Contempt Cheryl Howell School of Government

1

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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/f iles/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/aojb1 503.pdf)
- Contempt of Court Online training module (https://www.sog.unc.edu/courses/onlinemodules/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)

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-regulationsregarding-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."



- "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."

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

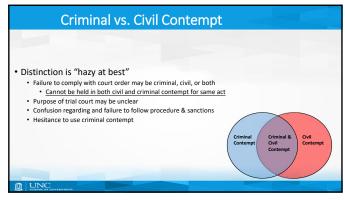
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Criminal contempt

- 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)

Civil contempt

- To preserve & enforce rights of party by coercing compliance with court's orders
- To coerce compliance with court's order
- A status



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),

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."
- m UNC

13

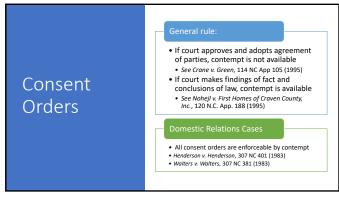


- Criminal or Civil ????:
- Defendant in contempt for being late for visitation pick up;
- "Purge" contempt by picking up on time next three visits;
- If late, forfeit three visits and spend 72 hours in jail.

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



• 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

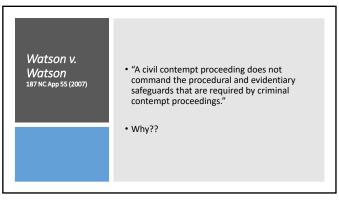
• The person's failure to comply is willful, and

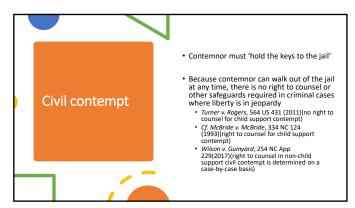
• The person has the present ability to comply with the order or to take reasonable measures that would enable him to comply with the order

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.





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.

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."

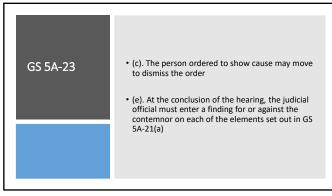
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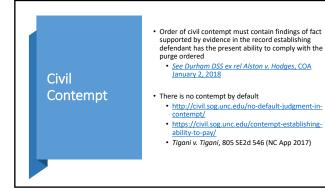


- Civil initiated either by:
 - Motion filed by a party.
 - GS 5A-23(a1)
 - Show cause order from court.
 GS 5A-23
 - No statutory authority to issue order for arrest for failing to show up
- If initiated by motion, moving party has burden of going forward at hearing
- If initiated by show cause order,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

23

Civil Contempt **Procedure**





Is this enough to support contempt?

Defendant was ordered to pay child support

Defendant has not paid







