

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2248

September Term, 2014

MARIA DEL PILAR WILLIAMS

v.

MATTHEW W. WILLIAMS

Zarnoch,
Graeff,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 9, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from a petition for contempt filed by Matthew W. Williams, Appellee, against Maria Del Pilar Williams, Appellant, in the Circuit Court for Anne Arundel County. In the contempt petition, Matthew alleged that Maria violated conditions governing the parties' behavior and visitation with their child, which were embodied in the parties' judgment of absolute divorce (entered on March 10, 2011), an amended order (entered June 25, 2012), and a consent order for standard conditions of parental behavior (entered August 23, 2013).¹ As relief, Matthew requested that the court find Maria in contempt, set an appropriate purge provision for the contempt, and award make-up visitation and attorney's fees and costs. After a merits hearing held on November 12 and 13, 2014, on the contempt petition and other motions concerning custody and visitation, the court entered an order on December 9, 2014, finding Maria in contempt, ordering her to pay \$750.00 in attorney's fees to Matthew, and setting out visitation and etiquette terms by which the parties must abide. Notably, the order did not include an express provision for the purge of the contempt.

On appeal, Maria raises one issue for our review:

- “Whether the Circuit Court erred by finding Appellant in contempt but failing to specify how the contempt may be purged.”

For the reasons set forth below, we vacate the judgment of contempt because it did not include the purge provision. However, because the award of attorney's fees was based on Maryland Code (1984, 2012 Repl. Vol.), Family Law Article (“F.L.”)

¹ We refer to the parties by their first names to avoid confusion and mean no disrespect.

§ 12-103(c) and Maryland Rule 1-341, that award still stands, as do the other provisions of the December 9, 2014, order.

BACKGROUND

On March 10, 2011, the parties were divorced pursuant to a judgment of absolute divorce, which stated that the parties shared joint legal custody of their child, gave physical custody to Maria, and vested Maria with final decision-making authority. Two years later, on August 23, 2013, the court entered a consent order for standard conditions of parental behavior, which required, *inter alia*, that “[a]ll conversations, interactions and dealings of any sort between the panics shall be conducted in a civil and courteous manner” and that “[e]ach party shall give the other party timely notice of the minor child’s medical appointments, school events, parent-teacher meetings, counseling sessions or the like.” On January 7, 2014, Matthew filed a petition for contempt against Maria alleging violations of the parties’ judgment of absolute divorce, amended order, and order for conditions of parental behavior. That same day, he filed a motion to modify legal custody of the parties’ child, which Maria answered and opposed on January 27, 2014. In her response to the petition for contempt, dated March 20, 2014, Maria denied all allegations that she willfully violated the judgments and consent orders.

Following discovery and hearings before family magistrates, the court held a merits hearing on November 12 and 13, 2014, to resolve the issues raised in the contempt petition and the motion to modify custody. After receiving evidence and hearing the testimony presented by the parties, none of which is disputed on appeal, the court found Maria in contempt for violations of the conditions of parental behavior order. In

discussing the contempt, the court indicated that its purpose was to effectuate compliance with the order and noted that Matthew had requested relief in the form of an award of counsel fees. The court then awarded attorney’s fees in the amount of \$750.00 to Matthew on the grounds of: 1) the contempt, and 2) its finding that Maria defended the contempt without substantial justification.

On December 9, 2014, the court entered an order embodying the oral rulings made on November 13, 2014. The order contained numerous provisions concerning the visitation schedule of the parties’ child and requiring civil conduct between the parties.

With regard to the contempt finding and attorney’s fees, the order provided:

ORDERED that the Plaintiff’s Petition for Contempt be and is hereby granted against Defendant as to Counts B and C, with the Court noting that Count A was disposed of at the March 31, 2014 hearing; and it is further

ORDERED the Defendant shall pay unto the Plaintiff the sum of \$750.00 for the Plaintiff’s attorney fees associated with the above-referenced contempt[.²]

The written order did not contain a purge provision, i.e., it did not reveal how Maria could purge the contempt.

Maria noticed her appeal on December 31, 2014.

² Although the order directed Maria to pay Matthew \$750.00 in attorney’s fees, a subsequent provision in the order directed Matthew to contribute \$5,000.00 to Maria’s attorney’s fees and offset that amount by the \$750.00 that Maria owed to Matthew. Thus, even though we mention “payment” of the attorney’s fee award in the amount of \$750.00, we recognize that it is Matthew who will actually be paying Maria, less the \$750.00 owed to him.

DISCUSSION

Maria asks this Court to vacate the order finding her in contempt. Maria does not contest the circuit court’s finding of contempt, nor does she allege error in the provisions of the court’s December 9, 2014, order that concern visitation with parties’ child and require the parties to maintain a civil rapport. The only error that Maria alleges is the failure of the order to contain a provision specifying the method by which she can purge her contempt. Matthew did not file an appellee’s brief and did not participate in oral argument.

The instant appeal is from a finding of constructive civil contempt.³ Civil contempt “is intended to preserve and enforce the rights of private parties to an action and to compel obedience to orders entered primarily for their benefit.” *Bryant v. Howard Cnty. Dep’t of Soc. Servs. ex rel. Costley*, 387 Md. 30, 46 (2005) (citing *State v. Roll & Scholl*, 267 Md. 714, 728 (1973) (stating that civil contempt proceedings are remedial and coercive in nature)). To further its coercive nature, a court-imposed penalty must provide a way for the contemnor to purge his or her contempt, that is, “it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant’s ability to perform.” *Id.*; see *Herd v. State*, 37 Md. App. 362, 364-65 (1977) (noting that the requirement that an order of civil contempt contain a “provision for purging” or “opportunity for purging,” means “that the contemner must be afforded the chance to rid himself of guilt and thus clear himself of the charge”).

³ Constructive contempt, as distinguished from direct civil contempt, is contempt committed outside of the presence of the judge presiding in court. See Md. Rule 15-202.

This requirement is reflected in Maryland Rule 15-207(d)(2), which states: “When a court or jury makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of civil contempt, the order shall specify how the contempt may be purged.” Thus, in the case of constructive civil contempt, the rule requires that a written contempt order specify both the sanction for the contempt and the means by which the contempt may be purged.

At the merits hearing, the court found Maria in contempt and noted that “the purpose and function of a [contempt] order is not just to punish someone but to in effect act as leverage to get them to comply with the order that is in effect after this.” The court also noted that Matthew requested an award of counsel fees in the petition for contempt. In the written order, the court granted Matthew’s petition for contempt, in part, and ordered Maria to pay Matthew “\$750.00 for the Plaintiff’s attorney fees associated with the above-referenced contempt[.]”

It is clear from the court’s oral ruling and the language of the order that the court intended as purge provisions Maria’s compliance with the order and her payment of attorney’s fees. The court connected the contempt with Maria’s future payment of attorney’s fees and her continued compliance with the visitation schedule and the behavioral conditions set out by the order. If Maria complied with the order, the court likely would have found her contempt to have been purged, and barring the existence of Rule 15-207, we would uphold the court’s ruling and order as a valid judgment of contempt. However, the clear language of the rule states that the written order shall “specif[y] the sanction imposed for the contempt[, and] . . . how the contempt may be

purged.” Md. Rule 15-207(d)(2). The written order did not specify how Maria may purge the contempt; therefore, we vacate the contempt order.

Nevertheless, the parties are still bound by the order’s other provisions. In its oral ruling, the court found that Maria defended the contempt petition without substantial merit or justification and ordered her to pay attorney’s fees pursuant to Maryland Rule 1-341 and F.L. § 12-103(c). Thus, Maria is still bound by the order to pay \$750.00 attorney’s fees and bound by the order’s other provisions detailing the visitation schedule and requiring civility.

**JUDGMENT OF THE CIRCUIT
COURT FOR ANNE ARUNDEL
COUNTY VACATED IN PART.
COSTS TO BE PAID BY THE
APPELLEE.**