. 2003)
- Fetzer v. Fetzer, 336 A.3d 1058, 1065, 1067-1068 (Pa. Super. 2025)
- In re Martorano, 346 A.2d 22, 28-29 (Pa. 1975)
- Crozer-Chester Medical Center v. Moran, 560 A.2d 133, 136-138 (Pa. 1989)
- Commonwealth v. McMullen, 961 A.2d 842, 849 (Pa. 2008)
- Knaus v. Knaus, 127 A.2d 669, 674 (Pa. 1956)
- Diamond v. Diamond, 715 A.2d 1190, 1194 (Pa. Super. 1998)
- Lerch v. Unemployment Compensation Board of Review, 180 A.3d 545, 550 (Pa. Cmwlth. 2018)
- Commonwealth v. Bartic, 303 A.3d 124, 132 (Pa. Super. 2023)
- Commonwealth v. Pruitt, 764 A.2d 569, 576 (Pa. Super. 2000)

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