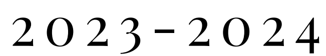


CONTEMPT

Caselaw Updates

Compiled by David Gotzh

Table Of Cases

01 Inability to Comply

People v. Weinstein,
2024 IL App (2d) 230062
In re L.W.,
2023 IL App (1st) 221048-U
City of Chicago v. Jewellery Tower, LLC,
2023 IL App (1st) 220443-U
Soman v. Cwik,
2023 IL App (1st) 220548-U
Melissa S.A. v. Cameron K.P.
2023 IL App (4th) 221003-U

02 Criminal Contempt

People v. Amber D.,
2023 IL App (4th) 220944-U
People v. Carty (In re Carty),
2023 IL App (2d) 220350-U

03 508(b) Fees

In re Marriage of Cholach,
2024 IL App (1st) 221927-U
Teymour v. Mostafa,
2023 IL App (1st) 211425-U
In re Marriage of Bonzani,
2023 IL App (3d) 220026-U
Knabb v. Knabb,
2023 IL App (1st) 220289-U

04 Friendly Contempt

Edwards v. Pekin Memorial Hospital,
2023 IL App (3d) 210005
Mackenna v. Pantano,
2023 IL App (1st) 210486
Door Properties Ltd. liability Co. v. Baker Hartley, P.C.,
2023 IL App (1st) 220875-U

05 Obvious Decisions

In re Marriage of Mehic, 2023 IL App (1st) 220287-U
Golliday v. Thompson, 2023 IL App (1st) 221149-U
In re Marriage of Lewin, 2023 IL App (4th) 221060-U
In re Marriage of Johnson, 2023 IL App (2d) 230205-U
In re Marriage of Otero, 2023 IL App (1st) 211452-U

06 Defective Appeals

In re Parentage of N.N., 2023 IL App (1st) 221544-U
City of Rockford v. Joudeh, 2023 IL App (4th) 220036-U
Swan v. Khokhar, 2023 IL App (4th) 230044-U
People v. Burton, 2023 IL App (5th) 220057-U

07 AFLAK Trivia Cases

Door Properties, LLC v. Nahlawi, 2023 IL App (1st) 230012
Pardilla v. Village of Hoffman Ests., 2023 IL App (1st) 211580
People v. Jackson, 2023 IL App (1st) 220424
Krilich v. Morgan, 2023 IL App (1st) 221198
In re Marriage of Nguyen, 2023 IL App (1st) 221045-U
Rice v. Meneely, 2023 IL App (5th) 220650-U
Pomrenke v. Pond, 2024 IL App (3d) 230157-U

08 Play Stupid Games, Win Stupid Prizes

Vite v. Vargason, 2023 IL App (2d) 220147-U

Hello again, hope you're all doing well. It has been a long journey bringing this particular edition to print. I'm not looking to give the ISBA's monthly magazine a run for it's money, but I will attempt to up the game a bit in each future installment.

As it tentatively stands, on October 16, 2024 I have accepted a royal invitation to give a CLE on caselaw updates in Chicago. Levity efforts aside, this is a very high honor, and one that I take very seriously.

In preparation for this omnibus presentation, I have radically altered the way I present these cheat sheets. Many of the cases featured involve multiple issues and I anticipate you will see the same decision featured in future cheat sheets involving different topics. Going forward, my coverage of any particular case will be limited to it's impact on the selected monthly topic.

And if you're made it this far - I have a small surprise. If you are in attendance at this CLE, you will be given the mother-of-all cheat sheets, covering hundreds of cases, divid-ed by topic. Contempt. Child Support. Custody. Modifications. Motions to Reconsider. Relocations. And anything else relevant to family law. If you're interested in attending, please reach out to the Cook County Domestic Relations department for information.

Next, any attorney worth their salt will "trust, but verify" anything they read. As the moment you blindly trust something, whether it be me or some thinking machine, you run the risk of getting "Levidow & Oberman'ed" (worth a google). So out of respect for our time honored tradition of due diligence, you will notice a functional improvement to the cheat sheet; "clickable" ¶'s.

When you click on a red ¶ it will open an Internet browser that takes you to the page and paragraph of the decision where I got that particular fact or holding. The featured cases are also clickable as well. This allows you the comfort of trusting my work, but also the safety of verifying it too.

Finally, if you see an error, omission, or something else that's "off," by all means let me know. I did have this edition double proofed by a couple of incredibly smart people, but no system is ever perfect - except maybe Gitlin's.

Enjoy,

David Gotzh

THE CIRCUIT COURT OF COOK COUNTY - DOMESTIC RELATIONS DIVISION
CHILD REPRESENTATIVE CONTINUING LEGAL EDUCATION SEMINARS

All 2024 seminars are held via Zoom from 12:00 p.m. to 1:30 p.m. on the 3rd Wednesday of the month unless otherwise indicated. All Child Representatives shall attend three (3) seminars per year to remain on the approved Child Representative list. In addition, the Division is an accredited Illinois MCLE provider.

February 21, 2024 — Utilizing Outside Resources for Teens

Speakers:
Daniel Hunter, Family Mediation Services
Stephanie Garrity, Rainbows for All Children

March 20, 2024 —Navigating Gender & Sexual Identity Issues

Speakers:
Hon. Jill Rose Quinn, Domestic Relations Division
Sharon Z. Johnson, PhD, Northshore University Health System
Kathryn Ciesla, Attorney-at-Law

April 24, 2024 — De-Escalating Techniques for Working with High Conflict Co-Parents

Speakers:
Dr. Beth Wilner, PhD, Families in Transition
Arlette Porter, Attorney-at-Law
Jacqueline Torshen, Attorney-at-Law

May 15, 2024 —To Be Announced

June 26, 2024 — Understanding the DCFS System-Learn the Process

Speakers:
Hon. David Haracz, Juvenile Justice Division
Hon. Jennifer Payne, Child Protection Division
Melissa Staas, Attorney-at-Law

September 18, 2024 — Anatomy of Writing a Report-Best Practices

Speakers:
Roberto Madera, Attorney-at-Law
Agnes Olechno, Attorney-at-Law

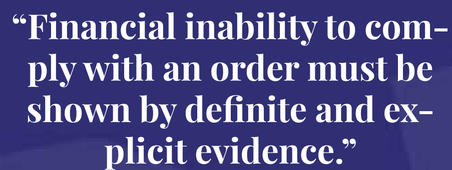
October 16, 2024 — Family Law Statute & Case Law Update

Speaker:
David Gotzh, Attorney-at-Law

November 20, 2024 — Communication in High Conflict Cases

Speakers:
Aaron Cooper, PhD, The Family Institute
Jacalyn Birnbaum, Attorney-at-Law
Stacey Platt, Attorney-at-Law

Inability To Comply



"Financial inability to comply with an order must be shown by definite and explicit evidence."

In re Marriage of Chenoweth,
134 Ill. App. 3d 1015, 1018-19, (1985)

People v. Weinstein, 2024 IL App (2d) 230062

Incompetance/woefully inadequate efforts are insufficent to justify non-compliance:

In five separate criminal cases, the trial court entered orders finding the defendants unfit to stand trial and remanded them to the custody of the Department of Human Service for inpatient treatment. ¶ 3. Delays by the Department in taking each defendant into their custody and providing treatment led to findings of indirect civil contempt against the Department in all five cases. ¶ 3. In one instance, the mentally unwell defendant "initially appeared to fall through the cracks" and sat in jail, without treatment, for over a month. ¶ 139.

The Department argued that "although its efforts to place and treat defendants were unsuccessful, they did not demonstrate [willful]" noncompliance. ¶ 133. The reviewing Court strongly disagreed, noting "the evidence reasonably showed that the Department essentially failed to even monitor and/or track defendants at the jail." ¶ 138. This policy also resulted in Department staff relying on jail personnel who had no mental health training to provide updates to staff concerning defendants.¶ 138.

Nor does it appear these failures were linked to funding shortfalls. ¶ 145. And that the failure to engage in some level of jail-based restoration services was a voluntary decision by the Department. ¶ 146.

As noted, "the inability defense may not be asserted where the contemnor has voluntarily created the incapacity." *County of Cook v. Lloyd A. Fry Roofing Co.*, 59 Ill. 2d 131, 137 (1974). ¶ 109

Here, the Court hints the contempt finding was predicated on the Department's incompetance as opposed to deliberate indifference; "the evidence reasonably showed that the Department failed to engage in efforts to comply with the court's unfitness orders. ¶ 144.

Author's Note: This case should be read in conjunction with the Court's analysis in *In re J.S., 2022* IL App (1st) 220083 - where the opinion eviserates DCFS's inadequate efforts to place minors in it's care, but declined to affirm the DCFS director's contempt finding because the trial court erred when it found he "ignored" its order. ¶ 83.

Read together, incompetance is not a defense to "inability to comply." Take for example a divorce judgment where a party is directed to sign and return a quit claim deed within 7 days. After 14 days of waiting, the ex-wife files a petition for rule, and it turns out the ex-husband remitted the quit claim deed via pony express (worth a google) which needs a few more days to complete their journey.

I believe the husband would not be shielded from sanctions because he inexplicably chose such an unreasonable method of compliance.

In re L.W., 2023 IL App (1st) 221048-U

Failure to comply is not the same thing as ignoring.

The Director of DCFS challenged additional contempt findings stemming from his office's failure to find proper placements for minor children[1]. ¶ 28. The trial court based its contempt on the premise that DCFS ignored its order. ¶ 38.

1 See *In re J.S., 2022* IL App (1st) 220083

The Appellate Court reversed, noting that DCFS did not ignore it, they just failed miserably at trying to comply with it. ¶ 39.

Unlike the *Weinstein* decision, had the trial court not based its reasoning for the contempt findings on DCFS "ignoring" the court's orders, the analysis would be different. ¶ 38.

City of Chicago v. Jewellery Tower, LLC, 2023 IL App (1st) 220443-U

A court can SOMETIMES set a purge condition that relies on the actions of 3rd parties.

An interested party (who owned some floors in the same building as the defendant in this cause) filed a petition for rule that stemmed from fire/safety code violations. ¶ 35. The defendants were required to complete certain repairs, provide a status on certain boilers and disclose the condition of certain canopies. ¶ 33

Ultimately the defendants were held in contempt for failing to make needed repairs/corrections/reports, and one of their challenges on appeal was that the purge provision was improper - insofar that it relied on actions from 3rd parties. ¶ 88.

The decision awknowledged that "[c]ourts have found a purge provision invalid when it required action or cooperation from another party in the case or from a third party." See *In re A.M.*, 2020 IL App (4th) 190645, ¶ 32 (finding that a provision requiring the father to participate and cooperate with the mother with respect to scheduling makeup parenting time was not a proper purge provision, noting that the "ability to purge her contempt was not left solely within her control"); *Bank of America N.A.*, 2012 IL App (1st) 113178, ¶¶ 43-44 (where the purge provision required the receiver to report to the court that his investigation was complete and to make a recommendation to the court, the reviewing court found that these provisions took "the keys of the defendants' hands and gave them to the receiver"). ¶ 88.

Here, the Court disagreed with the Appellant's strict reading of the order, noting "to purge the contempt and complete the actions required in the October 26, 2021, order, which included providing a report on the existing exterior canopy and submitting the permit application, Jewellery Tower [the Appellants] had to work with parties with whom it could make an agreement with and contract for services. Thus, Jewellery Tower had the control and ability to reach an agreement and contract with these parties regarding when it needed them to complete the work pursuant to the court's order, and it had the ability to communicate any issues to the court. Thus, the purge provision here was not improper despite some reliance on actions by third parties." ¶ 89.

Soman v. Cwik, 2023 IL App (1st) 220548-U

Cry wolf too often + credibilty issues = contempt finding affirmed despite documentation supporting indigency.

The father was held in contempt for failing to pay his ex's attorney fees (that derived from previous litigation). ¶ 23. On appeal, dad alleges the court ignored a social security disability decision and doctor's note indicating he had long-COVID. ¶ 48.

Normally, to sustain a defense of financial inability, "a defendant must show that he neither has money now with which he can pay, nor has disposed wrongfully of money or assets with which he might have paid.'" ¶ 47 (quoting *In re Marriage of Logston*, 103 Ill. 2d, 266, 285 (1984)).

However, the Appellate Court affirmed the finding of contempt, noting that dad had been held in contempt or otherwise punished for failure to pay several times throughout the proceedings—including criminal charges for felony nonsupport in Ohio—at which time he was able to pay what was owed once consequences reared it's ugly head, suggesting he had resources at his disposal. ¶ 48. And finally, the trial court found dad's excuses lacked credibility. ¶ 48.

Author's Note: *Soman* is a keeper for cases where someone swears they can't pay, yet always comes up with the $$$ when faced with incarceration.

Melissa S.A. v. Cameron K.P., 2023 IL App (4th) 221003-U

Compliance with the law is generally a defense to contempt.

The parties were rolling stones, their Ohio judgment was eventually registered in Illinois (And dad now resides in Indiana). ¶¶ 9, 12. The Ohio agreement allocated 50/50 parenting time between the parties. ¶ 6 .

Before the agreement was registered, there was a pending motion (in Ohio) to decide where the child was to attend school. ¶ 41. It appears while awaiting the trial date in Ohio (which ultimately never occurred), dad had not enrolled the child in school (at this time, the child was 6), so mom did it unilaterally in Illinois. ¶ 90.

Future litigation then occurred in Illinois. ¶ 42. Dad sought contempt, alleging mom (1) had denied him equal parenting time since August 14, 2021 and (2) enrolled the minor in kindergarten in Illinois without his agreement or court order. ¶ 17.

As to the latter, the trial court found that Illinois state law compels enrollment in school once a child attains the age of 6. ¶ 71. And as to the former, the court stated that after the child started school, the split parenting time ordered by the Ohio court was not an option, "given the minor's age." ¶ 71.

On appeal, dad argued that since mom only had 50/50 custody, the child could not have been a resident of Illinois – and was not subject to compulsory enrollment in school. ¶ 88. However, the Appellate Court points out this would also mean the minor wasn't a resident of Indiana either. ¶ 88.

However, in dispensing with dad's argument, the Court noted that the general rule is that a child "resides" in the school district where the parents reside. *School District No. 153, Cook County v. School District No. 154 1/2, Cook County*, 54 Ill. App. 3d 587, 591 (1977). ¶ 88.

Dad also argues mom's move to Illinois created the very legal compulsion that she now hides behind, and should be estopped from arguing it. ¶ 91. See *County of Cook v. Lloyd*

A. Fry Roofing Co., 59 Ill. 2d 131, 137 (1974), where the supreme court held that an inability to comply with a court order is no excuse if the alleged contemnor voluntarily creates the incapacity.

But the Court held that the *Fry Roofing Co*. was inapposite, noting the claimed "inability" was created by the alleged contemnor's own lack of diligence and even intentional disregard of a court order. *Fry Roofing Co.*, 59 Ill. 2d at 137-38. ¶ 91.

In *Fry Roofing Co.,* the defendant entered into an agreed order for installing pollution control equipment by a certain date. *Fry Roofing Co*., 59 Ill. 2d at 133. The defendant then accepted a construction bid with "full knowledge" that the contractor would not even begin work before the date specified in the agreed order, and a purchase order for a cement foundation was not made until after a "substantial portion" of the compliance period had elapsed. *Fry Roofing Co*., 59 Ill. 2d at 138. ¶ 91.

Here, mom testified that she formed the intent to enroll the minor in school in Illinois only when dad returned the child to her on August 14 *un-enrolled*. ¶ 91. The Reviewing Court noted that a party is not guilty of contempt for his or her inability to obey a court order (in this case, the law conflicted with the terms of the order). See *People ex rel. Melendez v. Melendez*, 47 Ill. 2d 383, 387 (1971). ¶ 91.

Thus the trial court's denial was affirmed. ¶ 99.

Compensatory Damages = Not Allowed

It is well established that civil contempt is an affront to the authority of the court and not a private remedy, that any fine imposed pursuant to the contempt is payable to the public treasury and not a plaintiff, and that a plaintiff may not recover compensatory damages in a civil contempt proceeding.

Keuper v. Beechen, Dill & Sperling Builders, 301 Ill. App. 3d 667, 669-70 (1998).

"A finding of criminal contempt is punitive in nature and is intended to vindicate the dignity and authority of the court."

***People v. Simac*,**
161 Ill. 2d 297, 306 (1994)

People v. Amber D., 2023 IL App (4th) 220944-U

Court should give a person the reasonable opportunity to comply before imposing criminal contempt.

This cause originally started as a juvenile matter, with mom refusing to turn over the minor child. ¶ 4-5. She was held in indirect civil contempt, sanctioned with incarceration, but could purge herself by turning over the child. ¶ 4. The minor was turned over, and court reconvened a few days later. ¶ 6.

At that time, the trial court sentenced mom to 120 days for criminal contempt stemming from outbursts made during her indirect civil contempt hearing. ¶ 7. Mom appeals, arguing her words were frustration, and not a direct affront to the integrity of the court. ¶ 10.

The Appellate Court acknowledged that the exercise of a court's contempt power is "a delicate one, and care is needed to avoid arbitrary or oppressive conclusions." *People v. Simac*, 161 Ill. 2d 297, 306 (1994) (quoting *Cooke v. United States,* 267 U.S. 517, 539 (1925)) ¶ 11.

However, the defendant had been admonished to stop interrupting during the indirect civil contempt hearing, and yet, she persisted. ¶ 5.

And the reviewing court distringuished this set of facts from *People v. Watts*, 66 Ill. App. 3d 971, 975 (1978), where the Court reversed a direct criminal contempt finding. There, the defendant appeared in the spectator section of courtroom wearing a T-shirt with the words "'Bitch, Bitch'" on it. *Watts*, 66 Ill. App. 3d at 973. The court summarily held the defendant in contempt and immediately sentenced her to three days in jail. *Watts*, 66 Ill. App. 3d at 973. In reversing the contempt order, the reviewing court noted defendant was not given a reasonable opportunity to alter her behavior. *Watts*, 66 Ill. App. 3d at 975." ¶ 16

Whereas in this appeal, the defendant was told several times that her behavior was inappropriate, but to no avail. ¶ 16. Thus the finding was affirmed. ¶ 19.

Author's Note: I noticed this comment near the conclusion of the decision; "we do recognize the circuit court did not summarily find defendant in contempt for her conduct but did so five days later. However, defendant does not argue the delay constitutes or demonstrates error." ¶ 18.

A subtle hint?

People v. Carty, 2023 IL App (2d) 220350-U

Criminal Contempt is appropriate even when the evidence is mostly circumstantial.

The ex-wife alleged the ex-husband violated a provision in the dissolution judgment that required him to provide breath test results of his blood-alcohol content (BAC) during his parenting time. ¶ 2. At trial, the judge determined that the ex-husband failed to provide breath results on certain dates, and further found him guilty of indirect criminal contempt. ¶ 2. He was sentenced to two days in jail and ordered to pay a $400 fine. ¶ 2.

Here, dad's defense was that the records admitted at trial only demonstrated there were time periods in which the BAC program did not reflect a test was tak-

en. ¶ 12. And dad's attorney even suggests his client might have complied, but the program may not have tracked it. ¶ 12.

In affirming, the Appellate Court noted that willfulness, the second element of criminal contempt, may be inferred from the allegedly contemptuous conduct, which includes the surrounding circumstances and the character of the party's conduct. *People v. Simac*, 161 Ill. 2d 297, 307 (1994); see also *People v. Roush*, 112 Ill. App. 3d 689, 691 (1983) ("intent may be either proved affirmatively or inferred from proof of the surrounding circumstances and the character of the action of the respondent"). The standard of proof is beyond a reasonable doubt. *People v. Lorence*, 2011 IL App (2d) 110041, ¶ 18. ¶ 40.

Here, dad had a history of non-compliance. ¶ 45. Additionally during the time periods in question, dad never alerted mom that he was having issues with the BAC machine. ¶ 44.

Thus, the trial court could reasonably infer that dad acted with contemptuous intent. ¶ 45.

Author's Note: Although not referenced in the opinion, it is well settled that a defendant's conviction can be based on circumstantial evidence. See *People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged.)

508(b) Fees

“[I]n dissolution of marriage cases, section 508(b) of the [IMDMA] provides that the trial court has no discretion as to whether to award reasonable attorney fees and costs incurred in enforcement of its orders”

Law Offices of Brendan R. Appel, LLC v. Georgia’s Rest. & Pancake House, 2021 IL App (1st) 192523, ¶ 58.

In re Marriage of Cholach, 2024 IL App (1st) 221927-U

A Contempt finding presumes the conduct was without compelling cause or justification.

Dad was ordered to pay 2/3rd of the GAL retainer – but didn't. ¶ 50. Mom serves a rule to show cause that results in a contempt finding against dad. ¶ 51. But, notwithstanding the finding of contempt, the order didn't explicitly state dad's conduct was without compelling cause or justification, a prerequisite before most 508(b) fees can be awarded. ¶ 51.

The Appellate Court affirmed, noting that "such finding is implied by the court when it determines a party's conduct was "contemptuous." See *In re Marriage of Putzler*, 2013 IL App (2d) 120551, ¶ 38. ('Preliminarily (and as to both contempt findings), 'finding a party in contempt for failing to comply with a court order implies a finding the failure to comply was without cause or justification,' rendering mandatory the imposition of attorney fees per section 508(b).' (quoting *In re Marriage of Deike*, 381 Ill. App. 3d 620, 634 (2008))." ¶ 51.

Teymour v. Mostafa, 2023 IL App (1st) 211425-U

A reversal of contempt in a family law proceeding does not vacate a fee award if there was a seperate finding that the conduct was without compelling cause or justification.

Here, the trial court found the husband in contempt for failing to maintain life insurance. ¶ 56. However, the judge failed to indicate what, if anything, he could do to "purge" himself of contempt. ¶ 63.

"Civil contempt is coercive in nature and seeks only to secure obedience to the court's prior order. *In re Marriage of Logston*, 103 Ill. 2d 266, 289 (1984). For that reason, a party must be permitted to purge himself of contempt. *Id.* at 289. Furthermore, no further sanctions are imposed upon the contemnor's compliance with the order in question. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 44 (1990)." ¶ 62.

However, the Appellate Court's vacatur of contempt did not reverse the award of attorney fees under 508(b), as the judge also made a finding that his conduct was without compelling cause or justification. ¶ 66.

Where the court finds no compelling cause or justification for noncompliance, attorney fees are mandatory under section 508(b). *In re Marriage of Ackerly*, 333 Ill. App. 3d 382, 397 (2002). Furthermore, section 508(b) does not require a contempt finding. *In re Marriage of Ackerly*, 333 Ill. App. 3d at 397. ¶ 65.

The trial judge may rely on his or her own knowledge and experience when deciding the value of the services provided.

In re Marriage of Powers, 252 Ill. App. 3d 506, 508 (1993).

In re Marriage of Bonzani,
2023 IL App (3d) 220026-U

Compliance Moots A Contempt Challenge. And 508(b) Fees can't be discharged in bankruptcy.

In a long running post-decree fight, the trial court held dad in contempt for failing to pay $80,000+ in arrears. ¶ 32. The purge order required dad to transfer $5,000 from an e-trade account to mom – something he did while the case was on appeal. ¶ 58. However, his compliance mooted that portion of his contempt challenge. ¶ 58. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009) ("As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided.") ¶ 58.

Dad also filed an 11th hour bankruptcy and attempted to list his 508(b) fees as dischargeable debt. ¶ 60. As far as the Appellate Court was concerned, that was a non-starter; "Attorney fees incurred in the enforcement of a support obligation, like the obligation itself, are considered as maintenance or support for purposes of nondischargeability under § 523(a)(5)." *In re Beattie*, 150 B.R. 699, 703 (Bankr. S.D. Ill. 1993). ¶ 60.

However, the trial court reversed and remanded the 508(b) fee award because mom sought reimbursement for matters (namely two businesses) that were not plead in her contempt pleading. ¶ 61.

Knabb v. Knabb,
2023 IL App (1st) 220289-U

An itemized billing statement should be submitted or attached to the fee petition.

Mom was sanctioned twice; once for violating a discovery order and the other for breaching an injunction that prohibited her from airing the case's drama on social media. ¶¶ 2, 9. In challenging the reasonableness of the fees, mom correctly notes that only one of the fee petitions filed included an itemized billing statement. ¶ 47.

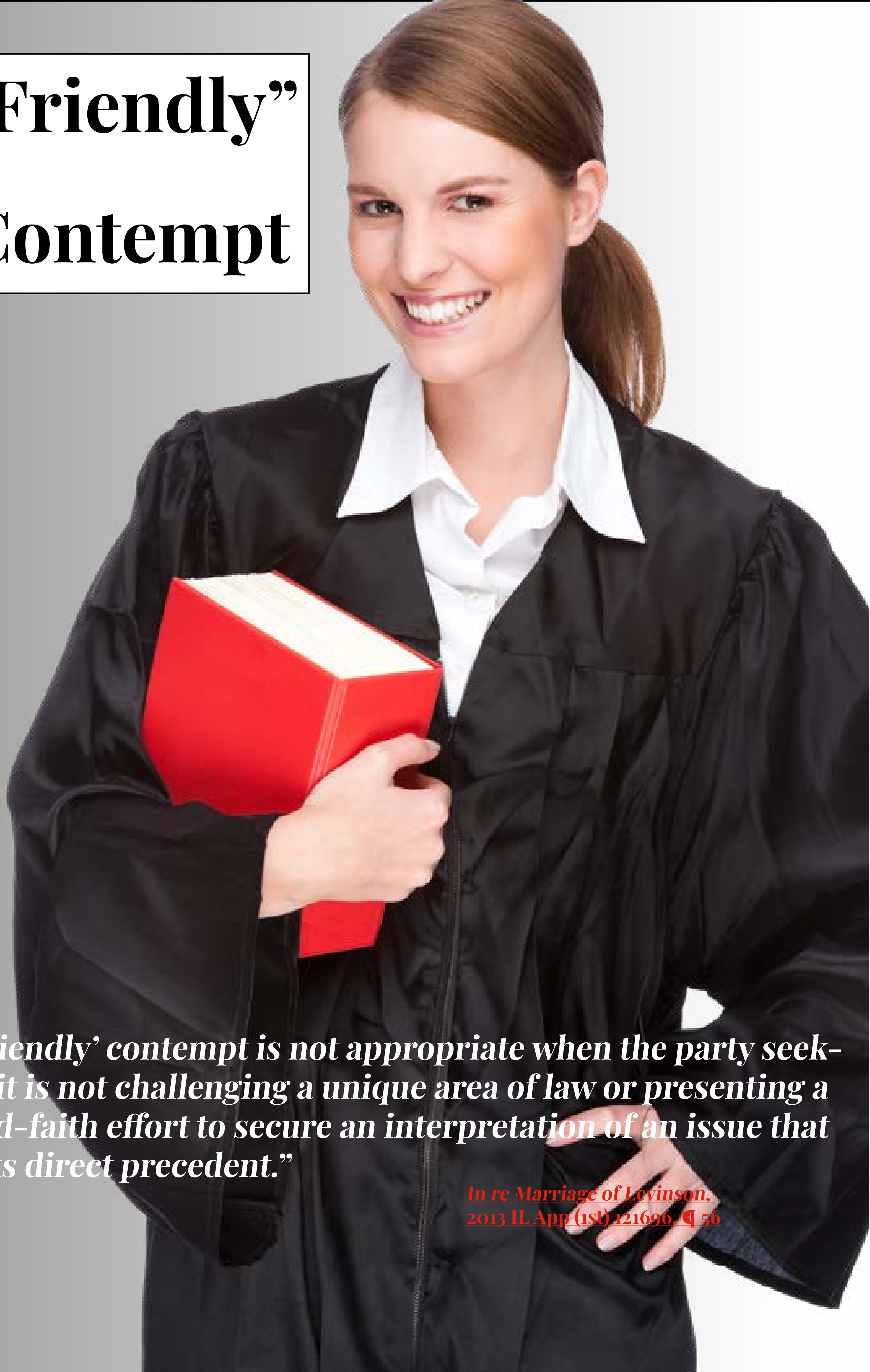
However, mom failed to attach sufficient transcripts that were applicable to hearing dates on the fee petitions, and given the number of court appearances involved, the amount of $8,982 did not shock the Appellate Court. ¶ 56.

(Where the transcript of the hearing at which the trial court issued its decision awarding attorney's fees was not available for review, the Court must assume that the trial court's termination "was in conformity with law and had a sufficient factual basis"); *In re Marriage of Chesrow*, 255 Ill.App.3d 613, 623 (1994). ¶ 56.

Authors Note: I don't think this case opens the door for lawyers to skip attaching an itemized billing statement to their fee petition. But, at the same time, the Appellate Court didn't seem too concerned about the lawyers failure to do so given the amount sought.

"[I]n petitioning a court for fees, an attorney is **generally** required to submit detailed time records; the attorney must itemize both the time expended and the work performed." *In re Marriage of Waltrip*, 216 Ill. App. 3d 776, 783 (1991). Key word, generally?

"Friendly" Contempt



"'Friendly' contempt is not appropriate when the party seeking it is not challenging a unique area of law or presenting a good-faith effort to secure an interpretation of an issue that lacks direct precedent."

In re Marriage of Levinson,
2013 IL App (1st) 121696, ¶ 56

Edwards v. Pekin Memorial Hospital, 2023 IL App (3d) 210005

No use indirect civil contempt'ing over spilled milk.

The parties settled a wrongful death suit, and as part of that settlement, entered into a non-disclosure agreement. ¶ 7. The NDA covered everything, from terms to even the identities of the parties. ¶ 7. However, one of the attorney's fired off an email, whose body was in compliance with the settlement terms, except for this ill-drafted subject line: "Regarding: Edwards, Estate of Troy." ¶ 21.

The trial court eventually held the lawyer in indirect civil contempt, sanctioned him with reimbursing the other side with reasonable attorney fees, and a purge to erase all trace of the email from his office and public. ¶ 27.

On appeal, the reviewing Court held that the purge was improper, as the horse was already out of the barn. ¶ 39.

A purge provision's validity is directly linked to its ability to rectify the offending conduct itself, which in turn is directly linked to compliance with a court order. See *In re Marriage of Depew,* 246 Ill. App. 3d 960, 966 (1993). If the offending conduct cannot be undone, a valid purge provision must be able to offset or undo the effects of the offending conduct such that the disadvantaged party is made whole. See *id.* (compelling civil contemnor's compliance with court order is for the benefit of the party harmed by noncompliance); see also, e.g., *Chue v. Clark*, 46 Misc. 3d 973, 999 N.Y.S.2d 676, 691 (Sup. Ct. 2014) (contemnor-mother may purge violation of parenting agreement by making father whole and by accommodating his rights under agreement).

Here, the "purge provision can neither offset nor undo the effects of [the lawyer's] irreversible disclosure, it amounts to an unreasonable attempt to purge indirect civil contempt." ¶ 41.

If a contempt finding is void, the corresponding attorney fee sanction is likewise void[1]. See *Freeman v. Myers*, 191 Ill. App. 3d 223, 228 (1989) (circuit court's attorney fee judgment cannot stand absent a contempt finding or specific authority). ¶ 50.

Bonus Knowledge: We emphasize, *** a criminal contempt filing does not require a "sign-off from the State's Attorney." ¶ 45. Why? Since it "is not a crime defined by statute, it may be prosecuted by private counsel, the State's Attorney, or an amicus curiae appointed by the court." See *Marcisz v. Marcisz*, 65 Ill. 2d 206, 210 (1976).

Mackenna v. Pantano, 2023 IL App (1st) 210486

Civil contempt should not stand when noncompliance with discovery order is based on good faith effort to clarify an issue.

In a wrongful death action, the defendants (physicians) sought discovery as to the deceased mental health records. ¶ 7. The deceased passed away due to lung cancer, which the estate argued, should have been caught far earlier than it was. ¶ 5. But the executor of the estate objected to the defendant's discovery request, and sought a protective order pursuant

1 Bear in mind this only applies to non-family law cases. See 750 ILCS 5/508(b).

to the Mental Health and Developmental Disabilities Confidentiality Act (Act) (740 ILCS 110/1 et seq.) noting it was neither applicable, nor placed at issue in this lawsuit. ¶ 8.

The trial court disagreed and ordered the estate to turn it over. ¶ 11. The executor sought to be placed in friendly contempt so she could appeal, which the trial court obliged. ¶ 15.

The Appellate Court reversed, finding the request improper give the specific facts of the case. Because her challenge was successful, the contempt finding against the plaintiff was reversed. ¶ 50. See *Reda v. Advocate Health Care*, 199 Ill. 2d 47, 63 (2002) ("'where the trial court's discovery order is invalid, a contempt judgment for failure to comply with the discovery order must be reversed'" (quoting I*n re Marriage of Bonneau*, 294 Ill. App. 3d 720, 723 (1998)).¶ 50.

Authors Note: A contempt order also merits reversal "where the refusal to comply with the court's order constitutes a good-faith effort to secure an interpretation of an issue without direct precedent." *In re Marriage of Radzik*, 2011 IL App (2d) 100374, ¶ 67.

However, if a party is merely challenging the order because they are disinclined to comply, that by itself is generally insuffient to warrant "friendly contempt." See *In re Marriage of Paris*, 2020 IL App (1st) 181116 ¶ 63

Door Properties Ltd. liability Co. v. Baker Hartley, P.C., 2023 IL App (1st) 220875-U

Vacatur of friendly contempt sanctions can occur, even if the appealing party isn't 100% victorious.

A companion case to the published opinion on "super sanctions;" here, the creditors allege that the defendant transferred or otherwise improperly disposed of assets, and subpoenaed the estate planning documents of his parents. ¶ 3. Unsurprisingly, the attorneys for the defendants parents objected, citing attorney-client privilege and the work product doctrine. ¶ 4.

The trial court overruled the objection, the attorneys refused, a petition for rule was filed, and a request for "friendly contempt" was granted. ¶ 6. On appeal, the Appellate Court reversed in part, but upheld most of the trial court's order mandating turnover of the requested materials. ¶ 54.

Although not victorious, since the challenge was in good faith, the contempt finding was reversed. ¶ 55.

1+1=2

Obvious Decisions

In re Marriage of Mehic, 2023 IL App (1st) 220287-U

Defects to service of the Rule are waived if you appear.

On appeal, the ex-husband argued that a failure to serve the petition for rule to show cause inhibited the trial court from finding him in contempt. ¶ 15. However, there was one flaw to his argument, he appeared at the hearing. ¶ 11:

Notice "must, of course, contain an adequate description of the facts on which the contempt charge is based and inform the alleged contemnor of the time and place of an evidentiary hearing on the charge within a reasonable time in advance of the hearing." *In re Marriage of Betts*, 200 Ill. App. 3d 26, 53 (1990). Pertinent here, "[a] n individual charged with indirect civil contempt may waive service of written notice of the charge by voluntarily appearing in court and defending against the charge." *Id*. (citing 17 C.J.S. Contempt § 79, at 201 (1963)).

Unsurprisingly, the trial court affirmed the contempt finding. ¶ 33.

Golliday v. Thompson, 2023 IL App (1st) 221149-U

The burden on preserving the record falls on the appealing party.

Dad owes a large pile of arrears from an old support case. ¶ 8. The court gave him generous repayment terms of $100 per month which, for the most part, were ignored. ¶ 14. A contempt petition is filed, dad is found in contempt, and appeals. ¶ 17.

However, he failed to tender transcripts or a bystanders report – which doomed his contempt challenge. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). ¶ 25.

In re Marriage of Lewin, 2023 IL App (4th) 221060-U

If the order is clear, that means it's not ambigious.

The parties established a 529 account for the children, and relevant to this case, the parties agreed to "expressly waive the right to assert a claim for any of the funds" in the accounts designated for the payment of the children's post-high-school educational expenses. ¶ 55.

After the kids finish undergrad, it appears mom raided the 529 account, prompting dad to file a petition for indirect civil contempt. ¶ 25. Despite the language of their MSA, mom insisted she could. ¶ 31. The court disagreed, and the Appellate Court affirmed, noting:

An MSA "is construed in the manner of any other contract." *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009). If the language of the agreement is unambiguous, "we must give effect to that language." *In re Marriage of Shulga*, 2019 IL App (1st) 182028, ¶ 23, Conversely, if the language is ambiguous, we may consider parol evidence to determine the parties'

intent. *Id*. The agreement is to "be construed as a whole, viewing each provision in light of the other provisions." *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011). ¶ 54.

Here the reviewing court found, the language "could not be clearer—[mom] does not have a right to the funds in the 529 accounts." ¶ 55.

In re Marriage of Johnson, 2023 IL App (2d) 230205-U

Pro Se people need to stop using Google for legal research.

The parties entered into an agreed order for mom to take the child to counseling. ¶ 8. Dad filed a petition for rule alleging mom was refusing to take the child. ¶ 10. It appears by the time the matter advanced to hearing, mom had complied with the order. ¶ 26. The trial court noted the agreed order didn't specify a time frame for mom to comply, and it appeared the delay was due to awaiting a response from a provider. ¶¶ 31, 55.

In arguing for reversal of the trial court's denial of his contempt request, dad argued that mom violatated the mend to hold doctrine. ¶ 55.

The Appellate Court noted there was no evidence in the record to support dad's contention on this issue, and they affirmed the trial court's denial of his contempt petition. ¶ 55.

In re Marriage of Otero, 2023 IL App (1st) 211452-U

Self help is not a defense to violating the court's order.

Here the ex-husband ceased maintenance payments while his motion to modify was pending. ¶ 5. The ex-wife in turn filed a petition for rule, which the court denied – primarily because it agreed alimony should be reduced. ¶ 9.

However, the appellate court reversed both. ¶ 64. Addressing the ex-husband's argument that his good faith motion to modify meant he could stop payments, the reviewing court stated:

Choosing to engage in unilateral self-help and cease payment on a court-ordered maintenance obligation because you are confident that the court will find in your favor is both willful and contumacious. *In re Marriage of Michaelson*, 359 Ill. App. 3d 706 (affirming a finding of contempt where contemnor ceased payment of maintenance before and during pendency of a petition to terminate or modify his maintenance obligation). ¶ 48.

The "mend the hold" doctrine is "a corollary of the duty of good faith that the law of Illinois as of other states imposes on the parties to contracts" and precludes "[a] party who hokes up a phony defense to the performance of his contractual duties" from "[trying] on another defense for size." *Trossman v. Philipsborn*, 373 Ill. App. 3d 1020, 1042 (2007) citing *Harbor Insurance Co. v. Conti-*

DEFECTIVE
APPEALS

In re Parentage of N.N., 2023 IL App (1st) 221544-U

Rule 304(b)(5) requires a fine or other penalty to be immediately appealable.

Relevant to this case, dad was ordered to pay child support, and didn't. ¶ 12. He was ultimately held in contempt, HOWEVER, no sanction was entered against him and the case was still ongoing when he appealed. ¶ 26. This doomed the appeal for review, as it's well settled law that if the case is ongoing, Rule 304(b)(5) requires a sanction. ¶ 36.

"[A] contempt order that does not impose sanctions is not final and reviewable." *In re Marriage of Virgin*, 2021 IL App (3d) 190650[1], ¶ 57. ¶ 36.

City of Rockford v. Joudeh, 2023 IL App (4th) 220036-U

Boilerplate motions to vacate = not enough to preserve an argument.

The city sought to compel two property owners into either repairing or demolishing two derelict properties. ¶ 3. Neither the parties nor their attorney appeared at hearing (however someone claiming to have power of attorney showed up). ¶ 23. A finding of contempt was made, but the order didn't indicate what kind of contempt. ¶ 28 Afterwards, a motion to vacate was filed, but merely stated that "[d]efendants have a meritorious defense," and the motion was not brought to hinder or delay justice. ¶ 29.

Because the defendant didn't raise the argument that the contempt was improper in his motion to vacate, the issue was considered forfeited on appeal.

1 Pointless FYI, I was Appellant's Counsel on this case.

And forfeited before the trial court. "[R]egardless of forfeiture, the trial court correctly found [the defendant] forfeited these arguments in the trial court by not raising them prior to filing his amended motion to reconsider." ¶ 66. Also see *Coles-Moultrie Electric Cooperative v. City of Sullivan*, 304 Ill. App. 3d 153, 166 (1999) (It is not proper to raise a new factual argument or legal theory in a motion to reconsider.)

Swan v. Khokhar (In re Est. of Swan), 2023 IL App (4th) 230044-U

It's not the judge's job to...

The respondent appeals her contempt finding for failing to pay the GAL. ¶ 2. However, the crux of her argument drowns on appeal because she failed to present a proper brief – to include citation to authorities and a coherent legal argument. ¶¶ 11, 19-20.

The Appellate Court was pretty blunt in this case, stating outright "[w]e will not do her legal research for her." See *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993) ("A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research."). ¶ 20.

Thus, the appellant forfeited review of this point by failing to present an adequate argument and the judgment was affirmed. ¶ 20.

Author's Note: This rationale applies to trial matters as well, as judge's "are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *In re Marriage of Basil*, 2021 IL App (1st) 200258-U, ¶ 34 citing *Walters v. Nadell*, 481 Mich. 377, 388 (2008).

People v. Burton, 2023 IL App (5th) 220057-U

Completion of criminal contempt sentence generally moots the appeal.

This was an Ander's case. If you don't do criminal, juvenile, or some other case where a party has a right to counsel, this is where the appellate attorney tells the reviewing Court there's no viable argument that can be found – and they want off the case[2].

Here, the defendant was picked up for failing to register as a sex offender and ran his mouth to the judge one too many times (almost to the point of threatening the court). ¶¶ 4, 6. He was found in direct criminal contempt and sentenced to 180 days (later reduced to 90). ¶¶ 6, 10.

However the Court didn't need to review the merits of the defendant's challenge – as by the time they got to the case, he had already served his sentence. ¶ 16. And satisfaction of the sentence arising from criminal contempt makes any appeal moot. See *People v. Roberson*, 212 Ill. 2d 430, 435 (2004). ¶ 16.

Author's Note: There is an exception to mootness, called the public interest exception. Under the public interest exception to the mootness doctrine, the criteria for application are (1) the existence of a question of a public nature, (2) the desirability of an authoritative determination for the purpose of guiding public officers in the performance of their duties, and (3) the likelihood that the question will recur. *Mount Carmel High School v. Illinois High School Ass'n* 279 Ill. App. 3d at 125. The public interest exception is narrowly construed (*In re Alfred H.H.*, 233 Ill. 2d 345, 355-56 (2009)), and a clear showing of each criterion is required to bring a case within the public interest exception (*Mount Carmel,* 279 Ill. App. 3d at 125-26). Whether a case falls within an established exception to the mootness doctrine is a case-by-case determination. *Alfred H.H.*, 233

2 See Anders v. California, 386 U.S. 738 (1967)

AFLAK TRIVIA DECISIONS

DID YOU KNOW?

Door Properties, LLC v. Nahlawi, **2023 IL App (1st) 230012**

Sanction on a sanction is generally not allowed.

Long time viewers will recall I covered this case on the YouTube channel last year. In sum, the court issued a monetary sanction against the debtor (who'd been ducking a judgment for years) for failing to comply with collection efforts. ¶¶ 13-14. And when the fine was ignored, the court issued a warrant/body attachment. ¶ 19.

Months later the debtor was picked up on an unrelated traffic stop, and jailed until he paid the $262,000 purge. ¶ 2. Instead of complying or paying, he appeals – and the Appellate Court reverses, noting you can pick jail or a monetary sanction, but not a sanction on a sanction. ¶ 29.

Bonus Note: The Reviewing Court suggests, in passing, that a purge amount could be high enough that it MIGHT be prima facie improper, insofar that it becomes a defacto punishment. 'We would add that it seems almost inescapably clear that these fines had reached an amount so high that [the Appellant] could not possibly afford to pay, further suggesting that they had become punitive in nature." See *Sanders v. Shepard*, 163 Ill. 2d 534, 540-41(1994) ("'When it becomes obvious that sanctions are not going to compel compliance, they lose their remedial characteristics and take on more of the nature of punishment.'" (quoting *Soobzokov v. CBS, Inc.*, 642 F.2d 28, 31 (2d Cir. 1981)). ¶ 43.

Pardilla v. Village of Hoffman Ests., **2023 IL App (1st) 211580**

Offer of proof is insuffıcent (by itself) to make a prima facie case of non-compliance.

Property owners filed a petition for rule to show cause against Hoffman Estates. ¶ 2. At hearing on issuance of the rule, the plaintiffs proceeded by way of "offer of proof." ¶ 15. The rule issued, and ultimately the Village (defendants) were held in contempt. ¶ 23. On appeal, the 1st District made clear that the initial burden falls on the plaintiff to present evidence:

"In civil contempt proceedings, the petitioner has the burden to show, by a preponderance of evidence, that a violation of a court order has occurred. *In re Marriage of LaTour*, 241 Ill. App. 3d 500, 507-08 (1993). Importantly, a verified petition for rule to show cause does not satisfy the petitioner's evidentiary burden. *Id.* Also, by issuing a rule to show cause, a court does not make a prima facie finding that the alleged contemnor has violated a court order. *Id.* at 508. Rather, a petition for rule to show cause and the rule to show cause "operate together to inform the alleged contemnor of the allegations against [them]" as well as the time and place of the hearing. *Id.*

At the hearing, the burden is on the petitioner to show that the alleged contemnor has violated a court order. *Id.* The burden shifts to the alleged contemnor only after such showing is made. *Id.*" ¶ 42.

Here, the court found that the [plaintiffs] made a prima facie showing that the [defendants] violated the preliminary injunction based on an "offer of proof" ***. ¶ 43. However, as the Court notes, "an offer of proof is not evidence." ¶ 43.

They note that an offer of proof may have been sufficient to issue the rule to show cause, but it failed to satisfy the plaintiffs evidentiary burden. ¶ 44 .And that burden remained at the hearing on the rule to show cause. ¶ 44 . Since the proper procedure for a contempt hearing was not followed, the Appellate Court vacated the finding of contempt. "A failure to provide constitutional and procedural guarantees results in vacatur of the contempt finding." *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 31." ¶ 44 . And reversed the subsequent award of attorney fees. See *Edwards v. Pekin Memorial Hospital*, 2023 IL App (3d) 210005, ¶ 51 (vacating attorney fee sanction when upon finding the corresponding contempt finding void). ¶ 45.

People v. Jackson, 2023 IL App (1st) 220424

Contumacious conduct by an attorney can be a basis for an ineffective assistance of counsel claim.

In 2015, Anthony Jackson was convicted by a jury of the murder of Sanchez Mixon. His brother, George Jackson III, a private attorney, represented him, and another private attorney whom was later suspended from the practice of law. ¶ 2.

Sadly, the defendant's brother was wrestling with his own demons. He threw a lot of invective at Judge James Linn, among them stating he was "run[ing] amuck as a judge," being "broken," "dishonest," and engaged in "miscreant behavior." ¶ 7.

Although not mentioned in the decision, but relevant to understanding why this case is in here, on May 15, 2017, this same lawyer filed a motion that inserted an allegorical story of two jewish ladies being violated in the worst way describable[1].

Sadly, things only got worse, and the State's Attorney was eventually compelled to get an order of protection prohibiting defendant's counsel from entering the criminal courthouse except for the limited purpose of court appearances. ¶ 8.

He was also held in criminal contempt four times, by four different judges. ¶ 10. At some point, these shenanigans resulted in the attorney losing his privilege to practice law in Illinois for three years. ¶ 52.

The issue in this case was whether counsel's over-the-top contemnatious actions warrant a finding of ineffective assistance of counsel. The Appellate Court noted:

"But George Jackson's behavior was not limited to trial errors; throughout the years of proceedings during which he represented his brother, George Jackson indulged in courtroom stunts that resulted in four judges holding him in contempt. Judge Porter found George Jackson in direct criminal contempt based on statements maligning Judge Linn's character and intelligence.

Judge Walowski entered two orders holding George Jackson in direct criminal contempt of

1 Professional standards and common decency require me to water that summary down, considerably. See Mot. To Rec. Def. Emergency Mot. For Investigator, ¶¶ 12-15. (yes, I read it - it is the most insane legal filing I've ever seen from a licensed attorney). But a shortened version is quoted in the iARDC complaint (See 2021 PR 00102).

court for inflammatory language both in the motions for a change of venue and in open court. These findings of contempt, along with the others, demonstrate a pattern of behavior throughout the proceedings that began as soon as George Jackson returned to represent his brother. The record is replete with examples of rude and bullying behavior, directed primarily at the trial judge and prosecuting attorneys, but also hinted at in his interruptions on the record while the trial judge addressed the defendant, his younger brother. He distracted, delayed and interfered with Anthony Jackson's rights." ¶ 53.

Krilich v. Morgan, 2023 IL App (1st) 221198

Court's can retain enforcement powers, even after the death of BOTH parties.

In *Krilich*, both husband and wife promised, as part of their divorce settlement, to leave 50% of their estate to both their children, and grandchildren, upon death. ¶ 1. Both parties later pass away, but it turns out the ex-husband failed to keep his end of the deal. ¶ 4-5.

The children filed a petition for contempt/motion to enforce in the domestic relations case against the estate and it's personal representatives, which were in the state of Florida. ¶ 6.

In response, the estate/personal representatives filed a motion to dismiss claiming they had insufficient contacts with Illinois - and because there was an open probate case pending in Florida, Illinois lacked subject matter jurisdiction. ¶ 7. The trial judge disagreed, and the Appellate Court affirmed, noting that long standing caselaw gave family court judges authority to enforce judgments well after the divorce was over. See *Smithberg v. Illinois Municipal Retirement Fund,* 192 Ill. 2d 291, 297-98 (2000) ("Where a domestic relations order has been entered, the trial court retains jurisdiction to enforce its order, as further performance by the parties is often contemplated."). ¶ 14.

Here, the circuit court's authority was not to override the Florida probate proceedings, but to reduce the children's vested right into a judgment, and the children could then present the judgment to the Florida courts for enforcement. ¶ 17.

As to the personal jurisdiction claim, the Appellate court noted the defendants were not being sued as individuals, but in their capacity as representatives of the ex-husbands estate. A representative "steps into the shoes of the decedent" (*Moon v. Rhode*, 2016 IL 119572, ¶ 39), and "an action on a claim against a decedent which arose in his lifetime lies against the administrator in his representative capacity" (*Puhrman v. Ver Vynck,* 99 Ill. App. 3d 1130, 1132 (1981)). Cf. *In re Estate of Jagodowski*, 2017 IL App (2d) 160723, ¶ 56 (under the Illinois Parentage Act of 2015 (750 ILCS 46/602(j) (West 2016)), "the administrator of an estate, as the deceased's legal representative, stands in the deceased's shoes"). ¶ 18.

Thus, the trial court had both subject matter and personal jurisdiction to enforce the terms of the parties MSA. ¶ 24.

Author's Note: the trial court's "forever" power to enforce after death is limited to property divisions. See *In re Marriage of Poulsom*, 2022 IL App (1st) 220100, which sets a time limit to enforce money judgments from MSA's to no more than 20 years. *Poulsom*, 2022 IL App (1st) 220100, ¶ 19.

In re Marriage of Nguyen, 2023 IL App (1st) 221045-U

Affirmative defenses can't be raised in response to motions

In June of 2021, mom filed a "MOTION TO ENFORCE JUDGMENT AND FOR OTHER RELIEF," although not contained in the opinion, the court file notes that as part of her requested relief, she sought a finding of indirect civil contempt and sanctions. ¶ 6.

Dad raises a series of affirmative defenses, which mom ignores. ¶ 8. The court's ruling required dad to "immediately take all steps necessary" to transfer the accounts to mom as custodian within 14 days; the order further provided that "a daily fine for each day of non-compliance may be imposed if [dad] fails to transfer said accounts." ¶ 9.

Dad tries to appeal this, but since the order didn't hold him in contempt, and he was unable to secure a Rule 304(a) finding, it died on the vine. ¶ 11. In February of 2022, mom file a petition for indirect civil contempt because dad sat on his hands, and on July 13, 2022 the trial court agreed. ¶ 13.

Dad appeals and argues mom's initial failure to respond to his affirmative defenses negated everything that followed, as it's well settled that "[a]n order finding a party in contempt and imposing sanctions is an appropriate method for testing pretrial orders, which would otherwise not be appealable. *Bearden v. Hamby,* 240 Ill. App. 3d 779, 892 (1992). Moreover, review of the contempt finding necessarily requires review of the order which it is based. *Waste Management, Inc. v. International Surplus Lines Insurance Co*., 144 Ill. 2d 178, 189 (1991)." ¶ 21.

However, dad's legal theory is dead on arrival because a failure to respond to an affirmative defense is limited to pleadings, not a motion to enforce. ¶ 22.

A pleading "consists of a party's formal allegations of his claims or defenses." *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 407 (2005). ¶ 23. ***

The revewing court noted that dad cited no authority suggesting that a motion to enforce a dissolution judgment is a pleading, and for their part, could not find that it is anything other than "an application to the court for a ruling or an order in a pending case" (*Wolff*, 355 Ill. App. 3d at 407). See also *In re Marriage of Andres,* 2021 IL App (2d) 191146, ¶ 61 (a motion concerning past-due child support was properly characterized as a motion to enforce the prior order and not a modification or new cause of action, as it sought to enforce the rights and obligations that already existed, not to impose new or different obligations on the parties). ¶ 23.

Consequently, the Court found mom wasn't required to respond to dad's affirmative defenses. ¶ 23.

Additionally, dad's argument that because he wasn't issued a Rule 304(a) finding excuses him from compliance was found to be a non-starter. ¶ 26.

As the Court noted his position would effectively mean that no litigant would be required to comply with any interlocutory order, absent certain exceptions which allow for immediate appealability of such orders. ¶ 26. Furthermore, the Supreme Court has made clear that a party may refuse to comply with a court order only if that order is void; otherwise, if the court has jurisdiction over the subject matter and the parties, "its order must be obeyed until such time as it is set aside by the issuing or reviewing court." *Faris v. Faris*, 35 Ill. 2d 305, 309 (1966). ¶ 26. Thus, dad loses this argument as well. ¶ 26.

Rice v. Meneely, 2023 IL App (5th) 220650-U

Waiver and Estoppel can defeat a contempt claim.

Here, the parties worked out (just mere days before the COVID crisis) dad's arrears for the sum of $65,000, provided he paid a lump sum of $22,000 to mom by March 20, 2020, and $1500 per month toward the remaining balance beginning on April 20, 2020, until paid in full. ¶ 14.

COVID happens, dad loses his job, but being smarter than most, he communicates this to his lawyer, who lets opposing counsel know. ¶ 8. Mom's lawyer then acknowledged the need for patience in light of the COVID situation, and in the interim, mom accepted a $20,000 lump sum, followed by monthly payments of $282 per month. ¶ 8.

In March of 2021, mom turns around and files for contempt for the underpayments. ¶ 9. The trial judge felt that her conduct lured dad into believing strict compliance wasn't warranted, and declined to hold him in contempt. ¶ 13.

The appellate court affirmed, noting: "Waiver is either an express or implied voluntary and intentional relinquishment of a known and existing right." *Wells v. Minor*, 219 Ill. App. 3d 32, 45 (1991).

As to an implied waiver, waiver of a legal right may arise when the conduct of the person against whom waiver is asserted is inconsistent with an intent to enforce said right. *Id.* A party to a contract may not lull another into false assurance that strict compliance with a contract duty will not be required and then sue for noncompliance. *Id.* The courts analysis focuses on the intent of the nonbreaching party. *Id.* Where she has intentionally relinquished a known right, either expressly or by conduct inconsistent with an intent to enforce that right,they have waived it and may not thereafter seek judicial enforcement. *Id.* ¶ 19.

If affirming the trial court's ruling, the court notes that althought "the petitioner failed to strictly comply with the terms of the agreed order, the respondent accepted the petitioner's payments, acknowledged the COVID-19 crisis, acknowledged the issues that needed to be corrected in the agreed order, and offered to be patient." ¶ 21.

Pomrenke v. Pond (In re Pond), **2024 IL App (3d) 230157-U**

The defense of Res Judicata is generally not applicable when the contempt allegations allege different time periods of non-compliance.

A lawyer and his client agree to a payment plan for his unpaid fees back in 2008. ¶ 4. Sometime in 2011, the client stops paying (although she did tender about $44k). ¶ 4. For reasons unknown, the lawyer waits until 2022 to file a petition for rule for the remaining balance of approximately $12k. ¶ 4.

The client, for her part, argued 1) the lawyer worked out an arrangement with her and 2) laches. ¶ 5. The court issued the rule against the client. ¶ 5.

At hearing on return of the rule, the trial judge found the former client credible, and the lawyer, well, not so much. ¶ 7. It quashed the rule and declared that the lawyer's conduct of silence from 2011 thru 2022 made it reasonable for the client to presume she owed nothing. ¶ 7.

Undeterred, the lawyer files another petition for rule, but this time argues that NOW (given the filing of his first petition for rule) the client understands she owes, and yet still refuses to pay. ¶ 9. The trial court told the lawyer to go pound sand and granted the client's motion to dismiss based on res judicata. ¶ 10.

However the appellate court reverses, noting the time period of alleged non-complivance of the second petition (2022-2023) differed from the first (2011-2022), thus res judicata was not applicable to this case. ¶ 14.

"The doctrine of res judicata provides that a final judgment on the merits rendered by a court of competent jurisdiction acts as an absolute bar to a subsequent action between the same parties or their privies involving the same claim, demand, or cause of action." *Wilson v. Edward Hospital,* 2012 IL 112898, ¶ 9. ¶ 13.

HOWEVER, in what could be argued was a telegraphed signal to the trial court, the Appellate Court notes: "Our decision to do so should not be construed as an indication that the petition has merit, rather it is simply based upon the conclusion that on the record before us dismissal was not warranted under the doctrine of res judicata." ¶ 14.

Play Stupid Games, Win Stupid Prizes

Vite v. Vargason, 2023 IL App (2d) 220147-U

Judge's may consider a party's history of thumbing their nose at the court when determining intent.

The plaintiff was the general manager at a car dealership, the latter of which was one of the defendant's in this cause. ¶ 5. The plaintiff alleged in part that he had made a "commissions loan" to the defendants, which at some point, broke bad. ¶ 5. Things get a bit stranger, as while the plaintiff's lawsuit against the dealership was pending, he also filed a wage claim with the Illinois Department of Labor ; this claim was alledgely duplicative of the breach-of-contract claim. ¶ 6.

In the breach of contract case, the trial court eventually appointed a receiver for the defendant's. ¶ 8. However, the terms of that receivership noted that thereceiver shall have no rights, powers, authorities, duties, responsibilities, or obligations with respect to any defense of [the defendant] individually or personally. ¶ 8.

And that the defendant himself was enjoined from representing or otherwise acting on behalf of the entities (e.g., the corporate defendants) he was associated with. ¶ 8. And that if the defendant acted in contravention "or attempts to or does hinder, interfere with, obstruct, or frustrate the receiver in carrying out his powers and duties may be held in contempt." ¶ 8.

It was alledged the plaintiff did not notify the receiver of the pending wage claim, and that an administrative hearing had been scheduled. ¶ 9. At the hearing on the wage claim, no one appeared except the plaintiff. ¶ 10. At the conclusion of the hearing, the Administrative Law Judge (ALJ) ruled in favor of the plaintiff, and imposed liability on both the defendant and his company. ¶ 11.

Once the defendant (individually) learned of the decision, he filed a motion to reconsider, stating "we" (as opposed to "I") received no notice, and "was found in default by not showing up to defend the company." ¶ 12.

The Department's ALJ granted the motion to reconsider. ¶ 13. In response, the plaintiff filed a petition for rule in the breach of contract case, alleging the motion to reconsider (and more importantly, the terminology used) demonstrated the defendant was still asserting control or otherwise representing it's interests in contravention of the court's order. ¶ 15.

The defendant responded that his reference to the "company" in the motion to reconsider might have been "inartful," but that "mistakes in pleadings do not merit contempt proceedings." ¶ 16.

However, the facts also reflect the defendant sent his motion to reconsider from his company's email address. ¶ 20. And it was later revealed that he was aware of the wage claim, insofar that he retained an attorney to handle it (said lawyer later withdrew). ¶ 21. The defendant also failed to notify the Department of the breach of contract lawsuit, or his subsequent relation to Iowa. ¶ 21. And finally, (and perhaps most damning) the defendant failed to notify the receiver prior to filing the motion to reconsider. ¶ 21.

The court held the defendant in contempt, in part due to past contempt findings (noting the defendant was no stranger to the courtroom), and use of the company email address. ¶ 28.

On appeal, the defendant's "inartful" wording and other acts, did not impress the reviewing Court. As the trial court noted, Vargason was not an innocent "babe in the woods;" he had already been found in contempt (prior times) for actions representing the dealership and those actions precipitated the court's receivership appointment and a stay of arbitration proceedings.

More problematic, the record reflects that, when he wrote the motion, the defendent did not know the status of the receiver's notice of or position on the wage claim (or whether or not he had a rationale for not defending it). ¶ 41.

"[T]he fact that the issue was complicated and that there existed a court order prohibiting [the defendant] from taking certain actions meant *** [the defendant] could have sought guidance from the receiver and/or the court, as opposed to simply acting independently." ¶ 46.

As for the defendant's argument that nothing specifically precluded him from using the dealership's email address, the reviewing Court found this argument is reminiscent of a child protesting punishment for pushing a sibling because the parent only expressly prohibited hitting. ¶ 46. And the trial court was not unreasonable in finding that use of the email address would suggest to an objective party that defendant had some authority, whether in a capacity as employee, agent, or otherwise, to act on the dealership's behalf." ¶ 46.

Needless the say, the contempt finding was affirmed. ¶ 56.

CONTACT US

David Gotzh
Midwest Appeals LLC
444 N Michigan Ave, Ste 1200
Chicago, IL 60601

e. David@MidwestAppeals.com