

Circuit Court for Montgomery County
Case No. 165962FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1971

September Term, 2022

MIGUEL JESUS CAVALLINI

v.

EWELINA CHABOWSKA

Graeff,
Arthur,
Beachley,

JJ.

Opinion by Arthur, J.

Filed: September 12, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A father violated his obligations under a custody order. The mother moved to have him held in constructive civil contempt, to enforce the order, and for other relief. Adopting a magistrate’s recommendations, the circuit court held the father in contempt, modified the custody order in several respects, required the father to pay the mother’s attorneys’ fees, and entered a judgment in the amount of the fees. The father appealed.

We affirm the judgment in part, vacate it in part, and remand for further proceedings. We affirm the modifications to the custody order, but vacate the contempt order and the award of fees. On remand, the court may be able to reinstate all or part of the award of fees.

BACKGROUND

Miguel Jesus Cavallini (“Father”) and Ewelina Chabowska (“Mother”) were married in 2014. They have two minor children. They were divorced in 2022.

On May 16, 2022, the date of the hearing in their divorce case, Mother and Father entered into a consent custody and child support order. Pursuant to the order, Mother and Father have joint legal custody of the children, and Mother has primary physical custody. Father has access to the children every other weekend from Friday afternoon, when he picks them up at school, until Sunday evening. The order requires Father to return the children to Mother at a “mutually agreed upon location midway between the Parties’ residences[.]”

“In the event of an impasse with regard to a legal custody matter,” the order requires the parties to “attend one three-hour session with a Parenting Coordinator.” “If the Parties remain at an impasse after [the] Parent Coordinator session,” the order

provides that Mother “shall have tie-breaker authority to make the final decision on the matter[.]” Under the order, “each Party shall keep the other Party informed of his or her address.”

On June 23, 2022, barely a month after the parties signed the consent order, Mother petitioned the Circuit Court for Montgomery County to hold Father in constructive civil contempt and for other relief, including modification of the consent order. Among other things, Mother claimed that Father had refused to drop off the minor children at a midway location between their residences, that he refused to meet with the parenting coordinator, and that he refused to inform her of his current address.

In support of her petition, Mother stated that she had made multiple efforts to procure Father’s compliance with the consent order, including providing two midway locations for the drop-off, both of which were closer to Father’s home than Mother’s home. Mother, who lives in Northern Virginia, alleged that Father insisted on dropping off the children at a police station near his home in Germantown, Maryland. According to the petition, Father asserted that if Mother did not pick up the children at the location that he had designated, he would keep them in his care, which meant that they would not be able to attend school the next day. Mother alleged that because of Father’s unjustified refusal to comply with the order, she had incurred additional gas expenses to facilitate Father’s access to the children.

Mother requested that the court make a judicial finding that Father was in constructive civil contempt because of his willful failure to comply with the terms of the consent order; that the court award her attorneys’ fees and expenses; that the court enter

an order enforcing the consent order; that the court enter an additional order with “any provisions necessary” to ensure Father’s compliance with the consent order; that the court sanction Father for his refusal to comply with the consent order; and that the court modify the terms of the custody order “as necessary” to ensure Father’s compliance.

On November 17, 2022, following a show cause hearing on Mother’s petition for contempt, a family law magistrate made findings of fact and issued oral recommendations. The magistrate found that Father had willfully refused to abide by the terms of the consent order and that he had “intentionally and deliberately engaged in conduct designed to frustrate the parties’ consent agreement.” The magistrate recommended that Father be held in contempt for violating the terms of the consent order by refusing to meet at a midway point and by keeping the children in his care in violation of the schedule set forth in the consent order. The magistrate also recommended that Father be “sanctioned” in the sum of \$50.00 per month from June 2022 through November 2022, which represented the additional gas costs incurred by Mother, and the wear and tear to her vehicle caused by Father’s continued failure to meet at a midway point. The magistrate stated that Father could “purge the contempt” by dropping off the children every other Sunday at the police station in Leesburg, Virginia, and by paying Mother \$4,053.00 for her attorney’s fees, pursuant to Md. Code (1984, 2019 Repl. Vol.), § 12-103 of the Family Law Article.

The magistrate also recommended that the parties’ consent order be modified to state that if the parties reached an impasse on an issue pertaining to legal custody, and if Father refused to meet with the parenting coordinator as required by the consent order,

Mother may make the decision without consulting Father. The magistrate found this modification necessary because it “is in the children’s best interest[] to avoid harm to the children caused by a delay by [Father] in addressing a legal custody issue.”

On November 25, 2022, Father filed timely exceptions to the magistrate’s recommendations. In his exceptions, Father argued that Mother had improperly sought to use the remedy of contempt to punish him for his past conduct, rather than to coerce present or future compliance with the consent order. Father also argued that the magistrate erred in recommending that the consent order be modified to specify a mid-point where the drop-offs would occur and to allow Mother to act unilaterally if Father refused to meet with the parenting coordinator. The proposed modifications were improper, he argued, because Mother had not moved to modify the order and because no material change in circumstances had occurred. In addition, Father challenged the \$50.00 monthly “sanction” by characterizing it as an increase in his child support obligation. Finally, he challenged the award of attorneys’ fees on the ground that it imposed what he called a “draconian financial penalty.”

On December 14, 2022, the circuit court entered an order denying Father’s exceptions. On December 21, 2022, the court entered two additional orders.

In the first order, the court granted Mother’s petition for contempt, to enforce the consent order, and for other relief. In the order, the court found Father in contempt. The court decreed that Father “shall purge his contempt by transitioning the children every other Sunday at the Leesburg Police Station” in Leesburg, Virginia. “In addition,” the order required Father to pay Mother’s attorney’s fees in the amount of \$4,053.00 within

10 days of the entry of the order. The order directed the clerk to enter a judgment against Father in that amount if he did not make that payment within 10 days.

In the second order, which was captioned as an “order for constructive civil contempt,” the court reiterated its finding that Father was in contempt, but specified the bases for the finding: he had willfully and knowingly failed to comply with the consent order by failing to meet at a midway point for transitions and had failed to return the children in accordance with the order. The order for constructive civil contempt provided that Father shall be “sanctioned” in the sum of \$50.00 per month from June 2022 through October 2022, representing the additional gasoline cost incurred by Mother and the wear and tear on her car that was occasioned by Father’s failure to meet at a midway point for transitions. It further provided that Father could “purge” his contempt by dropping off the children every other Sunday at the Leesburg Police Station and by paying Mother’s attorney’s fees in the amount of \$4,053.00 within 10 days of the entry of the order. If Father did not make the payment within 10 days, the court directed the clerk to enter judgment in favor of Mother against Father for any amounts that remained unpaid.

The order for constructive civil contempt modified the parties consent order to state: “If the parties reach an impasse on a legal custody issue and [Father] has refused to meet with the parent coordinator as required by the Consent Order, [Mother] may make the legal custody decision without consulting [Father].”

Finally, the order for constructive civil contempt court set a review hearing 90 days in the future, unless the parties filed a joint line indicating that Father had complied with the “purge provisions.” The order stated that, if the parties agreed that Father had

complied with the “purge provisions,” he would be permitted to drop off the children at the police station in Vienna, Virginia, which is evidently closer to his home than the station in Leesburg.

On January 12, 2023, Father noted a timely appeal.

On February 23, 2023, after Father noted his appeal, the court recorded a judgment against Father in the amount of \$4,053.00, representing the sum owed to Mother for her attorney’s fees. On that same day, Father noted a timely appeal from the judgment.

This Court combined the two appeals into this single case.

QUESTIONS PRESENTED

On appeal, Father presents five questions, which we have consolidated and rephrased in the interest of concision:

1. Did the trial court err in finding Father in constructive civil contempt and by imposing a “sanction” to compensate Mother for her additional travel expenses?
2. Did the trial court err by modifying the terms of the consent order?
3. Did the trial court err in awarding payment of Mother’s attorney’s fees?¹

¹ Father phrased his questions as follows:

- I. Whether it was an abuse of discretion or contrary to law to find appellant Cavallini in constructive civil contempt.
- II. Wheher [sic] it was an abuse of discretion or contrary to law to modify the May 24, 2022 consent custody and child support order (to require the exclusive use of the Leesburg police station for the transition of the children on Sundays).
- III. Whether it was an abuse of discretion or contrary to law to modify the May 24, 2022 custody and child support order to change the provision related to the use of the parent coordinator Laura Kane.

DISCUSSION

I.

There is no dispute that Father knowingly and willfully violated the consent order by refusing to drop off the children at the midway point between the parties’ residences and by refusing to meet with the parenting coordinator. Father exploited the ambiguities and flaws in the order by insisting on his own, unreasonable definition of the midway point and by refusing to meet with a parenting coordinator (and thereby thwarting Mother’s ability to make decisions pertaining to legal custody if an impasse remained after a meeting with the parenting coordinator). But despite Father’s violations of the consent order, we must vacate the contempt orders because they do not comply with Maryland law.

“[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).

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- IV. Whether it was an abuse of discretion and contrary to law to award travel monies to appellee Chabowska for pick up or drop off of minor children for visitation with appellant Cavallini.
 - V. Whether it was an abuse of discretion and contrary to law to award the payment of appellee’s attorney’s fees by a judgment against appellant Cavallini.

Mother asked the court to hold Father in constructive civil contempt.

“Constructive, as opposed to direct, contempt is contempt that occurs outside of ‘the presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.’” *Breona C. v. Rodney D.*, 253 Md. App. at 73 (quoting Md. Rule 15-202) (footnote omitted). “Civil, as opposed to criminal, contempt proceedings are those that are ‘intended to preserve and enforce the right of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.’” *Id.* (quoting *Cnty. Comm’rs of Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. 328, 393 (2008)) (further citation omitted). “[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Id.* at 73-74 (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)).

“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.* at 74. 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. In making a finding of civil contempt, the Maryland Rules require a court to “issue a written order” that both “specifies the sanction imposed for the contempt” and “specif[ies] how the contempt may be purged.” Md. Rule 15-207(d).

“[T]o serve the coercive purpose of civil contempt, the sanction must be distinct from the purge provision and the valid legal requirement the court seeks to enforce.”

Breona C. v. Rodney D., 253 Md. App. at 74. “If the sanction imposed is a requirement to take the very action the court says will purge the contempt, then undertaking the purge action necessarily completes, rather than avoids, the sanction.” *Id.* “And if the sanction imposed is to act in accord with the same legal requirement with which the court seeks to coerce compliance, there is no coercive mechanism at all.” *Id.* “Instead, there is just a second order directing compliance with an existing order.” *Id.* at 74-75.

“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.” *Id.* at 74. The orders in this case do not satisfy these requirements.

In this case, the court’s orders fail to impose a sanction that differs from the purported purge provision. The orders do not, for example, require that Father be jailed or that he pay a fine that grows on a daily basis until he brings himself into compliance with the consent order. Instead, the orders state that Father can “purge” himself of his contempt by doing what the orders already require him to do—drop off the children at the place designated by the court. The orders are invalid because they are just additional orders “directing compliance with an existing order.” *Breona C. v. Rodney D.*, 253 Md. App. at 74-75.²

² Mother characterizes the requirement that Father drop off the children at the Leesburg police station as a “temporary sanction” that the court imposed on Father “to

Mother argues that the “sanction” is the requirement, admittedly characterized as a “sanction” in the order for constructive civil contempt, that Father pay \$50.00 per month to compensate her for the additional expenses that she incurred between June and October 2022, when he refused to meet her at the midway point. Her argument is untenable.

In the first of the two orders in which the court held Father in contempt, the court said nothing about any sanction at all; it simply said that Father could “purge” himself of his contempt by dropping off the children at the Leesburg Police Station. And in the second order—the order captioned as an order for constructive civil contempt—the “sanction” is not an ongoing obligation, like incarceration or a daily fine, which Father can avoid by bringing himself into compliance with the court’s order; it is a backward-looking penalty that is designed to compensate Mother for the costs that she incurred as a result of Father’s past violations of the consent order. The order does not state, suggest, or imply that Father can avoid the penalty or “sanction” for his past violations by bringing himself into compliance with the requirement that he drop off the children at the midway point, as designated by the court.

allow him to purge his contempt.” Mother is correct that the provision was “temporary,” in that the drop-off location would change to a place more convenient for Father if he obeyed the order for 90 days. Nonetheless, Mother misapprehends the distinction between a sanction, which is designed to motivate a contemnor to comply with an existing order, and a purge, which occurs when the contemnor complies with the existing order. Here, the court dictated that Father could purge himself of his contempt by complying with the court’s order and dropping off the children at the Leesburg police station. Dropping off the children in Leesburg was not a “sanction” designed to motivate Father to do what the order required; it was what the order required.

“[I]mposing a sanction for past misconduct,” which is what this provision does, “is the function of criminal contempt.” *Dodson v. Dodson*, 380 Md. at 448. The “sanction” “punishes past noncompliance rather than compelling future compliance.” *Breona C. v. Rodney D.*, 253 Md. App. at 76. The sanction, therefore, is invalid in what purports to be an order for constructive civil contempt. *Id.*

Mother also argues that Father could purge himself of his contempt in part by paying the award of attorneys’ fees. Although the magistrate certainly envisioned that Father could “purge the contempt” in part by paying Mother \$4,053.00 for her attorney’s fees, it is unclear whether the circuit court agreed: in both of the orders pertaining to contempt, the obligation to pay attorneys’ fees appears in the same paragraph as the reference to purging the contempt, but the obligation to pay attorneys’ fees is expressed as an “addition[al]” obligation. Is the obligation to pay attorneys’ fees an additional task that Father must perform in order to “purge” himself of his contempt, or is it a separate obligation altogether—one that derives, for example, from the court’s statutory power to award costs and attorneys’ fees under various provisions of the Family Law Article, such as section 9-105 or 12-103?

If the obligation to pay attorneys’ fees was intended as an additional task that Father must perform in order to purge himself of his contempt, the order is invalid, because contemnors purge themselves of their contempt by bringing themselves into compliance with an existing court order, not by complying with an additional obligation, such as a new order to pay attorneys’ fees. Furthermore, if the court meant to say that Father could “purge” himself of his contempt by paying Mother’s attorneys’ fees, the

order would also be invalid, because the court would appear to have imposed a penalty for past misconduct, which is the function of criminal, rather than civil, contempt.

Dodson v. Dodson, 380 Md. at 448.

In summary, the court had ample grounds to hold Father in constructive civil contempt, but its orders violate the basic requirements of an order for civil contempt in several respects. Consequently, we must vacate that aspect of the judgment on appeal. On remand, the court should specify the legal basis for its award of attorneys' fees. *See* section III, below.

II.

Father contends that the court erred in modifying the consent order by ordering that he drop off the children at the Leesburg police station and by authorizing Mother to make decisions pertaining to legal custody if the parties reach an impasse and Father has refused to meet with the parent coordinator as required by the consent order. Father contends that the modification was improper because the magistrate did not consider the factors required to make a finding of a material change of circumstances to warrant modification of the order. Mother responds that the court had the authority to take those actions under section 9-105 of the Family Law Article.

Section 9-105 provides as follows:

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

- (1) order that the visitation be rescheduled;

- (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or
- (3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

Here, the magistrate found, in substance, that Father had unjustifiably denied or interfered with visitation granted by a custody or visitation order. The magistrate acknowledged all of the factors to be considered in conducting a best-interest analysis, specifically stating: “I have considered each of the factors even if I do not specifically reference a particular factor.” In addition, in recommending that Mother be permitted to make decisions pertaining to legal custody if Father refused to meet with parenting coordinator, the magistrate found that the modification was “in the children’s best interest, to avoid harm to the children caused by a delay by [Father] in addressing a legal custody issue.” The court overruled Father’s exceptions to the magistrate’s findings and recommendations.

Thus, the question becomes, whether the court had the power, under section 9-105 of the Family Law Article, to modify the consent order so that it would (1) expressly define where the drop-offs would occur and (2) empower Mother to make decisions pertaining to legal custody when Father sought to frustrate her ability to act by refusing to meet with the parenting coordinator. As we read the statute, both modifications fall within the literal language of section 9-105(2), which permits the court to impose “additional terms or conditions designed to ensure future compliance with” an order like the parties’ consent order. Father made no argument to the contrary: his brief does not

even cite or discuss section 9-105. For that reason, we affirm that the circuit court’s modifications to the consent order.

III.

Finally, Father challenges the award of attorneys’ fees, which has now been reduced to a judgment. He asserts, in general terms, that the evidence was insufficient to support an award of fees. In addition, he associates the award of fees with the contempt orders, which he correctly says were invalid.

In section I of this opinion, we expressed uncertainty as to the basis for the award of attorneys’ fees. Did the court order Father to pay the fees in order to “purge” his contempt, as the magistrate did? If so, the order is invalid for the reasons discussed above. Or did the court order Father to pay the fees under one of the fee-shifting provisions of the Family Law Article, such as section 9-105 or section 12-103? If so, the order might be valid in whole or in part.

On remand, the court should clarify its order to specify the basis for the award of fees. In this regard, we note that the magistrate made findings that might justify an award of fees under section 12-103, including findings that the amount of fees was “fair and reasonable,” that Father had “the present ability to pay” the award of fees, and that Father’s “unreasonable conduct and willful violation of the consent order had caused” Mother to incur the fees. In addition, under section 9-105(3), the court might have the basis to assess costs or counsel fees against Father on the ground that he unjustifiably denied or interfered with Mother’s visitation rights. Nonetheless, we must vacate the award of fees until the court has clarified the basis for them.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED IN PART AND VACATED IN
PART; CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID ONE-HALF BY APPELLANT AND
ONE-HALF BY APPELLEE.**