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# On the Civil Side

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### Contempt: NC Court of Appeals vacates a “springing” order for arrest



This entry was contributed by Cheryl Howell on July 10, 2025 at 9:00 am and is filed under Contempt.

In this earlier post, my current colleague Danny Spiegel (who was an NC Assistant Appellate Defender at the time the post was published), analyzed the law of civil contempt and concluded that “springing orders for arrest upon future nonpayment of purge payments in child support civil contempt proceeding without contemporaneous inquiry into ability to pay” are unlawful. <https://civil.sog.unc.edu/civil-contempt-and-springing-orders-for-arrest/> In an opinion issued June 18, 2025, the NC Court of Appeals agreed with that assessment. *Collins v. Holley*, NC App. (June 18, 2025).

#### What is a ‘springing’ order for arrest?

The purpose of civil contempt is not to punish but, rather, to coerce a defendant to comply with an order of the court. *Shippen v. Shippen*, 204 N.C. App. 188 (2010) (citing *Scott v. Scott*, 157 N.C. App. 382 (2003)). Because immediate coercion is the purpose of civil contempt, the statutory remedy for civil contempt is incarceration until the civil contempt is purged. GS 5A-21(b). An order for civil contempt must specify how a person can purge themselves from contempt, GS 5A-22(a), and a court order cannot provide that a person will be in civil contempt indefinitely. *Spears v. Spears*, 245 NC App. 260 (2016); *Collins v. Holley*, NC App. (June 18, 2025).

As Danny’s earlier blog post points out, it is not uncommon in some courts throughout North Carolina for orders issued in child support enforcement proceedings to determine that a respondent is in civil contempt but stay incarceration and order the respondent to pay ongoing monthly payments until all arrears are satisfied. These orders often also provide that, if the respondent fails to make a monthly payment, the respondent is to be immediately arrested and incarcerated. The order for arrest and incarceration ‘springs’ into effect upon the respondent’s future failure to comply with the monthly payment schedule.

#### What’s wrong with that?

G.S. 5A-21(a) provides that a person may be found in civil contempt for failure to comply with a court order if the following elements are met:

1. The order remains in force;
2. The purpose of the order may still be served by compliance with the order;
3. The noncompliance by the person to whom the order is directed is willful; and
4. The person to whom the order is directed is able to comply, or able to take reasonable measures that would enable the person to comply, with the order.

A finding of willful failure to pay court-ordered child support must be based on evidence that the obligor is purposefully, deliberately, stubbornly, or in bad faith disobeying a child support order or disregarding a court-ordered obligation to pay child support despite the present ability to do so. *Shippen v. Shippen*, 204 N.C. App. 188 (2010) (citing *Forte v. Forte*, 65 N.C. App. 615 (1983)).

As Danny’s earlier post states, because a respondent in a civil contempt proceeding can be incarcerated only after a determination is made that the respondent is capable of complying with the order of the court at the time of the contempt proceeding, “courts have repeatedly described those incarcerated for civil contempt as “holding the keys to their own jail.” See *McBride v. McBride*, 334 N.C. 124, 128 (1993); see also *Turner v. Rogers*, 564 U.S. 431, 442, 180 L. Ed. 2d 452, 462 (2011).

In other words, the court must determine that, at the time of incarceration, the respondent can comply with the purge condition and free themselves from incarceration. Evidence of an obligor’s ability to pay at a particular time in the past is not sufficient to show the obligor has the present ability to comply. *Tigani v. Tigani*, 256 N.C. App 154 (2017) (where, addressing defendant’s bank records from November 2016 through March 2016, the court stated that “the records did not reflect defendant’s financial circumstances on 25 July 2016 [the date of the contempt hearing], which is the relevant time for purposes of determining defendant’s *present* ability to pay.”).

### **Collins v. Holley, NC App. (June 18, 2025)**

In this recent court of appeals opinion, the defendant father filed a motion for civil contempt, alleging the plaintiff mother failed to pay the amounts required by a child support order and an order for attorney fees. The only evidence offered during the hearing was testimony by plaintiff about her financial circumstances. The trial court concluded that the plaintiff was in civil contempt, and the court ordered that she pay an amount of child support arrears that was more than the amount required by the order being enforced and ordered that she pay an amount of attorney fees that also was more than the amount already required by the order being enforced. The contempt order included findings that plaintiff had the ability to comply with these

additional amounts as well as the amounts required by the original child support order and ordered that she make monthly payments until she paid all amounts ordered. The contempt order then provided that if the plaintiff failed to make any of the required monthly payments, she was to be immediately arrested and held in the county jail until all payments were made in full.

The plaintiff appealed and the court of appeals reversed the contempt order. The appellate court held that the trial court’s findings that plaintiff acted willfully and had the ability to pay in compliance with the underlying orders were not supported by the only evidence produced during the hearing. The plaintiff’s testimony about her income and expenses clearly showed she did not have the ability to pay. The defendant’s written motion contained allegations regarding plaintiff’s ability to pay, but the defendant did not testify or offer evidence to support the allegations contained in the motion.

The court of appeals also held that the trial court did not have the authority to increase the amounts plaintiff owed for child support arrears or for attorney fees in the contempt order. Existing child support orders and existing orders for attorney fees cannot be modified in a civil contempt proceeding.

Finally, the court of appeals held that a trial court cannot order an automatic future arrest of a person who fails to comply with a purge condition that requires future actions. The court held that, before incarceration, there must be a hearing to determine that the respondent has the actual present ability to comply with the purge condition at the time of incarceration. The appellate court stated, “there is simply no way the trial court can project out and assume [a party’s] income, expenses, or assets in the future.”

In previous opinions, the appellate court has affirmed contempt orders with short stays of incarceration when there is evidence presented during the contempt hearing that the respondent will have the ability to comply with the court order in the very near future, or where the respondent has the ability to take immediate reasonable steps that will allow the respondent to comply. See *Gordon v. Gordon*, 233 N.C. App. 477 (2014) (60-day stay of incarceration was upheld where evidence established that the obligor would receive funds to pay the purge condition in sixty days), and *Watson v. Watson*, 187 N.C. App. 55 (2007) (affirming an order of civil contempt allowing defendant ninety days to sell property to pay the order’s purge amount).

But the holding in *Collins* makes it clear that purge orders for on-going payments into the future cannot be enforced with springing orders for arrest; a new hearing must be held to determine that a respondent has the actual ability to comply at the time of incarceration.

This entry was tagged with the following terms: ability to pay, civil contempt, orders for arrest.

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