

Contempt

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1

SOG Resources

- ▶ Family Law Bench Book, Child Support Chapter (enforcement section)
 - <http://defendermanuals.sog.unc.edu/content/other-manuals>
 - <http://www.ncids.org/ChildSupport/ReferenceMaterials/RefMaterialsLinks.htm>
- ▶ Bench Book Volume 2, Contempt Chapter
 - <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/Bench%20Book%20-%20Vol%202%20-%2004%20Contempt.pdf>

2

SOG Resources

- ▶ Contempt (overview), AOJ Bulletin, M. Crowell 2015:
(<http://sogpubs.unc.edu/electronicversions/pdfs/aojb1503.pdf>)
- ▶ Contempt of Court – Online training module
(<https://www.sog.unc.edu/courses/online-modules/contempt-court>)
- ▶ Numerous blog posts at “On the Civil Side”:
(civil.sog.unc.edu/)
- ▶ Numerous blog posts at Criminal Law Blog
(nccriminallaw.sog.unc.edu)

3

Contempt authority is statutory

NC Gen. Stat. Chapter 5A

Criminal Contempt

Civil Contempt

Contempt by Juveniles

4

Federal/State Regulations

- ▶ **Read** about federal and state direction to child support enforcement agencies regarding the use of contempt to enforce child support
 - <https://civil.sog.unc.edu/new-regulations-regarding-contempt-in-iv-d-child-support-cases/>

5

NC DSS Child Support Enforcement Manual

• [GUIDELINES FOR USE OF CIVIL CONTEMPT IN IV-D CASES](#)

"The federal Office of Child Support Enforcement (OCSE) has stated: "Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice." Prior to considering the use of contempt proceedings in a delinquent case, CSS caseworkers should consider the use of administrative enforcement remedies. If a repayment plan can be negotiated successfully, this approach can be considered as a cost savings to the CSS agency."

6

NC DSS Child Support Enforcement Manual

- "If caseworkers determine other enforcement remedies to be inadequate, then prior to initiating a contempt proceeding in court, they must screen the case for information regarding the NCP's [NCP is the noncustodial parent] ability to pay (or otherwise comply with the order, if appropriate)...."
- "Caseworkers must share the results of this review with the IV-D attorney, so that the IV-D attorney can present this information to the court, either if the court requests it or as is otherwise appropriate."
- "Alternatively, if the results of the review indicate that the amount of the current court-ordered obligation may no longer be consistent with the NCP's ability to pay, caseworkers should consider whether modification of the order might be appropriate."
- "Prior to a civil contempt hearing, the NCP must also be given notice that his/her ability to pay will be a critical question at the hearing."

7

Criminal vs. Civil Contempt

- Different purposes
- Different legal basis, grounds, elements
- Different legal procedure
- Different burden of proof
- Different legal rights
- Different sanctions
- Different appellate procedure

8

Criminal contempt	Civil contempt
<ul style="list-style-type: none"> • To vindicate the dignity of court by punishing disrespect to court or its orders • To deter future violations • A judgment, a "conviction" (not a conviction for structured sentencing) 	<ul style="list-style-type: none"> • To preserve & enforce rights of party by coercing compliance with court's orders • To coerce compliance with court's order • A status

9

Criminal vs. Civil Contempt

- Distinction is “hazy at best”
 - Failure to comply with court order may be criminal, civil, or both
 - Cannot be held in both civil and criminal contempt for same act
 - Purpose of trial court may be unclear
 - Confusion regarding and failure to follow procedure & sanctions
 - Hesitance to use criminal contempt

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10

[Kolczak v. Johnson, 260 NC App 208 \(2018\)](#)

- Trial court found civil contempt for violations of custody order:
 - failing to inform father of certain events as required by the custody order,
 - failing to give father the right of first refusal when she needed childcare for the child as specified in the custody order,
 - allowing her husband to be present when the children were at her home when order provided that children were to have no contact with the husband, and
 - scheduling the children for camps during times that interfered with father’s custodial time with the children.
- Court of Appeals stated:
 - It is not “apparent how an appropriate civil purge condition could coerce the defendant to comply with the court order as opposed to punishing her for a past violation.”

11

Criminal vs. Civil Contempt

Civil contempt

- Avoid or terminate status by compliance

Criminal contempt

- Punishment is imposed
- Can’t avoid or terminate the “conviction” through compliance
 - Even if sentence suspended, judgment remains

- **“Bright line” rule**
 - **Sanction, not label, is determinative**
 - *Reynolds v. Reynolds*, 356 NC 287 (2002).

12

Reynolds v. Reynolds, 356 NC 287 (2002), adopting dissent in 147 NC App 566 (2001)

- Criminal or Civil ????
- “Defendant is guilty of ... contempt and ordered an active sentence of thirty days in [jail] suspended on the following conditions:
 - Defendant's posting of a cash bond or security of at least \$75,000.00 to secure and assure the timely payment of future cash child support;
 - Defendant immediately paying Plaintiff's attorney the sum of \$212.52, “representing interest on the four delinquent child support payments”;
 - Defendant timely paying each cash child support amount due; and Defendant immediately paying \$10,000.00 in attorney's fees.”

13

Wilson v. Guinyard, 801 SE2d 700 (2017)

- Criminal or Civil ??????
- Defendant in contempt for being late for visitation pick up;
- “Purge” contempt by picking up on time next three visits;
- If late, forfeit three visits and spend 72 hours in jail.

14

Civil contempt

- Only purpose is to coerce compliance with a court order after court concludes party has the present ability to comply with the order

15

Consent Orders

General rule:

- If court approves and adopts agreement of parties, contempt is not available
 - See *Crane v. Green*, 114 NC App 105 (1995)
- If court makes findings of fact and conclusions of law, contempt is available
 - See *Nohejl v. First Homes of Craven County, Inc.*, 120 N.C. App. 188 (1995)

Domestic Relations Cases

- All consent orders are enforceable by contempt
 - *Henderson v. Henderson*, 307 NC 401 (1983)
 - *Walters v. Walters*, 307 NC 381 (1983)

16

GS 5A-21(a)

- Failure to comply with court order is continuing civil contempt as long as:
 - The order remains in force
 - The purpose of the order may still be served by the person's compliance with it
 - The person's failure to comply is **willful**, and
 - The person has the **present ability to comply** with the order or to take reasonable measures that would enable him to comply with the order

17

GS 5A-22(a)

- A person imprisoned for civil contempt must be released when his civil contempt no longer continues.
- The order of the court holding a person in civil contempt must specify how the person may purge himself of the contempt.

18

Watson v. Watson
187 NC App 55 (2007)

- “A civil contempt proceeding does not command the procedural and evidentiary safeguards that are required by criminal contempt proceedings.”
- Why??

19

Civil contempt

- Contemnor must ‘hold the keys to the jail’
- Because contemnor can walk out of the jail at any time, there is no right to counsel or other safeguards required in criminal cases where liberty is in jeopardy
 - *Turner v. Rogers*, 564 US 431 (2011)(no right to counsel for child support contempt)
 - *Cf. McBride v. McBride*, 334 NC 124 (1993)(right to counsel for child support contempt)
 - *Wilson v. Guinyard*, 254 NC App 229(2017)(right to counsel in non-child support civil contempt is determined on a case-by-case basis)

20

***McBride v. McBride*, 334 NC 124 (1993)**

- ▶ Overruled *Jolly* wherein court held no right to counsel because civil contemnor “holds the keys to the jail.”
- ▶ *McBride*: contemnor does not “hold keys to the jail” if he cannot pay the purge.

21

McBride v. McBride, 334 NC 124 (1993)

- ▶ Despite requirements of the law, “experience has shown” “trial courts do not always make [the required] determination.”
- ▶ Attorneys will prevent “unjustified deprivation of a defendant’s physical liberty” and “increase the accuracy of the proceeding.”

22

Civil Contempt Procedure

- Civil initiated either by:
 - Motion filed by a party.
 - GS 5A-23(a1)
 - Show cause order from court.
 - GS 5A-23
 - No statutory authority to issue order for arrest for failing to show up
- If initiated by motion, moving party has burden of going forward at hearing
- If initiated by show cause order, respondent obligor has burden of going forward at hearing.

23

Civil Contempt Procedure

Show cause cannot issue unless judicial official determines, based on verified motion and sworn statement, there is probable cause to believe obligor is in civil contempt.

The finding of probable cause justifies the shifting of the burden of presenting evidence in the contempt trial

- Probable cause requires trustworthy information sufficient to warrant a prudent man in believing obligor is in civil contempt.

• Young v. Mastrom, Inc., 143 NC App 463 (2002)

24

GS 5A-23

- (c). The person ordered to show cause may move to dismiss the order
- (e). At the conclusion of the hearing, the judicial official must enter a finding for or against the contemnor on each of the elements set out in GS 5A-21(a)

25

Civil Contempt

- Order of civil contempt must contain findings of fact supported by evidence in the record establishing defendant has the present ability to comply with the purge ordered
 - [See Durham DSS ex rel Alston v. Hodges, COA January 2, 2018](#)
- There is no contempt by default
 - <http://civil.sog.unc.edu/no-default-judgment-in-contempt/>
 - <https://civil.sog.unc.edu/contempt-establishing-ability-to-pay/>
 - Tigani v. Tigani*, 805 SE2d 546 (NC App 2017)

26

Is this enough to support contempt?

Defendant was ordered to pay child support

Defendant has not paid

27

What about this?

- Defendant has not paid and he:
 - Is healthy and able-bodied
 - Is presently employed
 - Owns a car
 - No ill health or incapacity since entry of order
 - Has ability to earn good wages as a salesman
 - Is experienced in the restaurant business
 - Never requested modification of order

28

Mauney v. Mauney, 268 NC 254 (1966)

No – findings insufficient to establish defendant’s ability to pay at any time during the period in which he was in arrears.

Court should “take an inventory of the property of the defendant; find what are his assets and liabilities and his ability to pay and work – an inventory of his financial position.”

29

What about...

- Alleged contemnor has not paid and:
 - Is an able-bodied 32-year old
 - Attended high school up to 10th grade
 - Has work experience in the furniture industry but prefers to work outside jobs
 - Worked full time for 8 months last year as a brick mason

30

Clark v. Gragg,
171 NC App 120
(2005)

- Findings insufficient to show defendant's noncompliance was willful.
 - See also *County of Durham v. Burnette*, 262 NC App 17 (2018)(need evidence of income, assets, liabilities and reasonable subsistence needs)
- To support conclusion of willful noncompliance, must establish ability to pay "during the time he was in default".
- In addition, court must find present ability to comply with purge.
 - Order must show contemnor "holds the keys to the jail".

31

Remedy for
civil
contempt
GS 5A-21

Person found in civil contempt "may be imprisoned as long as the civil contempt continues."	Imprisonment is the only remedy	Contempt order must provide "purge"
<ul style="list-style-type: none"> • Indefinite incarceration: • Purge that does not require payment of money • Purge that requires payment of money for child support • GS 5A-21(b) • Required review after 90 days: • Purge that requires payment of money for something other than child support • GS 5A-21(b2) • See <i>McKenzie v. McKenzie</i>, 279 NC App 126 (2020) 	<ul style="list-style-type: none"> • Short "stays" of incarceration are permissible but not suspended sentences • See <i>Blanchard v. Blanchard</i>, 865 SE2d 693 (N.C. Ct. App. Sept. 21, 2011)(180-day stay upheld) • See <i>Gordon v. Gordon</i>, 233 NC App 477 (2014)(60-day stay okay where evidence showed ability to pay purge in 60 days) • <i>Watson v. Watson</i>, 187 NC App 55 (2007)(90-day stay okay where evidence showed party had property that could be sold) 	<ul style="list-style-type: none"> • Must specify how and when contempt will be lifted • <i>Kolczak v. Johnson</i>, 260 NC App 288 (2018)(civil contempt vacated for lack of a purge) • Indefinite civil contempt is not allowed • <i>Wetters v. White</i>, 229 NC App 164 (2013) • <i>Spears v. Spears</i>, 245 NC App 260 (2016)

32

Remedy for
civil
contempt

Fines are not allowed

- GS 5A-21(d)

Costs and Damages are not allowed

- *Watson v. Watson*, 187 N.C. App. 55 (2007)(no expert witness fees)
- *Attassi v. Attassi*, 122 N.C. App. 356 (1996)(no compensatory damages)

33