

Circuit Court for Caroline County  
Case No. C-05-FM-20-000076

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 199

September Term, 2022

---

CLARENCE R. OTTEY, III

v.

MICHELE OTTEY

---

Arthur,  
Zic,  
Harrell, Glenn T., Jr.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Arthur, J.

---

Filed: February 7, 2023

\*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.

The Circuit Court for Caroline County held an unrepresented litigant in constructive civil contempt of court because of his failure to comply with his obligations in a judgment of absolute divorce. He appealed. We vacate the judgment because the order is defective in that it fails to impose a sanction for the litigant’s contempt.

### **BACKGROUND**

On September 3, 2021, Clarence R. Ottey, III (“Husband”), and Michele Ottey (“Wife”) reached an oral agreement to resolve their divorce litigation. On November 3, 2021, the circuit court entered a judgment of absolute divorce, which incorporated the terms of the oral agreement.

The judgment required Husband to apply to refinance the marital home within 10 days of the oral agreement, a date that had already passed. The order also required Husband to have the home professionally cleaned before the appraisal occurred. In addition, the order required Husband to transfer \$265,000.00 from his IRA account at Morgan Stanley to an IRA account at Morgan Stanley in Wife’s sole name. The court reserved on the question of whether it would award attorneys’ fees to Wife under the Family Law Article.

On December 6, 2021, the court ordered Husband to pay \$12,819.04 in attorneys’ fees to Wife. Husband did not note an appeal from that order or from the judgment of absolute divorce.

Meanwhile, on December 14, 2021, Wife filed what she called a petition for constructive civil contempt and a motion to enforce the judgment and settlement

agreement.<sup>1</sup> Wife complained that Husband had failed to apply for the refinancing of the marital home, that he had not had the home professionally cleaned, and that he had not cooperated with Morgan Stanley to effectuate the transfer of the funds in the IRA.

On December 15, 2021, the court ordered Husband to answer the petition by February 8, 2022, and to appear in person on March 1, 2022, to show cause why he should not be held in contempt. The show cause order contained the “Advice of Rights” language required by Md. Rule 15-206(c)(2)(C). Thus, the order advised Husband, among other things, that he had allegedly violated a court order, could be found in contempt, and might go to jail until he obeyed the court’s order, and that he had the right to a lawyer.

Husband was served with the show cause order and the accompanying “Advice of Rights” on January 11, 2022.

On January 20, 2022, Wife filed another petition for constructive civil contempt. In this petition, Wife complained principally that Husband had failed to obey the December 6, 2021, order requiring him to pay \$12,819.04 in attorneys’ fees. She asked that this petition be consolidated with the earlier petition.

On that same day, January 20, 2022, the court ordered Husband to answer the petition by February 22, 2022, and to appear in person on March 1, 2022, to show cause

---

<sup>1</sup> This was actually Wife’s second petition for constructive contempt: she filed the first petition on September 14, 2021, before the parties’ oral agreement had even been incorporated into a court order. Wife appears not to have served the first petition on Husband.

why he should not be held in contempt. Like the previous show cause order, this order contained the “Advice of Rights” language advising Husband, among other things, that he had allegedly violated a court order, could be found in contempt, and might go to jail until he obeyed the court’s order, and that he had the right to a lawyer.

Husband was served with the second show cause order and the accompanying “Advice of Rights” on January 27, 2022.

Husband did not file an answer to either of the contempt petitions. Instead, on the afternoon of February 28, 2022, less than 24 hours before the scheduled hearing, he moved for a continuance or a postponement. In support of the motion, Husband asserted that he had learned that day that his lawyer’s appearance had been stricken in December 2021. He said that he needed time to consult with new counsel on the matter of “refi[n]ancing tax issues.” He represented that his new counsel had “reached out to opposing counsel,” but had received no response.

The show cause hearing proceeded as scheduled on the following day, March 1, 2022. Husband appeared without a lawyer; Wife’s lawyer was present.

At the outset of the hearing, the court took issue with Husband’s assertion that his lawyer’s appearance had been stricken. The court observed that there was nothing in the record to suggest that the lawyer’s appearance had been stricken. Wife’s attorney added that she too saw nothing to suggest that Husband’s lawyer’s appearance had been stricken. The court and the attorney apparently did not realize that under Rule 2-132(d) a lawyer’s appearance “is automatically terminated upon the expiration of the appeal

period,” which occurred no later than 30 days after December 6, 2021, when the court ordered Husband to pay \$12,819.04 in attorneys’ fees to Wife.

The court proceeded to confirm that Husband had been served with the show cause orders. It noted that the orders advised Husband that he had the right to an attorney; that he should not wait until the day of the hearing to get an attorney; and that if he did not have an attorney before the hearing date, the court might find that he had waived his right to an attorney and might hold the hearing even though he was unrepresented. The court also confirmed that Wife did not seek to have Husband incarcerated as a sanction for his alleged contempt. Consequently, the court found that Husband had waived his right to counsel at the hearing.

When the court turned to the merits of the pending motions, the judge asked Wife’s attorney whether she had conferred with Husband. The attorney responded that she had not, because she believed that Husband was still represented by counsel. She added that she and her colleague had sent letters and emails to Husband’s (former) attorney.

The court mentioned the assertion in Husband’s motion for a continuance, that his new attorney had been in touch with Wife’s counsel. Wife’s attorney responded that another attorney had reached out to her colleague, but had said that she had not yet been retained.

When Husband began to address the court, he said that on “the eighteenth” – apparently meaning February 18, 2022 – he had spoken to a second attorney about “tax

stuff.” Husband later asserted that the second attorney had agreed to represent him if he could get a continuance.

Husband introduced an email, dated February 18, 2022, from the other attorney to one of Wife’s attorneys. According to the email, the second attorney had told Husband that she “couldn’t get involved unless the show cause hearing was moved and time extended for response was pushed by 2 weeks.” She asked whether Wife’s attorney would agree to agree to a postponement. The record does not disclose the response, if any.

On the merits, Husband claimed that he had been unable to refinance the home because of tax liens, which, he said, might affect how much money Wife receives from the refinancing. After the court established that Husband did not have any documentation to substantiate his claim about the liens, he volunteered that he had put the refinancing “on hold” and that on February 18, 2022, he had “stopped” the refinancing “because of the tax issue.” He claimed that he could not obtain an appraisal until the amount of the tax liens was known. He said that he would have the house professionally cleaned once he had gotten a date for the appraisal.

Husband testified that he did not know of the order requiring him to pay Wife’s attorneys’ fees until the day before the show cause hearing. He admitted that he had received Wife’s petition for constructive contempt, which mentions his failure to comply with the order requiring him to pay the fees. He also admitted that he had seen the

original order requiring him to pay Wife’s attorneys’ fees. He claimed, however, that he did not understand the documents because he is not a lawyer.

Husband admitted that he had met with Morgan Stanley in November 2021, but did not complete the paperwork to transfer the funds from his IRA account to Wife’s until February 25, 2022. Although his testimony is not entirely clear, he seems to have said that the “mortgage company” advised him to hold onto the funds. He said that he did not know that there was a time limit on when he had to transfer the funds. It appears that, as of the date of the hearing, the transfer would occur once Wife had signed the paperwork.

During the hearing, Wife made an oral motion for the appointment of a trustee to sell the marital home.

At the conclusion of the hearing, the circuit court delivered an oral ruling. The court began by expressing doubt about the veracity of Husband’s testimony and frustration with the delays that Husband had occasioned. The court also expressed concern about why Husband’s attorney had not appeared, but conceded that “there may be a good reason why” she was not present.<sup>2</sup> The court found Husband in contempt because he failed to follow through with the process of obtaining the appraisal, failed to have the home professionally cleaned, and failed to pay Wife’s attorneys’ fees. The court found that Husband was not in contempt because of his failure to request the appraisal in

---

<sup>2</sup> Indeed, there was a good reason, as the attorney’s appearance had been stricken as a matter of law once the time for taking an appeal had passed almost two months earlier. *See* Md. Rule 2-132(d).

the first instance or his failure to effectuate the transfer of funds from the IRA. As grounds for the latter decision, the court observed that the judgment of absolute divorce did not impose an express deadline on when the transfer must occur. The court added, however, that Husband had not acted in good faith.

The court announced that it would give Husband 30 days to complete the refinancing of the home. The court said that, if Husband did not complete the refinancing within 30 days, it would sign Wife’s proposed order, which does not appear to be in the record.<sup>3</sup>

The court also announced that it had signed Wife’s proposed order requiring Morgan Stanley, which was not a party to the case and was unrepresented at the hearing, to transfer the \$265,000.00 that Husband had been ordered to transfer plus \$12,819.04 (the amount of the attorneys’ fee award) from Husband’s IRA to Wife. The court reserved its decision on the question of whether Husband should pay the attorneys’ fees that Wife had incurred in pursuing the contempt petitions, saying that it would review the question after 30 days (apparently to assess the extent to which Husband had complied with the latest round of orders).

After the hearing, the court issued two written orders.

The first is dated March 1, 2022, the date of the hearing, and appears to be the order that the court said that it had signed at the hearing. Among other things, that order

---

<sup>3</sup> Perhaps this was an order appointing a trustee to effectuate the sale.



required Morgan Stanley, which again was not a party, to transfer a total of \$277,819.04 (\$265,000.00 plus \$12,819.04) from Husband’s IRA account to an IRA account in Wife’s sole name.

In the second, dated March 4, 2022, the court found that Husband was in contempt because he had failed to have an appraiser perform an appraisal of the marital home, had failed to have the home professionally cleaned before the appraisal, and had failed to cooperate with the bank so that the refinancing could occur with “all due haste.”<sup>4</sup> The order imposed no sanction for the contempt, but did require that the refinancing be completed within 30 days of March 1, 2022. The order went on to state that, if Husband did not complete the refinancing within those 30 days, the court would appoint a trustee to oversee the sale of the marital home. Much like the judgment of absolute divorce, the order required Husband to cooperate with Morgan Stanley to effectuate the transfer of funds from his IRA account to Wife’s, adding that he must do so with “all due haste.” As the court said it would do at the hearing, the order reserved the decision on the question of whether Husband should pay the attorneys’ fees that Wife had incurred in pursuing the contempt petitions, saying that it would look at the issue again after 30 days (apparently to assess the extent to which Husband had complied with the latest round of orders).

---

<sup>4</sup> In its oral ruling at the end of the hearing on March 1, 2023, the court found Husband in contempt because he failed to follow through with the process of obtaining the appraisal, failed to have the home professionally cleaned, and failed to comply with the order requiring him to pay Wife’s attorneys’ fees. At that time, the court had declined to find Husband in contempt for his alleged failure to cooperate with the bank to complete the refinancing.

Husband noted a timely appeal.

### **QUESTIONS PRESENTED**

Husband presents four questions, which we have distilled into two:

1. Did the circuit court err or abuse its discretion in refusing to grant a postponement and in requiring Husband to go forward at the contempt hearing without an attorney?
2. Is the contempt order defective?<sup>5</sup>

---

<sup>5</sup> Husband formulated his questions as follows:

I. DID THE COURT ABUSE ITS DISCRETION BY DENYING APPELLANT’S REQUEST FOR A POSTPONEMENT ONCE THE COURT KNEW HE HAD AN ATTORNEY OF RECORD WHO FAILED TO APPEAR TO REPRESENT HIM?

II. DID THE COURT VIOLATE MD RULE 15-206(E) WHEN IT FOUND APPELLANT HAD WAIVED HIS RIGHT TO COUNSEL WITHOUT GIVING HIM AN OPPORTUNITY TO EXPLAIN HIS COUNSEL’S FAILURE TO APPEAR AND WITHOUT FINDING THAT THERE WAS NO MERITORIOUS REASON FOR APPEARING WITHOUT COUNSEL?

III. DID THE COURT VIOLATE APPELLANT’S RIGHT TO DUE PROCESS BY MAKING HIM REPRESENT HIMSELF IN A CONTEMPT HEARING WHEN THE COURT KNEW APPELLANT HAD AN ATTORNEY OF RECORD WHO FAILED TO APPEAR TO REPRESENT HER CLIENT?

IV. DID THE COURT ERR BY FINDING CONTEMPT WITHOUT WILLFUL CONDUCT, BY ORDERING PURGE PROVISIONS THAT HAD NOTHING TO DO WITH THE REASONS FOR FINDING APPELLANT IN CONTEMPT BY INCLUDING PROVISIONS THAT EXCEEDED HIS [sic] AUTHORITY, AND BY ORDERING APPELLANT TO DO SOMETHING OUTSIDE OF HIS CONTROL?

Because we conclude that the contempt order is defective, we shall vacate the judgment and remand the case for further proceedings. In view of our decision to vacate the order, we need not decide Husband’s contention that the court erred in requiring him to go forward without an attorney.<sup>6</sup>

### DISCUSSION

“[T]his Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)). “A trial court abuses its discretion when its decision encompasses an error of law, which this Court reviews without deference[.]” *Id.* (citations omitted).

In this case, Wife moved for an order of constructive civil contempt to address Husband’s alleged violation of a court order outside the presence of the court itself.

“[T]he purpose of civil contempt is to coerce present or future compliance with a court order[.]” *Id.* (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). “A written order making a finding of civil contempt must therefore ‘specif[y] the sanction imposed for the contempt,’ and ‘specify how the contempt may be purged.’” *Id.* at 74 (quoting Md. Rule 15-207(d)).

---

<sup>6</sup> At oral argument, we were informed that the transfer of funds from Husband’s IRA to Wife’s has occurred. Therefore, the appeal is moot to the extent that it concerns that transfer. We were also informed, however, that the appraisal had not yet been done and that the house had not yet been professionally cleaned. Those aspects of the appeal are not moot.

“The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Id.* A sanction may involve incarceration or the imposition of a fine for each day in which the contemnors fail to “purge” their contempt by coming into compliance with the court order. *See id.* at 75. When the sanction involves incarceration, the contemnors are said to “carry ‘the keys of their prison in their own pockets’” (*State v. Roll*, 267 Md. 714, 729 (1973) (quoting *Shillitani v. United States*, 384 U.S. 364, 368 (1966))), because they can secure their release by purging their contempt and doing what the court has previously ordered them to do.

“In sum, an order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) is designed to coerce the contemnor’s future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct.” *Breona C. v. Rodney D.*, 253 Md. App. at 74. The orders in this case do not satisfy these requirements.

The first order does not appear to be designed to remedy Husband’s noncompliance in any way: it does not hold Husband in contempt, it imposes no sanction, and it specifies no means to avoid a sanction by purging the contempt. Instead, the order simply directs Morgan Stanley, a non-party, to transfer the funds that Husband had been

ordered to transfer. Wife has not explained how a court can order a non-party to transfer funds from one party to another, as the circuit court did here. The first order exceeds the court's powers.

The second order does find Husband in contempt. Like the first order, however, it imposes no sanction and specifies no means to avoid a sanction by purging the contempt. Instead, the order imposes a new obligation on Husband: he must conclude the refinancing so that Wife receives her share of the proceeds within 30 days of March 1, 2022, i.e., by March 31, 2022. In addition, the order announces that the court will grant Wife's oral motion for the appointment of a trustee to oversee the sale of the marital home if Husband fails to conclude the refinancing by March 31, 2022. In directing Husband to cooperate with Morgan Stanley in effectuating the transfer of funds from his IRA to Wife's, the order largely duplicates one requirement in the judgment of absolute divorce,<sup>7</sup> and is, to that extent, "just a second order directing compliance with an existing order." *Breona C. v. Rodney D.*, 253 Md. App. at 75. Finally, the order reserves a decision on Wife's request for additional attorneys' fees until the court can assess the extent of Husband's compliance.

We understand that the circuit court, as a court of equity, was trying to do substantial justice in a case involving a recalcitrant litigant who had allegedly shirked his court-ordered obligations. We agree with the court's goal of bringing the post-judgment

---

<sup>7</sup> The judgment of absolute divorce required Husband to transfer only \$265,000.00, while this order required him to transfer \$277,819.04, which consisted of the original \$265,000.00 plus \$12,819.04 in attorneys' fees.

proceedings to a timely conclusion and limiting the delay and expense that the parties would have to incur. Nonetheless, we cannot uphold the orders in this case, because they do not contain the required elements of orders of civil contempt – most notably, a sanction for the contempt (such as incarceration or an ongoing fine) and a means to avoid a sanction by purging the contempt and coming into compliance with the court’s earlier order.

Because Wife foreswore incarceration as a sanction for Husband’s alleged contempt, the court was left to devise a different sanction – e.g., a fine for every day in which Husband failed to purge himself of his contempt by bringing himself into compliance with the court’s orders. Absent such a sanction and a means of avoiding the sanction, the order is invalid. For that reason, we must vacate the judgment and remand for further proceedings.<sup>8</sup>

**JUDGMENT OF THE CIRCUIT COURT  
FOR CAROLINE COUNTY VACATED;  
CASE REMANDED TO THAT COURT  
FOR FURTHER PROCEEDINGS  
CONSISTENT WITH THIS OPINION;**

---

<sup>8</sup> As discussed at oral argument, contempt is not the only remedy to enforce a judgment mandating action. Under Maryland Rule 2-648(a), “[w]hen a person fails to comply with a judgment mandating action,” such as a judgment requiring that the person obtain an appraisal or transfer funds from one account to another, “the court may direct that the action be performed by some other person appointed by the court at the expense of the person failing to comply.” Under the same rule, “[w]hen a person fails to comply with a judgment mandating the payment of money,” such as a judgment requiring the payment of the other party’s attorneys’ fees, “the court may also enter a money judgment to the extent of any amount due.” *Id.* Once a court has entered a money judgment, the judgment-creditors may avail themselves of the panoply of collection methods in Subtitle 6 of Title 2 of the Maryland Rules.

**COSTS TO BE DIVIDED EQUALLY  
BETWEEN THE PARTIES.**