Circuit Court for Anne Arundel County

Case No. 02-C-03-093536

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1695

September Term, 2016

CHRISTOPHER ZURMUHLEN

v.

ANNE ARUNDEL COUNTY OFFICE OF CHILD SUPPORT ENFORCEMENT, *et. al.*

Wright,
Kehoe,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 16, 2017

By petition filed in the Circuit Court for Anne Arundel County, appellee, Anne Arundel County Office of Child Support Enforcement ("OCSE"), alleged that appellant, Christopher Zurmuhlen, had failed to obey a court order to pay child support and was therefore in contempt of court. Following a hearing on August 8, 2016, the circuit court found Mr. Zurmuhlen in constructive civil contempt of court and sentenced him to 20 days in the Anne Arundel County Detention Center. The court order specified that Mr. Zurmuhlen could purge the contempt by executing a document releasing his interest in his late father's estate to OCSE. He complied with the court's order the same day and purged the contempt by executing the document.

In his timely appeal of the order (notice of appeal), Mr. Zurmuhlen raises two questions for our consideration, which we have rephrased and consolidated:[1]

> Did the circuit court err or abuse its discretion by imposing a sanction of incarceration unless Mr. Zurmuhlen purged the contempt by executing a document assigning his share of proceeds from a trust to satisfy his child support obligation?

For the following reasons, we dismiss Mr. Zurmuhlen's appeal as moot.

FACTS and LEGAL PROCEEDINGS

[1] The issues, as framed by Mr. Zurmuhlen, are:

> 1. Did the lower court err by imposing a sanction of incarceration after finding that Appellant did not have the present ability to purge the contempt?
>
> 2. Did the lower court impose an improper purging provision?

After a 17-year marriage, Mr. Zurmuhlen and Marianne Sitar Cook, f/k/a Zurmuhlen, divorced in March 2005. At the time of their divorce, they shared three minor children who resided primarily with Ms. Sitar Cook. (complaint for limited divorce, 11/13/03). Mr. Zurmuhlen was ordered by the circuit court to pay child support to Ms. Sitar in the amount of $1000.00 per month. He paid the child support every month, "like clockwork," even after the eldest child reached the age of eighteen, when he assumed that the support allocated to that child would be credited to his obligation to the other two children.[2]

In 2010, Mr. Zurmuhlen and Ms. Sitar Cook agreed to attend an appointment with OCSE to modify the child support to account for the emancipation of their eldest child, but Mr. Zurmuhlen cancelled the appointment, and he did not participate in a later review initiated by Ms. Sitar Cook. Ms. Sitar Cook claimed that Mr. Zurmuhlen was well aware that he was required to file a request for modification to reduce his child support obligation.

In 2013, Mr. Zurmuhlen was fired from his job, and he became unable to pay the $1000.00 per month child support. He made his last full child support payment on December 17, 2013; thereafter, he began accruing an arrearage.

[2] Although the child support agreement between Mr. Zurmuhlen and Ms. Sitar Cook specified that support be paid until each child reached the age of 18 or graduated from high school, the agreement did not identify a modification at that time, and it was Ms. Sitar Cook's understanding that the support amount would not change until a modification was requested of and granted by the court.

Mr. Zurmuhlen filed a motion to modify child support in April 2014, contending that he was unable to pay child support as a result of his job loss and that he had overpaid his child support obligation since 2009, when his eldest child graduated from high school. He requested that the overpayments be applied to his arrearage.

On March 20, 2015, while Mr. Zurmuhlen's motion to modify was pending, the OCSE filed a motion to cite for contempt against him, based on his continued failure to pay child support. The court issued a show cause order on March 24, 2015.

At a March 3, 2016 hearing on his motion to modify child support, Mr. Zurmuhlen testified that he worked as a handyman, caregiver, and property manager for Miller Enterprises, which was a company owned by his girlfriend, Faith Miller. He said he received no income, only room, board, and food.[3] He acknowledged that he had not sought a paying job in the previous six months but agreed that he was likely to inherit a monetary amount from his late father's estate at some unknown point in the future.

The magistrate rejected Mr. Zurmuhlen's argument that any overpayment he had made since his eldest child's eighteenth birthday should be credited to his obligation to the other children or to his arrearage. The magistrate explained that, in the absence of a request for modification or court order, any overpayment of child support would be considered a gift to the remaining minor children. Finding that Mr. Zurmuhlen was voluntarily impoverished, the magistrate imputed his previous $45,000.00 annual salary

[3] He lived with Ms. Miller in her Annapolis home.

to him and modified his child support obligation to $597.00 per month, along with $28.00 per month toward his arrearage.

Mr. Zurmuhlen filed exceptions to the magistrate's findings, asking that the circuit court apply his child support overpayments to his arrearage. At the exceptions hearing, Mr. Zurmuhlen acknowledged that he was one of eight beneficiaries of a trust created by his late father. He also acknowledged that he was aware that OCSE had placed a lien against his proceeds from the trust.

The court declined to apply any overpayments to an arrearage because Mr. Zurmuhlen "sat on his rights" when he failed to request a modification of child support. The court also declined to find that the magistrate's imputation of $45,000.00 of income to Mr. Zurmuhlen was too high because it was based on his earning potential, and, despite Mr. Zurmuhlen's claim of disability, he had produced no evidence that he was unable to earn at least that much income. Therefore, the court denied Mr. Zurmuhlen's exceptions.

Mr. Zurmuhlen appealed the circuit court's ruling to this Court, but he did not file a request to stay the accrual of child support pending the outcome of the appeal. We dismissed that appeal on our own initiative on March 13, 2017.

Following several postponements, the circuit court heard argument on OCSE's motion to cite for contempt on August 8, 2016. By the time of the hearing, two of Mr. Zurmuhlen's children had reached the age of eighteen, with the third to turn 18 years old in June 2017.

Jeremy Anderson, a child support specialist with OCSE, verified that Mr. Zurmuhlen remained under an order to pay $527.00 per month, plus an additional $28.00 per month toward his arrearage. His arrearage as of August 5, 2016, stood at $20,431.35.

Mr. Zurmuhlen testified that he had not received any income since December 2013, when he lost his job. He claimed to have approximately $50,000.00 in credit card debt and to owe more than $100,000.00 in back taxes. He said that he had applied for disability benefits, given his status as a Type I diabetic, but he had not provided any information relating to that application to OCSE, and he conceded he had not obtained the required documentation from a physician. With regard to the proceeds of his father's estate, he claimed that several of his siblings disagreed with the accounting, and he believed it would be some time until he saw any money from the trust, although it was his understanding he would eventually receive a benefit of approximately $50,000.00.

Ms. Sitar Cook testified that upon the death of Mr. Zurmuhlen's father, she had inquired of OCSE whether she could obtain child support payment from the proceeds of the trust. An attorney for the trust had also requested OCSE's position on garnishing the proceeds of the trust for the collection of Mr. Zurmuhlen's child support obligation.

OCSE's attorney asked that Mr. Zurmuhlen be held in contempt because "he very clearly has shown his state of mind that he has no intention of paying her this money." Recognizing that Mr. Zurmuhlen did not have the present ability to pay the outstanding child support, the court inquired, "If I accept everything that you just said as true, excepting for the fact that the . . . funds of the Trust have not been released—how do I get passed [sic] the requirement that he has to have a present ability to pay?" OCSE's

attorney suggested that either Mr. Zurmuhlen's girlfriend begin paying him a regular salary or that Mr. Zurmuhlen sign a document agreeing to turn over to OCSE sufficient future payout from the proceeds of his father's trust to satisfy his child support obligations.

The circuit court, finding that Mr. Zurmuhlen had a "credibility problem," expressed its concern that Mr. Zurmuhlen had paid "not a dime to support his children" since 2013. The court also expressed concern that, even if Mr. Zurmuhlen promised to pay his child support obligation when he received the proceeds from his father's trust, he could waive his interest in that money in favor of his siblings to circumvent his obligation.

For Mr. Zurmuhlen to execute a document signing over sufficient interest in the proceeds of the trust to pay his obligation, the circuit court added, "may be the methodology for me addressing a purge." Mr. Zurmuhlen was not inclined to sign such a document, as his appeal to this Court regarding the modification of child support was still pending. It remained his opinion that he was not in contempt of a court order because he did not have the present ability to pay the child support owed.

The circuit court ruled, as follows:

> THE COURT: All right. All right. The Court's listened to the testimony that was presented here. The Court does find, based on the testimony, that Mr. Zurmuhlen has an outstanding arrears obligation in the amount of $20,431.35.
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> That obligation comes from a failure to pay child support as of January 5th, 2015. And that's the Court generously giving credit for the $3.56 that was paid on that particular day, for whatever reason that was

paid on January 5th of 2015. He has not, however, made any regular support payments since December of 2013.

Defendant would have the Court—Defendant would ask that the Court consider that he has not worked since the end of 2013, because he has Type 1 diabetes. The Court's not received any proof, or any indication, or any medical records to support . . . Mr. Zurmuhlen's contention that he is unable to work. He indicates that while he may have filed for benefits, that that too is in limbo, because of an inability to find a doctor that he likes. But he certainly could have provided the documentation that was provided to the Office of Support Enforcement or to the—I'm sorry, to the State for purposes of seeking benefits. None of that is before the Court.

So, the only thing I have is the gentleman has indicated that he can't work, except his testimony contradicts that. He says for the last 10 years, he has in fact been acting as the property manager on behalf of his girlfriend. And in acting on behalf of his girlfriend, and overseeing the management of rental properties, he indicates that his title is handyman, caregiver and property manager.

So, he admits that he has the ability to do some level of employment, and he chooses not to do that. Instead of getting paid—instead of not getting paid for services, perhaps, your client should be getting paid for services, and those payments then could have been made available to the Plaintiff in this case for purposes of satisfying a child support obligation.

Sir, the fact that you have disagreed with the magistrate, and you disagreed with Judge Harris, and you're going to take that up on appeal, as Counsel has indicated, is certainly your right to do that. However, sitting in my courtroom today, you have not asked to have the proceedings stayed; you have not asked to have your child support suspended pending an outcome from the Court of Special Appeals.

So, as you sit here today in August of 2016, every month that goes by is a month that you are supposed to be paying child support. You went to court and asked for a reduction, and the Court found that a reduction was appropriate, and entered $597 a month as your obligation, and $28 a month towards arrears. It's going to take you a very long time to pay the $20,000 off, if in fact you don't receive the proceeds from the Estate of your parents or the Estate of your father.

Therefore, the Court does find you in contempt. The Court believes that you had the—that you understand the obligation to make your child

> support payments. And the Court also finds your ex-wife very credible. You've decided you're done paying. And you want credit for payment, despite not having taking [sic] the appropriate steps for child support modifications, or any other set asides.
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> But in the meantime, those children continue to grow. Those children continued on a monthly basis to need clothing, and food, and support, and insurance. And you didn't contribute to that. And as a result of not contributing to that for more than—at this point—almost three years complete time, the Court finds you. . . in contempt. Sir, the Court does find you in contempt.
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> MR. ZURMUHLEN: Okay.
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> THE COURT: As a result, the Court does believe that should [sic] be sentenced to a period of incarceration for failing to abide by the Court Order. In this particular case, the Defendant is hereby sentenced to 20 days at the Anne Arundel County Detention Center.
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> Defendant may purge that contempt. Counsel he's not—unfortunately, he does not have a present ability to pay, but he can purge that contempt by executing the necessary documents that will ensure that any interest that he was designed to receive under the Case No. C-02-JG-14-602, be assigned to the Office of Support Enforcement for purposes of paying any child support arrears that would be due.
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> And Defendant is also ordered to take no steps that would prevent him from receiving the share for which he's entitled.

The circuit court's written order of contempt specified that Mr. Zurmuhlen could purge himself of contempt by "executing such docs as required to assign his interest in the trust identified on front of this document." Mr. Zurmuhlen executed the required document the same day and was released from detention.

Thereafter, the trustee of Mr. Zurmuhlen's late father's estate mailed a check in the amount of $20,431.35 to OCSE, but the trustee's attorney notified OCSE's attorney that the trustee had put a stop payment on the check because Mr. Zurmuhlen advised that he planned to try to set aside the consent order on the ground that he was coerced by the

circuit court to sign it. It is unclear from the record whether OCSE has received any additional payment for Mr. Zurmuhlen's child support obligation.

DISCUSSION

Mr. Zurmuhlen contends that the circuit court erred by finding him in contempt of the court order to pay child support and arrearages, and ordering detention as a result, in the absence of an immediate ability to purge the contempt. Because he was unable to guarantee when, if ever, he would receive the proceeds from his late father's trust, the court's requirement that he execute a document assigning his share of the trust benefits to OCSE could not immediately satisfy his child support obligation, leaving him open to the risk that OCSE might file another contempt petition against him, even though he signed the document. Because the purging provision did not satisfy the requirement that it be one he could immediately meet to avoid incarceration, he concludes, the purging provision was impermissible.

Although not raised by OCSE in its brief, we conclude that Mr. Zurmuhlen's appeal of the circuit court's contempt order and purging provision was mooted when he purged the contempt by executing the document assigning his interest in his late father's trust to OCSE, after which he was released from detention. *Bradford v. State*, 199 Md. App. 175, 190 (2011) ("[A]s a general proposition, an appeal of an order of contempt is moot if the contempt is purged."). *See also Arrington v. Dept. of Human Resources*, 402 Md. 79, 90 (2007); *Chase v. Chase*, 287 Md. 472, 473 (1980). A case is moot when there is "no longer an existing controversy when the case comes before the Court or when there

is no longer an effective remedy the Court could grant." *Suter v. Stuckey,* 402 Md. 211, 219 (2007) (citations omitted).

In this matter, although Mr. Zurmuhlen argued below that he was not in contempt of a court order requiring him to pay child support and arrearages because he overpaid on his child support obligation for several years, and he may have suggested to the trustee of his later father's trust that he would appeal because he believed the circuit court had coerced him into executing the document assigning his interest in the proceeds from the trust, he does not, in his brief, specifically challenge the circuit court's finding of contempt or contend that he was impermissibly coerced into executing the document to purge the contempt. Instead, he argues only that the court's imposition of the purge provision was impermissible because he did not have the immediate ability to purge the contempt to avoid detention.[4] When he executed the document assigning his interest in the proceeds from his father's trust to OCSE, however, he purged the contempt and was released from detention. Therefore, there is no longer an existing controversy, nor an effective remedy we can grant Mr. Zurmuhlen.

[4] In his brief, Mr. Zurmuhlen conflates an immediate ability to *pay* his child support obligation with an immediate ability to *purge* the contempt. The circuit court did not order that Mr. Zurmuhlen pay the outstanding balance on his child support obligation at any particular time. To purge the contempt, the court ordered only that he execute a document assigning sufficient proceeds from his late father's trust to OCSE to satisfy his child support obligation, whenever those proceeds were made available to him. Therefore, his argument that the court did not impose a purge provision that he could meet immediately to avoid detention would have been fatally flawed, especially in light of the fact that he did immediately purge the contempt by signing the required document, even were his appeal not moot.

Courts do not entertain moot controversies. *Id.* Therefore, "we generally dismiss moot actions without a decision on the merits." *Dep't of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007) (citations omitted). Although there are circumstances in which an appellate court will address the merits of a moot case, *see Sanchez v. Potomac Abatement, Inc.,* 198 Md. App. 436, 443 (2011), *aff'd*, 424 Md. 701 (2012), in our view, neither of those circumstances exists in this matter, and Mr. Zurmuhlen's appeal must be dismissed.

APPEAL DISMISSED AS MOOT; COSTS TO BE PAID BY APPELLANT.