

Circuit Court for Calvert County  
Case No. 04-C-16-000826

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 0834

September Term, 2023

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JENNIFER BANCROFT

v.

CHRISTOPHER PARKER

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Nazarian,  
Leahy,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: January 25, 2024

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Jennifer Bancroft (“Mother”) appeals the order of the Circuit Court of Calvert County holding her in constructive civil contempt for denying her now-ex-husband, Christopher Parker (“Father”), visitation with their three children unjustifiably. She contends that the court erred by setting a purge provision without finding that she had the ability to perform the purge or finding that the purge would be in the best interest of the children. She also argues that the court erred by awarding attorneys’ fees to Father without making findings about her financial resources or the reasonableness of the fees. We find no error and affirm.

### **I. BACKGROUND**

Mother and Father were married in Maryland in 2007 and have three children, born in 2008, 2010, and 2012, respectively. In 2014, Mother and Father separated. They were granted a judgment of absolute divorce on January 17, 2017. Before their divorce, Mother and Father signed a settlement agreement governing the custody of the children that was incorporated into the divorce judgment. The agreement specified that they would share physical custody of the children and it set forth a weekly visitation schedule.

The settlement agreement governed custody of the children until January 2022, when Mother alleged that Father strangled the youngest child. From that time on, Father has been denied visitation with the children. Mother alleges that she has not engaged in any action to prevent the children from visiting Father but contends that the children became fearful and refused to have any contact with him.

Father has filed a total of seven contempt petitions against Mother. After the first

contempt petition, the court issued a temporary order granting Father weekly parenting time with the two older children and “reasonable visitation” with the youngest child. About two weeks later, Father filed a second contempt petition, asserting that Mother had not complied with the temporary order and that she was “interfering with and depriving [Father] of parenting time . . . .”

On October 13, 2022, the court denied Father’s contempt petition, but again granted Father weekly parenting time with the two older children. The court reserved decision on the issue of visitation with the youngest child. In addition, the court advised Mother that “if she failed to see to it that her daughters have visitation with Father pursuant to the court order, starting on October 27, 2022, she might be held in contempt of court.”

The children did not have visitation with Father after the October 13, 2022 order and Father filed his third contempt petition against Mother. The court found Mother to be in constructive civil contempt of the October 13 order, and stated that “the refusal of the children to have contact with Father and the failure of Mother to see to it that Father’s visitation rights are honored[] is entirely unjustified.” The court found that “Father never choked [the youngest child] or otherwise physically abused him” and that “the children’s fear is due to . . . intentional parental alienation on the part of Mother.” As a sanction, the court ordered Mother to pay \$7,500.00 into the court’s registry. The court advised Mother that she could purge herself of the contempt order “if, on December 9, 2022, at 6:00 p.m., she [met with] Father at the Sheriff’s Department of Calvert County in Prince Frederick, MD and transfer[ed] to Father his three children . . . .”

On December 29, 2022, Father filed a fourth contempt petition against Mother. He alleged that although Mother and the children arrived at the Sheriff’s Department on December 9, 2022, Mother left without transferring the children. He asserted that he heard Mother’s car doors lock after Mother stepped out of the vehicle to talk to Father upon arriving. Mother responded that she attempted to transfer the children to Father, but they “refused to get out of the car even when told to by [Mother] and police officers.”

The denial of visitation continued for the following several weekends, and Father filed his fifth and sixth contempt petitions against Mother on February 5, 2023 and March 1, 2023, respectively. The petitions alleged that on December 23, 2022, January 6, 2023, January 27, 2023, February 10, 2023, and February 24, 2023, Mother and the children arrived at the Sheriff’s Department but Mother did not transfer the children to Father. The court granted Father’s fourth, fifth, and sixth contempt petitions on June 14, 2023, finding that Mother “ha[d] unjustifiably denied [Father] his court-ordered visitation.” The court found that Mother “d[id] not believe that her children should go with their father, so she engage[d] in the biweekly theater of arriving with her children at the Calvert County Sheriff’s Office in an attempt to demonstrate compliance,” and that “Mother [wa]s not compliant with the Custody Order.”

The court imposed a sanction of forty-eight hours of incarceration on Mother. It also set forth a purge provision specifying that Mother could avoid the sanction “if she [met Father] at the Calvert County Sheriff’s Office on Thursday, June 15, 2023, at 5:00 p.m. and transfer[red] to [Father] the three minor children.” The court found that Mother had

the ability to satisfy the purge provision because she was a “fit and proper parent” and was “more than reasonably capable of ensuring that her minor children act in their own best interest, even if those children [did] not believe that a given action [wa]s in their best interest.” Moreover, the court determined that “it [was] necessary, and in the best interest of the minor children, to assess [Father]’s counsel fees against [Mother] for her unjustified denial of visitation.”

Mother arrived with the children at the Sheriff’s Office on June 15, 2023 but did not transfer the children to Father. The next day, on June 16, 2023, Mother filed a Motion for Reconsideration of the court’s contempt order. The court held a hearing on Mother’s motion one week later, on June 22, 2023. At the hearing, the court reviewed police body camera footage of the failed transfers scheduled for June 9, 2023 and June 15, 2023. Moreover, Mother asked the court to observe her size compared to the oldest child to show “how she could not physically pick the child up,” and the court allowed a side-by-side comparison.

At the end of the hearing, the court denied Mother’s Motion to Reconsider. The court found that the body camera footage revealed that Mother did “nothing other than open[] the door and try[] to get one child out,” which was not sufficient to satisfy the purge provision. Although the court noted that the child “pushed at” Mother, it concluded that Mother’s attempt to remove the child was “brief.” The court also emphasized that Mother

had directed her efforts toward finding fault with Father rather than toward transferring the children:

[T]he effort of [Mother] was focused on [Father]. She was blaming him for putting her in jail, and that it was his fault as opposed to . . . go[ing] to the other side of the vehicle and try[ing] to get [the oldest child] out of the vehicle or . . . try[ing] to get [the youngest child], who was in the back, out of the vehicle. There was nothing other than opening the door and trying to get one child out.

Based on that, . . . the reconsideration, again, is denied.

Mother filed a notice of appeal on June 23, 2023. One month later, on July 27, 2023, Father filed his seventh contempt petition against Mother, asserting that Mother continued to deny him visitation with the children. Given the close overlap between the issues on appeal and those raised in the most recent contempt petition, Mother and Father submitted a consent order agreeing to stay the proceedings relating to Father’s seventh contempt petition. The court signed the consent order. Additional facts will be provided below as needed.

## II. DISCUSSION

This appeal, which brings before us the June 14, 2023 order granting Father’s fourth, fifth, and sixth contempt petitions and the June 22, 2023 order denying Mother’s motion to reconsider, presents two issues: *first*, whether the circuit court erred in setting a purge provision that required Mother to transfer the children to Father without, as Mother claims, finding that Mother had the ability to perform the purge or finding that the purge would be in the best interest of the children; and *second*, whether the circuit court erred in awarding

attorneys' fees to Father.<sup>1</sup> We hold that the circuit court did not err in setting the purge provision because it found that Mother had the ability to transfer the children to Father and that visitation with Father was in the best interest of the children. Further, we hold that the court did not err by awarding attorneys' fees to Father because it found that Mother had unjustifiably denied Father of his court-ordered visitation.

“The decision of whether to hold a party in contempt is vested in the trial court.” *Dronney v. Dronney*, 102 Md. App. 672, 683 (1995). “[T]his Court will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed.” *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)).

**A. The Circuit Court Did Not Err In Setting A Purge Provision That Required Mother To Transfer The Children To Father.**

Mother contends *first* that the court's order holding her in contempt must be

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<sup>1</sup> Mother phrased her Questions Presented as follows:

- I. DID THE TRIAL COURT ERR AS A MATTER OF LAW IN SETTING A PURGE PROVISION THAT MS. BANCROFT COULD NOT PERFORM WITHOUT THE COMPLIANCE AND PARTICIPATION OF THIRD PARTIES?
- II. DID THE TRIAL COURT ERR IN FAILING TO CONDUCT A BEST INTEREST ANALYSIS BEFORE IT SET A PURGE PROVISION THAT HAD A LIKELIHOOD OF EXPOSING THE MINOR CHILDREN TO MENTAL AND PHYSICAL HARM?
- III. DID THE TRIAL COURT ERR IN MAKING AN AWARD OF ATTORNEY'S FEES WHEN IT MADE NO FINDING AS TO MS. BANCROFT'S ABILITY TO PAY OR THE REASONABLENESS OR NECESSITY OF MR. PARKER'S FEES?

reversed because she did not have the ability to meet the purge provision. The contempt order at issue here is an order of constructive civil contempt. Constructive contempt occurs outside the presence of the court and beyond a place where the contempt would directly interfere with the proper functioning of the court. *Breona C.*, 253 Md. App. at 73. Civil contempt proceedings are meant to “coerce present or future compliance with a court order . . . .” *Id.* (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)).

An order for constructive civil contempt must: “(1) impose[] a sanction; (2) include[] a purge provision that gives the contemnor the opportunity to avoid the sanction by taking a definite, specific action of which the contemnor is reasonably capable; and (3) [be] designed to coerce the contemnor’s future compliance with a valid legal requirement . . . .” *Id.* at 74. For the purge provision to be coercive rather than punitive, it must “permit[] the defendant to avoid the penalty by some specific conduct that is within the defendant’s ability to perform.” *Id.* at 75 (quoting *Kowalczyk*, 231 Md. App. at 209).

Mother contends that the contempt order failed to include a valid purge provision because “the [court] expressly found that [Mother] was *physically unable* to comply” with the purge. (Emphasis in original). She quotes two statements that the court made during the Motion for Reconsideration hearing to support her argument. *First*, she points to a statement by the court paraphrasing her attorney’s argument that she lacked the ability to complete the transfer:

The Court finds that—and [Mother’s counsel] indicated that she, [Mother], has done everything that she reasonably can to be able to put the kids in [Father]’s car, specifically that she is



unable to physically place them in the vehicle. However, she's done everything reasonably possible.

Based on this statement, Mother contends that the court's order holding her in constructive civil contempt must be reversed because the court found that she did not have the ability to meet the purge provision. We disagree.

Mother's argument overlooks the context of the court's statement. A complete review of the record reveals that the court was not making a finding that Mother lacked the ability to transfer the children to Father. Instead, the court paraphrased what Mother's attorney contended during her closing argument. The statement at issue followed immediately after the court summarized the evidence and testimony presented during the hearing, and the court continued by summarizing rather than endorsing the argument presented by Mother's attorney. After making the statement, the court described Mother's attempt at transferring the children as "brief" and emphasized that Mother had chosen not to try to get the oldest and youngest children out of the car. Contrary to Mother's argument that the court's statement was a finding that "she'[d] done everything reasonably possible" but was unable to transfer the children, the court found explicitly that Mother could have done more to complete the transfer.

Mother points *second* to the court's statement that she failed to transfer the children as proof that the court found that she lacked the ability to transfer them:

[T]he review of the case was set really to see if [Mother] was able to purge and put the kids in the vehicle, which, again, she was unable to do.

She contends that this statement makes it "clear" that the court did not know whether

Mother had the ability to transfer the children when the court imposed the purge provision. But again, Mother’s argument takes the court’s statement out of context. The court was not finding there that Mother lacked the ability to transfer the children—it *was* finding that Mother didn’t transfer the children. The court made this statement after highlighting that Mother did “nothing other than opening the door and trying to get one child out” and after emphasizing that Mother’s focus was on blaming Father rather than transferring the children.

We note as well that when the court set the purge provision, it found expressly that Mother had the ability to complete the transfer. In particular, the court stated that Mother was a “fit and proper parent” and that she was “more than reasonably capable of ensuring that her minor children act[ed] in their own best interest, even if those children [did] not believe that a given action [wa]s in their best interest.” Indeed, the court found that Mother’s counteractive behavior was what was delaying the transfer of the children. The court found explicitly that “[Mother] empower[ed] and embolden[ed] the children to make their own decisions without consequence” and “consistently qualifie[d] any encouragement of the children to go with [Father] with statements about the rights of the children to feel safe, which the children consistently repeat[ed].” As a result, the court “[wa]s not convinced that it [wa]s outside [Mother]’s power as an adult parent to get her minor children to go with their father.” In light of the context, the court’s statement hardly suggests a finding that Mother lacked the ability to transfer the children.

1. *The purge provision does not fail for lack of specificity.*

Mother argues also that the purge provision should be reversed because the court did not “adequately specify the conduct that [Mother] was required to engage in should the children refuse to go willingly [with Father] . . . .” She cites Maryland Rule 15-207(d) for the proposition that a contempt order must “specif[y] how the contempt may be purged.” She asserts that this purge provision failed to satisfy the Rule because the court did not specify “[h]ow far . . . [Mother should] have gone with her use of force and coercion against the minor children” and “when . . . ‘enough’ [would] have turned into ‘too much[.]’” And she contends that her “actions might [have been] construed in another context as abusive behavior . . . .”

We are not persuaded. The court advised Mother that she could purge the contempt if she met with Father at the Calvert County’s Sheriff’s Office and transferred the children to Father. Although the court did not specify the exact methods Mother could or must use in transferring the children, the court’s instruction was definite and specific enough to meet the requirements of a valid purge provision. *See Droney*, 102 Md. App. at 680 (court did not err by setting a purge provision that allowed the defendant to “purge the contempt by executing the necessary documents to effectuate transfer of title of [a] home”). Our analysis is not changed by Mother’s argument that performing the purge could be construed as abusive behavior. The purge provision did not call for Mother to abuse the children—it instructed her to transfer the children to their father.

2. *The purge provision does not fail for lack of a best interest analysis.*

*Next*, Mother argues that the court erred by failing to engage in a best interest analysis before imposing the purge provision and sanction against her. She argues that the purge provision “put the minor children in the middle of the conflict between the two parents” and that the “sanction of incarceration mean[t] that the minor children [would] be deprived of their primary custodial parent for two days . . . .” She argues that these circumstances required the court to conduct an additional best interest analysis rather than “simply endors[ing] the prior finding that the children’s best interest was served by having the same court-ordered access with their father.”

We disagree. The court already had conducted a best interest analysis when it ordered initially that Father should have visitation with the children. When Mother failed to comply with the court-ordered visitation, the court sought to enforce the visitation by holding Mother in contempt. The imposition of the purge provision and the sanction were designed to carry out what the court already determined was in the best interest of the children. There was no occasion to revisit the children’s best interests in this regard—and to the extent that Mother argues now that the process of transferring the children or Mother’s incarceration would have rendered the visitation no longer in the best interest of the children, the court found otherwise. After specifying that Mother would be incarcerated if she failed to purge the contempt by completing the transfer, the court stated that “it remains in the children’s best interest for [Father] to have access with his children.” We

see no error in the court’s decision to enforce its existing best interest analysis rather than revisiting it in the context of contempt proceedings.

**B. The Circuit Court Did Not Err In Awarding Attorneys’ Fees to Father.**

*Finally*, Mother argues that the court erred in awarding attorneys’ fees to Father under Maryland Code (1984, 2019 Repl. Vol.), § 9-105 of the Family Law Article (“FL”). She contends that the award “is both unfounded and excessive” and that the “[c]ourt made no finding as to [Mother]’s financial resources or her ability to pay the fee.” She argues as well that the court abused its discretion in awarding attorneys’ fees to Father because it “made no finding as to whether the amount of fees incurred by [Father] were reasonabl[e] or necessary in order to litigate this proceeding.”

We see no error in the court’s award of attorneys’ fees. As Mother acknowledges, the court made the award under FL § 9-105. Section 9-105 specifies that courts may assess attorneys’ fees against parties who have interfered with visitation rights, and it does not require courts to make a finding as to the parties’ financial resources or the reasonableness of the fees incurred:

In any custody or visitation proceeding, if the court determines that a party to a custody or visitation order has unjustifiably denied or interfered with visitation granted by a custody or visitation order, the court may, in addition to any other remedy available to the court and in a manner consistent with the best interests of the child, take any or all of the following actions:

- (1) order that the visitation be rescheduled;
- (2) modify the custody or visitation order to require additional terms or conditions designed to ensure future compliance with the order; or

(3) assess costs or counsel fees against the party who has unjustifiably denied or interfered with visitation rights.

Here, the court found that Mother had “unjustifiably denied [Father] his court-ordered visitation” and that “the assessment of counsel fees[] [was] consistent with the best interest of the minor children.” Those findings were all that was needed to award attorneys’ fees under FL § 9-105.

**JUDGMENT OF THE CIRCUIT COURT  
FOR CALVERT COUNTY AFFIRMED.  
APPELLANT TO PAY COSTS.**