Circuit Court for Anne Arundel County
Case No.: C-02-FM-15-004242

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1659

September Term, 2022

THOMAS J. KESSLER

v.

JENNIFER H. KESSLER

Friedman,
Zic,
Sharer, Frederick, J.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: November 21, 2023

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

This case arises out of a petition for contempt filed in the Circuit Court for Anne Arundel County on May 23, 2022 by appellee, Jennifer H. Kessler ("Jennifer"), against appellant, Thomas J. Kessler ("Thomas").[1] In the petition, Jennifer alleged, among other things, that Thomas failed to reimburse her for certain expenses pursuant to the parties' May 18, 2017 Judgment of Absolute Divorce which was modified by an order entered on December 31, 2019. A show cause hearing was held before a magistrate on July 15, 2022, and thereafter, the magistrate issued a report and recommendation. Both parties filed exceptions. After a hearing on September 26, 2022, the circuit court found Thomas to be in contempt for failure to make reimbursement to Jennifer, set forth a purge provision, and denied Jennifer's request for attorneys' fees and reimbursement of costs for the services of a parent coordinator.

On October 2, 2022, two days prior to the entry of the court's order finding Thomas to be in contempt, Thomas filed a "Motion to Accept New Evidence," in which he asked the court to accept evidence of additional reimbursement payments he made to Jennifer. Jennifer opposed the motion and requested that Thomas pay the attorneys' fees she incurred in responding to it. The court denied the motion and granted Jennifer's request for attorneys' fees. On October 13, 2022, Thomas filed a motion to alter or amend the judgment, which the court denied. The court granted Jennifer's request for attorneys' fees incurred in responding to that motion. This timely appeal followed.

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[1] We shall refer to appellee, Jennifer H. Kessler, and appellant, Thomas J. Kessler, by their first names because they have the same surname. We do so for clarity and intend no familiarity or disrespect.

QUESTIONS PRESENTED

Thomas, who is proceeding in proper person, presents three questions for our consideration, which we have rephrased slightly as follows:

1. Did the circuit court err in finding Thomas in contempt?

2. Did the circuit court err in failing to find Jennifer to have acted with unclean hands in light of her bad faith compliance with the Judgment of Absolute Divorce?

3. If the finding of contempt is vacated, should the awards of attorneys' fees granted in connection with the denial of the "Motion to Accept New Evidence" and the motion to alter or amend be vacated?

For the reasons set forth below, we shall affirm in part and remand the case for the limited purpose of clarifying whether the court intended to order a sanction with regard to its finding of contempt.

BACKGROUND

In an order entered on May 18, 2017, the Circuit Court for Anne Arundel County granted Jennifer an absolute divorce from Thomas. The parties have two children, one born on April 30, 2002, and the other born on February 16, 2007. With respect to the children, the Judgment of Absolute Divorce ("JAD") provided that the parties "shall make a good faith effort to agree upon any legal custody issue (defined as a major/significant issue relating to education, medical, religion and extracurricular activities)." If the parties were unable to agree upon a legal custody matter, they were required to attend at least two sessions with Patricia Cummings, a parent coordinator, the cost of which was to be divided equally between the parties. The JAD included specific details pertaining to the role of the parent coordinator. The JAD provided that the parties

were to divide "the agreed upon costs of agreed upon extracurricular activities for the minor children" by the percentage of their incomes, with Thomas paying 68 percent and Jennifer paying 32 percent. By order entered on December 31, 2019, the provision governing the amount to be paid by each party was modified so that Thomas would pay 67 percent and Jennifer would pay 33 percent of "the agreed upon costs of agreed upon extracurricular activities[.]"

The JAD also addressed health and dental insurance and other health-related costs as follows:

> ADJUDGED, ORDERED, AND DECREED, that Husband shall continue to provide the currently existing health and dental insurance for the minor children, so long as it is available to him through his employer and so long as they are eligible for coverage. Wife shall continue to pay the minor children's current medication co-pays and work related daycare, as set forth in the Maryland Child Support Guidelines; and it is further
>
> ADJUDGED, ORDERED, AND DECREED, that except as provided herein, the parties shall divide by percentage of income (Husband shall pay 68% and Wife shall pay 32%), on behalf of the minor children, upon presentation to him/her of appropriate documentation of the extraordinary uninsured necessary medical, dental, vision, nursing and hospital expenses which are not covered by insurance, including the cost of any co-payments (except the minor children's current medication co-pays as set forth above), deductibles, medicines, drugs, therapy, orthodontics and appliances prescribed by a physician or dentist for each child, except such medicines and drugs as are usually kept in the medicine cabinet of the average household. "Extraordinary medical expenses" shall be defined as uninsured expenses over $100 for a single illness or condition and includes uninsured, reasonable and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, eye care, treatment for any chronic health problem, and

> professional counseling or psychiatric therapy for diagnosed mental disorders. The party owing any funds under this paragraph, including insurance reimbursements for funds previously paid, shall reimburse the other party his or her respective share within 15 day[s] of request[.]

On May 23, 2022, Jennifer filed a petition for contempt in which she argued that despite repeated requests, Thomas failed to reimburse her for certain extraordinary medical expenses and costs for the children's activities. In addition, Jennifer asserted that she and Thomas had been "informally paying for educational expenses" for the children on a fifty-fifty basis, and that Thomas failed to reimburse her for some of those expenses. She also asserted that she attempted to resolve those issues with the parties' parent coordinator, but that Thomas "refused to participate . . . on these items in good faith." Jennifer sought reimbursement in the amount of $9,415.61, "recoupment and contribution to" costs incurred for the parent coordinator, attorneys' fees for the contempt proceeding, and court costs.

Thomas opposed the petition for contempt on the grounds that Jennifer had refused to reimburse him for certain expenses and her "new requests" included expenses that did not meet the definition of extraordinary medical expenses set forth in the JAD. He acknowledged that three days before filing her petition for contempt, Jennifer "made a partial payment" to him in the amount of $764.91 for expenses that were incurred in 2019. Thomas stated that he agreed to meet with the parent coordinator "provided that specific items were addressed in advance and the written agreement to extend [the parent coordinator's] authority was executed as required" by the modified JAD. Because his

conditions were not met, Thomas did not agree to extend the parent coordinator's authority.

At a July 15, 2022 hearing before a magistrate, Jennifer provided a 15-page summary of unpaid expenses incurred by her from 2018 through 2022. Her requests for reimbursement totaled $9,347.61 and covered a variety of expenses including, but not limited to, piano lessons from December 2018 through June 2021; voice lessons; a gym uniform; school yearbooks; field trips; membership, audition, exam, and cast fees; a trip to Pittsburgh; shoes for a musical; makeup for a play; meals; trips to Fort Meade, Hershey Park, and Cape Cod; costs for a tutor; school supplies; uniform clothing and cleaning costs; track gear; driver's education class; and cell phone costs. She also requested reimbursement for 2020 eye exams and contact lenses; doctor/medical office visits; ADHD "med check[s]"; mental health and therapy-related expenses; chiropractor appointments; and prescription/pharmacy costs. Jennifer acknowledged that certain items, such as yearbooks, gym uniforms, and field trips, were not expressly included in the JAD, but she claimed that she and Thomas had been splitting those costs on an equal basis and not by their percentage of income.

Jennifer testified that she tried to work with Thomas, but they were unable to reach a resolution. Jennifer reached out to Ms. Cummings, their parent coordinator. Thomas was supposed to be at one of the meetings scheduled with Ms. Cummings, but he did not show up. Jennifer, who met with Ms. Cummings by herself, sought reimbursement for the fee she paid to the parent coordinator.

Ms. Cummings testified that by an order entered in January 2020, she was appointed to serve as a parent coordinator for Jennifer and Thomas for a two-year period that expired on January 17, 2022. According to Ms. Cummings, both parties canceled appointments, Thomas wished to resolve everything by email, and Thomas said he did not want to meet about reimbursement for medical expenses. In addition, Thomas was unable to meet in the Fall of 2021 because he and his wife were both having separate surgeries and, in December of that year, Ms. Cummings was unable to meet because she had knee replacement surgery. Ms. Cummings and Thomas read the provision of the court order governing extraordinary medical expenses in different ways. Ms. Cummings thought that any one condition that resulted in accumulated expenses of more than $100 was to be shared. For example, if there was a $15 per week charge for the same condition, once the aggregated expenses exceeded $100, it would be subject to division by the parties.

Thomas testified that the provision of the JAD governing the reimbursement of expenses was created by agreement of the parties, that it was very specific, and that it "went beyond" the definition of extraordinary medical expenses set forth in the version of § 12-201(g) of the Family Law Article ("FL") that was in effect at the time the JAD was entered in May 2017. Thomas maintained that the JAD did not permit the parties to seek reimbursement for what he referred to as "lower level costs," which were expenses under $100. He believed that immediately after the divorce, he and Jennifer were in agreement on that point. According to Thomas, Jennifer initially submitted multiple requests for reimbursement that did not include any expenses under $100. Beginning in May 2020,

however, she began seeking reimbursement for expenses under $100, which he claimed violated the terms of the JAD. Thomas testified that if the parties' agreement was followed, and expenses under $100 were excluded, Jennifer's requested reimbursements would be cut down to about $3,500. He also testified that he had offered to pay for their son's psychology sessions and voice lessons. Thomas complained that Jennifer held onto receipts for years before sending them to him for reimbursement and that this impacted his ability to get partial payments from insurance companies for out-of-network claims. Thomas denied that he refused to meet with Ms. Cummings and testified that he emailed her asking for assistance in February and April 2020. He acknowledged, however, that he set several conditions that had to be met before he would meet with Ms. Cummings and Jennifer.

In her report and recommendation, the magistrate found Thomas to be in contempt. The magistrate determined that the written language of the JAD was controlling, that the JAD, as modified, was "clear, definite and specific[,]" and that Thomas had an obligation to pay his share of the extraordinary medical expenses. The magistrate noted that "Maryland law dictates that extraordinary medical expenses incurred on behalf of a child shall be divided between the parents in proportion to their adjusted actual income. *See Md. Fam. Law § 12-204(h)(2).*" As a purge, the magistrate recommended that Thomas pay Jennifer "the accumulated uninsured medical expenses in the amount of" $9,347.61 in five installments on a schedule outlined in her report. As a sanction, the magistrate recommended that if Thomas did not pay the amounts due by the deadlines, he would pay to Jennifer $100 per day for every day the payments were late.

In addition, any unpaid amount would be reduced to a judgment upon Jennifer's request. The magistrate also recommended that Jennifer's request for attorneys' fees be denied.

Both parties filed exceptions. Among other things, Thomas argued that some of Jennifer's requests for reimbursement "were beyond the statute of limitations" and that a large number of Jennifer's requests for reimbursement involved items, such as school supplies, "that are outside the scope of the JAD[.]" He maintained that he had "the right to choose to assist in paying for items outside the JAD and ha[d] on occasion done so[,]" but he was not required to pay for such items. He also argued that the magistrate did not address Jennifer's "bad faith in manipulating the JAD" by holding onto "receipts for as much as 5 years" before requesting reimbursement.

Jennifer argued that the magistrate failed to address her request for reimbursement for the cost of the parent coordinator. She also challenged the magistrate's decision to deny her request for attorneys' fees under § 12-103 of the Family Law Article. She argued that such an award was justified under Maryland Rule 1-341(a) because Thomas acknowledged at the hearing that he knew he owed her at least $3,500 toward the extraordinary medical expenses.

A hearing on the exceptions was held on September 26, 2022. Thereafter, the circuit court, in a written opinion, determined that the terms of the JAD governed the reimbursement issue. The court found that certain reimbursement requests by Jennifer should be excluded because they were for items other than extraordinary medical expenses and extracurricular activities. Those items included such things as school supplies, cell phone payments, vacation expenses, yearbooks, driver's education classes,

and school field trips. After excluding those items, the court determined that the amount to be reimbursed to Jennifer would be revised from $9,209.09 to $8,060.20. The court rejected Thomas's argument that certain requests for reimbursement were barred by limitations, holding that the obligation to reimburse arose from the date notice was given, and the earliest notice was provided on May 28, 2020. The court noted that under the terms of the JAD, Jennifer was solely responsible for co-pays for existing medication prescriptions, but neither party offered testimony to distinguish the medications that were prescribed at the time of the divorce from subsequent prescriptions. The court wrote that "[i]n the absence of evidence to the contrary, the Court presumes the mother's requests were proper ones."

The court found Thomas in contempt for failure to make reimbursement of $8,060.20. The court ordered that Thomas may purge the contempt by making three monthly payments of $2,000 followed by the balance due. The court noted that Thomas had not complained that he was incapable of making the payments on the schedule ordered. No sanction was included in the court's order. The court did not find error in the magistrate's refusal to award attorneys' fees under either § 12-103(b) of the Family Law Article or Rule 1-341. Nor did it find error in the magistrate's decision to deny Jennifer's request for costs associated with the parent coordinator.

STANDARD OF REVIEW

"An obligor's failure to pay court-ordered support payments can constitute constructive contempt." *Bradford v. State*, 199 Md. App. 175, 193 (2011) (citation omitted). "Civil contempt proceedings are 'intended to preserve and enforce the rights of

private parties to a suit and to compel obedience' with court orders and decrees." *State v. Crawford*, 239 Md. App. 84, 110 (2018) (citing *Dodson v. Dodson*, 380 Md. 438, 448 (2004)). "Civil contempt proceedings are generally remedial in nature and are intended to coerce future compliance." *Id.* (citations and quotations omitted). Accordingly, a contempt order must provide for purging so as to permit "the defendant to avoid the penalty by some specific conduct that is within the defendant's ability to perform." *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016) (citation omitted). Generally, we "will not disturb a contempt order absent an abuse of discretion or a clearly erroneous finding of fact upon which the contempt was imposed." *Id*. "But where the order involves an interpretation and application of statutory and case law, we must determine whether the circuit court's conclusions are 'legally correct' under a *de novo* standard of review." *Id.* (citation omitted).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN FINDING THOMAS IN CONTEMPT FOR FAILURE TO REIMBURSE JENNIFER PURSUANT TO THE JAD BUT CLARIFICATION IS REQUIRED ON THE ISSUE OF SANCTIONS.

Thomas contends that the circuit court erred in finding him in contempt for failing to reimburse Jennifer pursuant to the JAD. He makes several arguments in support of that contention. Thomas maintains that in interpreting the reimbursement agreement contained in the JAD, the court was required to consider extrinsic evidence. He also maintains that the court erred in finding him in contempt because his actions were neither willful nor contumacious. Lastly, Thomas asserts that the court's contempt order lacked a "valid legal requirement designed to coerce future compliance."

Preliminarily, we pause to address Thomas's repeated references to the version of § 12-201(g) of the Family Law Article in effect at the time the JAD was entered in 2017 and a subsequent amendment to that statute enacted in 2019. At the time the JAD was entered on May 18, 2017, FL § 12-201(g) provided:

> (g)(1) "Extraordinary medical expenses" means uninsured expenses over $100 for a single illness or condition.
>
> (2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.

Effective October 1, 2019, subsection (g) was amended to provide:

> (g)(1) "Extraordinary medical expenses" means uninsured costs for medical treatment in excess of $250 in any calendar year.
>
> (2) "Extraordinary medical expenses" includes uninsured, reasonable, and necessary costs for orthodontia, dental treatment, vision care, asthma treatment, physical therapy, treatment for any chronic heath problem, and professional counseling or psychiatric therapy for diagnosed mental disorders.

References to those statutes in the instant case are a bit of a red herring because, as both parties acknowledge, they entered into an agreement concerning the reimbursement of certain expenses and that agreement included the definition of "extraordinary medical expenses" that was embodied in the JAD. The definition included in the JAD differed from the version of FL § 12-201(g) that was in effect at the time the JAD was entered. Although the parties and/or the court might have derived part of their definition of "extraordinary medical expenses" from the 2017 version of the statute, the JAD governed

with respect to the definition of that phrase and the 2019 amendment to the statutory provision did not change it in any way.

A. Ambiguity and Consideration of Extrinsic Evidence

We interpret court orders in the same manner as other written documents and contracts. *Taylor v. Mandel*, 402 Md. 109, 125 (2007) (citing *Md. Comm'n on Human Relations v. Downey Communications, Inc.*, 110 Md. App. 493, 518 (1996); *see also Green v. Green*, 188 Md. App. 661, 679-80 (2009). If the language of the order is clear and unambiguous, we will give effect to its plain, ordinary, and usual meaning, taking into account the context in which it is used. *Taylor,* 402 Md. at 125. The question of whether the language of an agreement is ambiguous is a question of law that we review *de novo*. *Credible Behavioral Health, Inc. v. Johnson*, 466 Md. 380, 392 (2019).

"Generally, Maryland courts subscribe to the objective theory of contract interpretation." *Id.* at 393. Under the objective view, courts give effect to "the clear terms of agreements, regardless of the intent of the parties at the time of contract formulation." *Myers v. Kayhoe*, 391 Md. 188, 198 (2006). "[W]e interpret a contract's plain language in accord with its 'ordinary and accepted meaning[.]'" *Credible Behavioral Health*, 466 Md. at 394 (quoting *Ocean Petroleum, Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010)). "'[W]hen the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed.'" *Calomiris v. Woods*, 353 Md. 425, 436 (1999) (quoting *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)). "[A] written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than

one meaning." *Calomiris*, 353 Md. at 436 (citations omitted); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 418 (2014). "Maryland Courts have acknowledged that when determining whether a contract is ambiguous, the mere fact that the parties disagree as to the meaning does not necessarily render it ambiguous." *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 334 (2014).

We begin our review by examining the pertinent language of the JAD. First, the JAD provided that Jennifer was required to continue paying "the minor children's current medication co-pays[.]" The JAD did not identify the medication co-pays Jennifer was paying in 2017, Thomas did not argue that Jennifer was seeking reimbursement for those specific co-pays, and no evidence on that issue was presented before the magistrate or at the hearing on the parties' exceptions.

The JAD further provided that the parties were to divide by their percentage of income "the extraordinary uninsured necessary medical, dental, vision, nursing and hospital expenses which are not covered by insurance[.]" Those expenses included "the cost of any co-payments" except those which Jennifer was paying at the time the JAD was entered in 2017, and except the cost of "such medicines and drugs as are usually kept in the medicine cabinet of the average household." The JAD specifically defined extraordinary medical expenses as "uninsured expenses over $100 for a single illness or condition[.]" Those expenses included "uninsured, reasonable and necessary costs for orthodontia, dental treatment, asthma treatment, physical therapy, eye care, treatment for any chronic health problem, and professional counseling or psychiatric therapy for diagnosed mental disorders." With respect to reimbursement, the JAD provided that the

party owing funds, "including insurance reimbursements for funds previously paid, shall reimburse the other party his or her respective share within 15 day[s] of request[.]"

A plain reading of the JAD reveals no ambiguity. Contrary to Thomas's argument, the JAD does not contain two definitions of any term, does not suggest two meanings for the phrase "extraordinary medical expenses," and extrinsic evidence was not necessary to determine the intention of the parties. The JAD defined extraordinary medical expenses as "uninsured expenses over $100 for a single illness or condition[.]" There was no reference to a specific statutory provision in effect in 2017, and subsequent amendments to FL § 12-201(g) had no impact on the JAD. The language of the JAD was plain, unambiguous, and governed the parties with respect to reimbursements for "extraordinary medical expenses."

To the extent that Thomas contends that there must be a single expense of $100 to qualify for reimbursement, he is mistaken. The dollar amount included in the JAD cannot be read in isolation. The JAD does not specify that there be a single expense of $100 or more; rather, it requires reimbursement for "uninsured expenses over $100 *for a single illness or condition.*" (Emphasis added). An expense of less than $100 *for a single illness or condition* would not qualify as an extraordinary medical expense but would be considered an ordinary medical expense. *See generally Bare v. Bare*, 192 Md. App. 307, 317 (2010) (discussing ordinary medical expenses). As the language of the JAD was not ambiguous, the circuit court did not err in failing to consider extrinsic evidence. *Piney Orchard Community Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 207 (2015) ("Courts consider extrinsic evidence to construe contracts only when the

language is ambiguous.") (citing *Newell v. Johns Hopkins Univ.*, 215 Md. App. 217, 235 (2013), *cert. denied*, 437 Md. 424 (2014)).

B. Willful and Contumacious Failure to Pay

Thomas contends that the circuit court erred in finding him in contempt because his failure to pay Jennifer was neither willful nor contumacious. In *Dodson v. Dodson*, the Supreme Court of Maryland addressed the requirement of willful or contumacious non-compliance, stating:

> Under settled Maryland law, one may not be held in contempt of a court order unless the failure to comply with the court order was or is willful. A negligent failure to comply with a court order is simply not contemptuous in a legal sense. This is true of civil contempt as well as criminal contempt. *Rawlings v. Rawlings,* [362 Md. 535, 544 (2001)] ("The contemnor may . . . defend by establishing, by a preponderance of the evidence, 'that the failure to pay was not an act of willful or contumacious non-compliance'"); *Ashford v. State*, 358 Md. 552, 572, 750 A.2d 35, 46 (2000); *Jones v. State*, [351 Md. 264, 273 (1998)] (A showing that the failure to comply with the court order "was not an act of willful or contumacious non-compliance" is a defense in a civil contempt action); *Lynch v. Lynch*, [342 Md. 509, 523 (1996)] ("'[A]n unintentional inability to pay precludes [a sanction] for either civil or criminal contempt'"); *Rutherford v. Rutherford*, [296 Md. 347, 364 (1983)] ("[C]ontempt is the *refusal* to comply with the court order, and not merely the breach of the prior support agreement") (emphasis added). Furthermore, this Court has taken the position that a civil contempt adjudication, even though it is for a coercive purpose, "labels the defendant a contemnor and imputes guilt to him or her." *Lynch v. Lynch, supra*, 342 Md. at 529, 677 A.2d at 594. An adjudication of civil contempt, based upon mere negligent inaction and not upon willful conduct, is flatly inconsistent with the above-cited cases.

380 Md. 438, 452-53 (2004).

Thomas asserts that he "repeatedly acknowledged that he was obligated to reimburse Jennifer for certain expenses contained in her request[,]" but that "half of her reimbursement requests were illegitimate and outside the JAD." He argues that his failure to reimburse Jennifer within the required 15-day period was neither willful nor contumacious non-compliance because "[m]ore than a mere technical calculation" of the 15-day time period was required. He states that he began paying Jennifer "for the legitimate expenses as soon as he was able and prior to the Magistrate hearing[,]" and points to his testimony before the magistrate that "no one has such large sums of money '*lying around,*" and [that] Jennifer's manipulation of the JAD put more pressure on him." He also claims that Jennifer took three years to reimburse him and "acknowledged zero regard for the court ordered fifteen-day time frame." According to Thomas, Jennifer's "actions were purposeful and designed to ensure" that he remained "in debt to her" and to "ensure she maintains control." Thomas also claims that, as of October 11, 2022, he had reimbursed Jennifer $4,296.51, which he claimed constituted payment for "all legitimate items."

Thomas's arguments are not persuasive. His payment for expenses that he deemed "legitimate" did not exempt him from paying the full amount due to Jennifer in the time required by the JAD. Nor did any failure on the part of Jennifer to make timely reimbursement justify the same failure by Thomas. Thomas was free to raise as a defense that he was unable to comply with the JAD, but, as the record shows and the court found, he did not make that argument or produce a financial statement or any other evidence to demonstrate his inability to make the required payments. The evidence supported a

finding of willful and contumacious behavior sufficient to support the circuit court's decision to hold Thomas in contempt.

C. The Civil Contempt Finding

Thomas argues that the court's contempt order was not valid because it failed to identify a "valid legal requirement designed to coerce future compliance." In support of that argument, Thomas directs our attention to *Breona C. v. Rodney D.*, in which we wrote:

> An order holding a person in constructive civil contempt must satisfy certain basic requirements, including that it must: (1) impose a sanction; (2) include a purge provision that gives the contemnor the opportunity to avoid the sanction by taking 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 rather than punish the contemnor for past, completed conduct.

253 Md. App. 67, 71 (2021).

In *Breona C.*, the mother of a minor child was held in constructive civil contempt[2] for violating a custody order by failing to return the child to her father immediately after a final protective order was denied. *Id.* at 72. The written contempt order did not identify a sanction, but provided that the mother "may purge this contempt by strictly

[2] "[C]onstructive contempts are those which do not occur in the presence of the court, or near it, . . . but at some other place out of the presence of the court and beyond a place where the contempt would directly interfere with the proper functioning of the court." *County Comm'rs for Carroll County v. Forty West Builders, Inc.*, 178 Md. App. 328, 393 (2008) (quoting *In re Lee*, 170 Md. 43, 47, *cert. denied*, 298 U.S. 680 (1936)). The purpose of civil contempt "is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt." *Dodson v. Dodson*, 380 Md. 438, 448 (2004).

following and complying with the ongoing" custody order. *Id.* On appeal, the mother argued that the contempt order should be reversed because it punished past, completed conduct, and included a "forever purge" provision that did not actually permit her to purge the contempt. *Id.* at 72-73.

In reversing the order of contempt, we recognized that the "coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable." *Id.* at 74 (citations omitted). Citing Maryland Rule 15-207(d), which "applies to all proceedings for contempt other than proceedings for constructive civil contempt based on an alleged failure to pay spousal or child support," we held that "[a] written order making a finding of civil contempt must therefore 'specif[y] the sanction imposed for the contempt,' and 'specify how the contempt may be purged.'" *Id.* We explained:

> In sum, an order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes 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) is designed to coerce the contemnor's future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct. Moreover, and critical to our analysis here, to serve the coercive purpose of civil contempt, the sanction must be distinct from the purge provision and the valid legal requirement the court seeks to enforce. If the sanction imposed is a requirement to take the very action the court says will purge the contempt, then undertaking the purge action necessarily completes, rather than avoids, the sanction. *See Kowalczyk*, 231 Md. App. at 211, 149 A.3d 1247. And if the sanction imposed is to act in accord with the same legal requirement with which the court seeks to coerce

> compliance, there is no coercive mechanism at all. Instead, there is just a second order directing compliance with an existing order.

Id. at 74-75.

Unlike *Breona C.*, the instant case involves an order of constructive civil contempt based on an alleged failure to pay child support and is governed by Maryland Rule 15-207(e), which provides, in pertinent part:

> (e)(1) Applicability. This section applies to proceedings for constructive civil contempt based on an alleged failure to pay spousal or child support, including an award of emergency family maintenance under Code, Family Law Article, Title 4, Subtitle 5.
>
> . . .
>
> (4) Order. Upon a finding of constructive civil contempt for failure to pay spousal or child support, the court shall issue a written order that specifies (A) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (B) any sanction imposed for the contempt, and (C) how the contempt may be purged. If the contemnor does not have the present ability to purge the contempt, the order may include directions that the contemnor make specified payments on the arrearage at future times and perform specified acts to enable the contemnor to comply with the direction to make payments.

The circuit court found Thomas in contempt for failing to pay $8,060.20 as required by the JAD. The court's order provides that the contempt may be purged by making the specified payments by the required dates. As a result, there is no coercive mechanism and the court's contempt order is "just a second order directing compliance" with the terms of the JAD.

Jennifer points to the fact that Rule 15-207 sets forth a special provision for findings of constructive civil contempt for failure to pay child support. She argues that unlike Rule 15-207(d) and *Breona C.,* the use of the phrase "any sanction" in Rule 15-207(e)(4)(B) suggests that the court had the option to impose a sanction but was not required to do so. However, that issue is not before the Court today because it is not clear to us whether the circuit court ordered a sanction at all. The magistrate, in her report and recommendation, recommended that if Thomas did not pay the amounts due by the specified deadlines, he would be sanctioned by having to pay Jennifer $100 per day for every day the payments were late. In addition, any unpaid amount would be reduced to a judgment upon Jennifer's request. The circuit court revised the magistrate's finding only with respect to the amount owed by Thomas, but ruled that except for that revision, "the prior orders remain in full force and effect." The circuit court's opinion affirmed the magistrate's finding of contempt for the father. But neither the court's opinion nor order mentioned a sanction, and therefore it is not clear whether the magistrate's sanction was affirmed or denied.[3] The circuit court did "overrule exceptions to the Magistrate's report and recommendations . . . ." However, neither party excepted to the magistrate's sanction, so that does not shed light on the existence of a sanction. Because the circuit court did not address the issue of a sanction, it is not clear whether the circuit court was adopting or rejecting the sanction recommended by the magistrate, or imposing a

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[3] Similarly, this Court is also not clear on the issue of attorneys' fees. Counsel fees were discussed in the circuit court's opinion, but it was not addressed in the court's order.

different sanction. Therefore, we shall remand the case to the circuit court for the limited purpose of clarifying its order as to whether the court intended to impose a sanction with regard to its finding of contempt. Md. Rule 8-604(d)(1).[4]

II. THE ISSUE OF UNCLEAN HANDS IS NOT PROPERLY BEFORE THIS COURT.

Thomas contends that the circuit court erred in failing to find that Jennifer acted with unclean hands in light of her bad faith compliance with the JAD. Thomas asserts that the circuit court "found Jennifer had 'unclean hands' but took no action to stop her bad faith manipulation of the JAD." He argues that he "detailed several overt actions Jennifer has taken since the conclusion of the divorce hearing that are all part of a well-orchestrated plan to manipulate the JAD and ensure that [he] remains indebted to her or pays her late." He complains that Jennifer refused to reimburse him for expenses he first requested from her in March 2019, and only partially reimbursed him three days prior to filing the petition for contempt. According to Thomas, Jennifer "should have waited a reasonable period of time" after paying him before filing her petition for contempt.

[4] Maryland Rule 8-604(d)(1) provides:

> (1) Generally. If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

Thomas also complains that Jennifer purposely held onto receipts so that she could request large sums of money in a single request for reimbursement. He maintains that Jennifer's holding of receipts "for months[,]" consolidating them into reimbursement requests "for as much as $1,656.08, $1,894.02, and $2,518.13," and requesting payment within 15 days "is not the behavior of an individual acting in good faith."

Thomas specifically blames Jennifer for willfully engaging in acts to make him "susceptible to a Petition for Contempt." He points to Jennifer's rejection of his offers to pay for one child's psychology appointments and voice lessons as evidence that "he is trying to repay her more quickly" and that Jennifer is trying "to ensure [he] remains indebted to her." In support of that assertion, Thomas points to Jennifer's claim for reimbursement of expenses she asserted were due because of an implicit agreement between the parties and which were rejected by the circuit court.

We do not find Thomas's arguments persuasive. The JAD does not contain any provision requiring the parties to send their requests for reimbursement within a certain time period after incurring an expense. Moreover, our review of the record does not reveal any instance where Thomas specifically raised the doctrine of unclean hands or any finding by the magistrate or the circuit court that Jennifer's petition for contempt or her requests for reimbursement were barred by that equitable doctrine. In the circuit court's written opinion, the court merely commented on Jennifer's complaint of delays by Thomas as follows:

> One last observation about the mother's complaint of delays occasioned by the father: The mother herself, under the Divorce Judgment, could have sent the father requests for

> reimbursement in real time as she incurred uninsured expenses; or she could have compiled them weekly, monthly, quarterly, semi-annually, or even annually. Instead, she began making reimbursement requests for 2018 in the middle of 2020 and waited another six months before submitting her next batch of requests. She can hardly complain of fault for delays in the process.

As the issue of unclean hands was neither raised in nor decided by the circuit court, it is not properly before us. Md. Rule 8-131(a) (Ordinarily, we will not decide any issue other than subject matter or personal jurisdiction "unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

III. The Awards of Attorneys' Fees Granted to Jennifer Should Not Be Vacated Because the Order of Contempt and Awards of Attorneys' Fees Are Not Interrelated.

Thomas contends that the awards of attorneys' fees granted to Jennifer after the denial of his post-judgment motion to accept new evidence and motion to alter or amend the judgment should be vacated. Thomas does not challenge the propriety of the court's decision to award attorneys' fees or the amount of the attorneys' fees that were awarded. Rather, relying on *Turner v. Turner*, 147 Md. App. 350, 400 (2002) and *Malin v. Mininberg*, 153 Md. App. 358, 425 (2003), he argues that if we vacate the order of contempt in the instant case, the awards of attorneys' fees should also be vacated. This court wrote in *Turner* that "[t]he factors underlying "alimony, a monetary award, and counsel fees are so interrelated that, when a trial court considers a claim for any one of them, it must weigh the award of any other." 147 Md. App. at 400. As the instant case does not involve issues of alimony or a monetary award, the cases relied upon by Thomas are inapposite. In any event, the court's finding of contempt was not so interrelated with

the denial of Thomas's post-judgment motions that the awards of attorneys' fees must be vacated. Thomas's motion to accept new evidence involved payments he allegedly made to Jennifer sometime after the contempt hearing and repeated some of the arguments raised during the hearing as to why he did not feel certain reimbursement requests were legitimate. Thomas's motion to alter or amend the circuit court's judgment repeated arguments he made at the hearing. We find no basis for vacating the circuit court's award of attorneys' fees with regard to those motions.

ORDER OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY REMANDED IN PART WITHOUT EITHER AFFIRMING OR REVERSING PURSUANT TO RULE 8-604(d)(1) FOR THE SOLE LIMITED PURPOSE OF CLARIFYING WHETHER A SANCTION FOR CONTEMPT IS TO BE INCLUDED AND OTHERWISE AFFIRMED; COSTS TO BE SHARED EQUALLY BY THE PARTIES.