

Circuit Court for St. Mary's County
Case No. C-18-CV-17-000001

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0148

September Term, 2024

WINDWARD LAND DEVELOPMENT, LLC

v.

J. WHITSON ROGERS, ET AL.

Nazarian,
Kehoe, S.,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: May 8, 2025

* 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).

This matter is an appeal arising from an Order and Judgment dated March 25, 2024, issued by the Circuit Court for St. Mary's County in which it held Appellant Windward Land Development, LLC ("Windward") in constructive civil contempt and fined it \$100,000 to be paid within 60 days of the date of the Order plus attorney's fees.

In 2018, Appellee J. Whitson Rogers ("Mr. Rogers") sued Windward, which had constructed a house on a neighboring property, with respect to issues concerning stormwater run-off. On December 15, 2022, the circuit court entered a permanent injunction against Windward, to install underground three 10-inch in diameter, 33-foot in length drainpipes at a 0.85% grade, consistent with recommendations from a report by Chris Alvey of Wilkerson Associates, and in the presence of a representative of Wilkerson. Windward initially installed pipes that were 8-inch in diameter without consulting Wilkerson. Windward contended that it used 8-inch pipes because 10-inch pipes were difficult to find. Windward later removed the 8-inch pipes and installed 10-inch pipes. However, it installed the 10-inch pipes in the absence of Mr. Alvey or Wilkerson. Mr. Rogers moved to have Windward show cause why it should not be held in contempt for failing to follow the court's December 15, 2022, Order. After a hearing, the court held Windward in constructive civil contempt and fined it \$100,000 plus attorney's fees. On appeal, Windward contends that the circuit court erred in issuing a constructive civil contempt order because the court failed to impose a purge provision distinct from the sanction. For reasons that we will outline, we vacate the judgment of the circuit court and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

Procedural History

The parties to this case have undergone several years of ongoing litigation. On July 9, 2014, Windward, a construction and development company, purchased a parcel of land in St. Mary's County. Windward constructed a single-family residence on the property and sold it to Robert and Karrie Schou. Mr. Rogers owns a 5,000 square-foot unimproved parcel of land adjacent to the Schous' property. The Schous' property has a 20-foot-wide easement from the main roadway, across Mr. Rogers' property, that expands as a driveway to the Schous' home. On the easement, Windward constructed a 10-foot-wide driveway leading from the main roadway to the Schous' property.

In 2018, Mr. Rogers filed a claim for negligence and nuisance against Windward because the inadequate construction of the driveway on the Schous' property caused stormwater and surface water to flood his property. *See J. Whitson Rogers v. Windward Land Dev., LLC*, No. 945, 2021 WL 4130749, at *1 (Md. App. Sept. 10, 2021). Mr. Rogers alleged that the driveway failed to comply with the site plan because Windward installed undersized drains with an improper backward slope. *Id.* at *2. The trial court granted summary judgment in favor of Windward and Mr. Rogers appealed. *Id.* In 2021, we vacated the order and remanded the case for further proceedings. *Id.* at *5.

December 2022 Order and Judgment

Upon remand, the circuit court conducted a bench trial on June 14, 2022, and reduced its oral ruling to a written Order and Judgment on December 15, 2022 ("December

2022 Order”). The court found Windward negligent in the construction of the driveway, entered a final permanent injunction against Windward, and required that Windward abate the nuisance by installing a system of drainage pipes as outlined above. The December 2022 Order required that Windward “exercise diligent efforts to install three (3) ten-inch diameter PVC drainpipes, 33 feet long and sloped at a 0.85% grade as recommended” by the report written by Wilkerson & Associates’ Professional Land Surveyor, Mr. Chris Alvey. The court further ordered Windward to “coordinate its installation of the drainpipes with Wilkerson in advance of performing the work and shall not perform the work unless Alvey or another representative of Wilkerson is on site to inspect and approve the work before the pipes are covered with soil.”

Pursuant to Subparagraph (e), Windward was required to “exercise diligent efforts to obtain, at its reasonable expense, the permission, consent, or temporary easement rights from [the Schous] to perform the scope of work required on their property.” This section included a provision that “[i]n the event [Windward] is unable to obtain such rights within ninety (90) days of the date of this Order, [Windward] shall file a notice with the [c]ourt advising the [c]ourt of the efforts made and reason why permission to temporary easement rights could not be procured from the Schous.” The Order further added that “[i]n the event a notice is filed by Windward with the [c]ourt under Subparagraph (e) above or Windward fails to comply with this Order, Windward shall reimburse Rogers all reasonable attorney’s fees incurred by Rogers in connection with any further proceedings in this case.”

On December 16, 2022, the day after the December 2022 Order was issued, Windward filed an affidavit stating: “[f]ollowing Judge McGann’s oral ruling in this case directing Windward to install pipes on the Schous’ property, I contacted [the Schous] and asked them for permission for Windward to perform that construction. The Schous refused our request and stated that Windward was not allowed on their property to perform any construction work.” Windward then filed an appeal to this Court and Mr. Rogers cross appealed. On January 11, 2023, Mr. Rogers filed a motion in the circuit court? to schedule a hearing for supplemental proceedings to implement the December 2022 Order, obtain an award for attorney’s fees in connection with supplemental proceedings, and be granted further relief as the court deems just and proper. This Court ordered that the permanent injunctive relief granted by the December 2022 Order be stayed for sixty days to give the circuit court the opportunity to hold a hearing on Mr. Rogers’ motion.

The circuit court scheduled a hearing for September 6, 2023, pursuant to the Appellate Court’s order. At the hearing, the Schous appeared and testified confirming that they objected to having work done on their property and explained that they were concerned about losing access to their property. Mr. Schou stated that he believed he was harassed by Mr. Rogers and refused to attend a private mediation to address his concerns. He also refused to accept any amount of money to bring in a temporary easement for Windward to complete the work. However, the court spoke to the Schous, and they agreed to allow Windward on their property, for one day only, to complete the work in compliance with the December 2022 Order.

Constructive Civil Contempt Finding and Order

On February 26, 2024, the circuit court held a show cause hearing for constructive civil contempt. Mr. Alvey testified that Windward contacted him in October 2023 to request his availability for that month, but Mr. Alvey explained that he was unavailable in October. He stated that Windward did not attempt to contact him again to request his availability. On October 31, 2023, Windward notified Mr. Alvey that it had completed the pipe installation. However, in violation of the December 2022 Order, the work was inspected after the pipes had been covered in soil on December 5, 2023.

Mr. Alvey drafted his first report on December 18, 2023, and wrote that Windward “never contacted [Wilkerson & Associates] to be on site for the installation of the pipes.” Windward installed 8-inch High Density Polyethylene (“HDPE”) pipe at an average slope of .19%, rather than the court-ordered 10-inch PVC pipe sloped at a 0.85% grade. Mr. Alvey noted that the pipes and slope were “still completely inadequate for passing the rain storm water under the driveway.” Windward’s representative, Mr. Martin Siebert, called Mr. Alvey and disclosed that Windward knew the land surveyors would not pass the 8-inch HDPE pipes but installed them anyways because 10-inch PVC pipes were “difficult to find.”

After receiving Mr. Alvey’s report, Windward performed the work a second time without contacting any Wilkerson associate to be on site and inspect the work before it was covered in soil. Mr. Alvey drafted a second report on January 29, 2024, stating that Windward removed the 8-inch HDPE pipe and installed 10-inch diameter, 60-foot-long

PVC sewer pipe. Mr. Alvey explained that the only difference between PVC sewer pipes and the court ordered 10-inch PVC pipes are thickness, but the sewer pipe has the necessary hydraulic performance as the PVC pipes. He also testified that Windward installed 60-foot piping instead of the court ordered 33-foot piping, but “it’s hydraulically more efficient to have a longer pipe.” Mr. Alvey also confirmed that the .83% slope of the piping installed was adequate. Mr. Alvey concluded that the court’s requirement as to the pipes and their capacity “has been met.”

At the conclusion of the hearing, the court found that this situation cannot be remedied. The court noted that the Schous made it clear Windward could only enter their property one time and the Schous did not attend the show cause hearing for the court to get their permission to have Windward to reenter a third time to complete the work in compliance with the December 2022 Order. The court held that:

This is as contemptuous as it gets. It’s a total defiance of the Court Order. We’re not dealing with somebody who made a mistake. We’re not dealing with somebody who doesn’t know the business. We’re not dealing with someone that’s [] unrepresented. It couldn’t be a clearer case of contempt. It’s willful. It’s deliberate. It’s defiance of the Order.

So what do I do now? I can’t order that Mr. Siebert go back and try to make some additional improvement, dig it up and let it be inspected because I don’t have the Schous here. I think the animosity is so great that Mr. Siebert is willing to continue to pay [] for his attorneys and expensive experts. . . . I agree with [Windward’s counsel] that in the typical case a Defendant has the ability to purge. So I think – I will give him the ability.

I find [Windward] in contempt. I think considering all the aggravation, considering all the headaches and all the back and forth and all the anxiety, I will impose a fine of \$100,000, plus order him to pay all reasonable attorney’s fees of [Mr. Rogers’ counsel] and of any experts that were consulted up to this point, which I guess is the Wilkerson Operation. And he

can purge that if he pays that off within 60 days. If not, I'll enter a judgment . . . in favor of Mr. Rogers. And if the attorney's fees aren't paid in front of [Mr. Rogers' counsel], so it can be purged. And I think this is in a court of law and a just court, I think this is the fairest and most just way to resolve this case.

The court added that Mr. Rogers may never know whether the “pipes have the proper angle. But that's part of the anxiety, frustration he'll have to live with. It's all part of the \$100,000.”

On March 25, 2024, the circuit court issued an Order of Constructive Civil Contempt against Windward. The court found Windward “in contempt of this Court's prior Order and Judgment entered in this case on December 15, 2022 [] by performing work on the Schous property on two occasions without Mr. Alvey or another representative of Wilkerson on site to inspect and approve the work before three stormwater drainage pipes were covered with soil.” The court imposed a sanction “in the amount of \$100,000 for reasons stated on the record,” and required Windward to pay all reasonable attorney's fees and Wilkerson fees related to the contempt proceeding. The court added that Windward “may purge the contempt by paying such sanction and fees within sixty (60) days of the date of entry of this Order,” but the court would enter judgment for the amount due in favor of Mr. Rogers if Windward fails to timely pay the sanction and fees.

II. QUESTIONS PRESENTED

Windward filed a timely appeal and presents the following issue which we rephrase as follows:¹

¹ In its brief, Windward framed the question as follows:

Whether the circuit court erred by issuing an order of constructive civil contempt with a sanction of \$100,000 and a provision requiring Windward to purge the sanction by paying Mr. Rogers within sixty days.

III. DISCUSSION

A circuit court's finding of civil contempt may only be reversed on appeal "upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous." *Droney v. Droney*, 102 Md. App. 672, 683–84 (1995); *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016) ("Generally, this 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."). "A trial court abuses its discretion when its decision encompasses an error of law which this Court reviews without deference." *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (internal citations omitted).

A. Contempt

Windward argues that the circuit court's constructive civil contempt order must be reversed because the order's sanction and purge provision are the same. Windward also asserts that the order is a punishment for past behavior rather than a coercive mechanism to ensure present or future compliance with a valid legal requirement because future compliance with the December 2022 Order would be impossible. Mr. Rogers counters that "the purge provision required payment of a \$100,000 monetary award within sixty (60)

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1. Did the trial court err as a matter of law when it found Appellant in constructive civil contempt, imposed a sanction of \$100,000 payable to Appellee, and set a purge provision that required payment of the \$100,000 sanction within sixty (60) days?

days to avoid the imposition of a judgment as a sanction” and contends that the \$100,000 is a monetary award for exceptional circumstances.

Constructive civil contempt “occurs outside of the ‘presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.’” *Breona C.*, 253 Md. App. at 73 (quoting Md. Rule 15-202(b)). “Before a party may be held in contempt of a court order, the order must be sufficiently definite, certain, and specific in the terms so that the party may understand precisely what conduct the order requires.” *Droney*, 102 Md. App. at 684. Civil contempt must be proven by a preponderance of the evidence that the party’s failure to comply with the order was willful. *See Royal Inv. Grp., LLC v. Wang*, 183 Md. App. 406, 447–48 (2008). A party may not be held in civil contempt if their failure to comply with the order was negligent. *See Dodson v. Dodson*, 380 Md. 438, 452–53 (2004).

Civil contempt proceedings are “intended to preserve and enforce the rights of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.” *State v. Roll & Scholl*, 267 Md. 714, 728 (1973). “These proceedings are generally remedial in nature and are intended to coerce future compliance.” *Id.* When a court finds that a party willfully acted in noncompliance with an order, the court may issue an order holding the party in constructive civil contempt. A valid order for constructive civil contempt:

- (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.

Breona C., 253 Md. App. at 74. The purpose of imposing sanctions in civil contempt order is to coerce the contemnor's future or present compliance with the court's order. *See Dodson*, 380 Md. at 448 ("We have not used the term "remedial" to mean a sanction, such as a penalty or compensation, where compliance with a prior court order is no longer possible or feasible."). "Thus, a penalty in a civil contempt must provide for purging." *Roll*, 267 Md. at 728.

[T]o 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.

Breona C., 253 Md. App. at 74 (citing *Kowalczyk*, 231 Md. App. at 211). Moreover, "a present inability to comply with the prior court order, or with the purging provision if it is different from the prior order, is a defense in a civil contempt action and precludes the imposition of a penalty." *Dodson*, 380 Md. at 449.

In contrast, "a constructive criminal contempt proceeding is the appropriate means to punish a past willful violation of a court order." *Id.* at 452. Criminal contempt orders do not require purging and may be punitive because criminal contempt punishes "past misconduct which may not necessarily be capable of remedy." *Id.* at 448 (quoting *Roll*, 267 Md. at 728).

Here, Windward does not dispute the circuit court's findings of willful noncompliance with the December 2022 Order. To the contrary, Windward relies on

Breona C. to argue that “neither the *Breona C.* [C]ourt, nor this [C]ourt may use constructive civil contempt as a mechanism to abate frustration with past, deliberate, noncompliance.” The Court in *Breona C.* reversed the circuit court’s contempt order that held a mother in contempt for violating a custody order by failing to return her child to the father after her final protective order was denied. 253 Md. App. at 72. The contempt order did not identify a sanction but provided that the mother “may purge this contempt by strictly following and complying” with the custody order. *Id.* The *Breona C.* Court explained the purpose of constructive civil contempt, set out the requirements of a valid order, and held that:

The court could not find a sanction to impose to coerce Mother to comply with an order with *which she was already in compliance*; the court could not craft a valid provision to purge a non-existent sanction; and, where the court’s focus was on past, completed noncompliance with its order, neither a forward-looking sanction nor purge provision could come into play.

Id. at 77 (emphasis added). However, the Court did not bar the issuance of an order of constructive civil contempt against parties engaged in “continuing and repetitive conduct in violation of a court order.” *Id.* at 76 n.6. The Court noted that because of the nature of the party’s conduct, contempt “could reasonably be found to be ongoing at the time of a contempt hearing even if the putative contemnor is not technically out of compliance with the order at the moment of the hearing.” *Id.* Whether the conduct is reasonably found to be ongoing at the time of the contempt hearing is for the circuit court to determine as the factfinder.

Turning to the contempt order before us, we hold that the circuit court's order of constructive civil contempt must be reversed. First, the sanction imposed in the contempt order punishes Windward's past completed behavior. The court found Windward in contempt and imposed the sanction requiring Windward to pay Mr. Rogers \$100,000 "considering all the aggravation, considering all the headaches and all the back and forth and all the anxiety." The circuit court made no alternative findings to suggest that the \$100,000 was imposed to coerce present or future conduct.

Second, the order lacks a valid purge provision that is distinct from the sanction and permits Windward to avoid the penalty by some specific act it is capable of. A valid purge provision in a contempt order must be distinct from the sanction, must allow the contemnor to undertake an action to avoid the sanction, and must provide the contemnor a present ability to comply with the provision. The circuit court held that it was allowing Windward to purge the sanction by paying it off within sixty days. However, if Windward did not pay off the sanction it would enter judgment in favor of Mr. Rogers.

Mr. Rogers compares the purge provision in *Wang* to the December 2022 Order's purge provision. He argues that in *Wang* the purge provision required the purchaser to pay the seller a \$75,000 monetary award for removal of cabinets to avoid a sanction of incarceration. He further contends that the December 2022 Order required payment of \$100,000 within sixty days to avoid "the imposition of a judgment as a sanction." Mr. Rogers misinterprets the sanction and purge provision in the order of contempt. The circuit court specifically ordered that it imposed "a sanction against [Windward] in the amount of

\$100,000.00 for reasons stated on the record” and ordered that Windward “may purge the contempt by paying such sanction and fees within sixty (60) days.” The purge provision is invalid for two reasons: (1) both the sanction and purge provision require Windward to pay \$100,000, the only difference between the two is that the purge provision includes a time condition; and (2) the purge provision does not allow Windward to engage in any conduct to avoid paying the \$100,000 sanction. It also does not allow Windward to erase the stain of having been found in contempt.

Third, the circuit court found that “this is not a situation at this point that can be remedied” because the Schous only granted Windward permission to work on their property once. Because the Schous were not present at the hearing, the court found that it could not order Mr. Siebert to return to the property to “make some additional improvement, dig it up and let it be inspected.” The court’s findings suggest that the sanction punishes the several violations of Windward’s past misconduct and Windward did not have a present ability to comply with the earlier court order. Therefore, we hold that the circuit court’s order of constructive civil contempt must be reversed.

B. Exceptional Circumstances

Mr. Rogers asserts that Windward’s willful violations form the basis for exceptional circumstances and permits the circuit court to award Mr. Rogers monetary damages. He contends that Windward engaged in multiple willful violations of the December 2022 Order that caused Mr. Rogers to suffer a monetary loss. He cites to costs for performing remedial work that were outlined in a report submitted by Mr. Alvey in June 2019.

Windward counters that Mr. Rogers failed to itemize any monetary loss caused by Windward's installation of the drainpipes and that the \$100,000 amount is to "assuage [Mr. Rogers'] presumed future anxiety, frustration, and aggravation."

"[C]ompensatory damages may not ordinarily be recovered in a civil contempt action." *Dodson*, 380 Md. at 454. Accordingly, the Supreme Court in *Dodson* declined to address whether exceptional circumstances form the basis for monetary awards because the civil contempt action before it involved a non-contetuous negligent act as opposed to a willful violation of a court order. *See id.* Nevertheless, this Court subsequently held that, "under exceptional circumstances, a willful violation of a court order, which clearly causes the plaintiff a monetary loss, can form the basis for a monetary award in a civil contempt case." *Wang*, 183 Md. App. at 455.

In this case, *Dodson* does not preclude a monetary award under exceptional circumstances. We apply the standard set in *Wang* because the circuit court explicitly found that:

This is as contemptuous as it gets. It's a total defiance of the Court Order. We're not dealing with somebody who made a mistake. We're not dealing with somebody who doesn't know the business. We're not dealing with someone that's [] unrepresented. It couldn't be a clearer case of contempt. It's willful. It's deliberate. It's defiance of the Order.

In *Wang*, the Court found exceptional circumstances warranting a monetary award to the seller of a residential property who filed a petition to hold the buyer in contempt for removing cabinets in the house. *Id.* at 428. The buyer of the residential property sued the seller to enforce purported contract, and the seller filed a counter claim which alleged that

the buyer trespassed on the property. *Id.* at 425–26. The court granted possession of the house to the seller and sent the order to the parties’ attorneys. *Id.* at 426. The buyer then received a copy of the court order granting possession to the seller, was told by the seller’s attorney he did not have a right to possession of the property, the buyer’s attorney advised against him on removing property from the home, and the buyer agreed with the seller’s attorney to “keep the status quo.” *Id.* at 455. However, the buyer entered the property the next day and removed installed cabinets. *Id.* at 427–28.

The seller filed a petition to hold the buyer in contempt and at the hearing an expert contractor estimated that the cabinets were worth \$75,000. *Id.* at 428–29. The trial court found the buyer in contempt sentenced the buyer to a 59-day period of incarceration but included payment of \$75,000 to the seller as a purge provision. *Id.* at 429. On appeal, the Court held that there were exceptional circumstances justifying compensatory damages. *Id.* at 456. The Court considered the trial court’s factual findings concerning the buyer’s actions that amounted to egregious conduct and “the protracted litigation that [the seller] already endured.” *Id.*

Here, the December 2022 Order found Windward’s negligence in the original construction of the driveway on the Schous’ property caused the nuisance to Mr. Rogers’ property. To prevent further litigation, the December 2022 Order strictly required that Windward abate the nuisance by following the specifications for installing stormwater piping under the Schous’ driveway. At the contempt hearing, the circuit court found that Windward willfully and deliberately failed to comply with the Order when it executed the

first piping reinstallation in October 2023 and installed insufficient piping at an inadequate slope and completed the work without the expert on site. The court stated that “[i]f Mr. Siebert had given it the old college try to follow the Court Order and said, Judge, all I can find [] are eight-inch pipe, I can’t find ten. Then we could have addressed it to modify the Order.” The court then found willful misconduct when Windward performed the second installation sometime between Mr. Alvey’s first report on December 18, 2023, and his second report on January 29, 2024. Windward completed the second installation without Mr. Alvey on site. On the record, the court stated:

I believe the testimony of Mr. Alvey that he said he wasn’t available in October, but there was no discussion of November, or December, or January, or any other time. In a case of this magnitude that’s been before the [c]ourt so many times and gone up on appeal and back, a reasonable man would have dotted all his I’s, crossed all his T’s and out of an abundance of caution made sure he fully complied with the Court Order. And if he couldn’t, he’d ask for leave of the [c]ourt. He didn’t do any of that.

Like *Wang*, the circuit court found that Windward deliberately violated the December 2022 Order and the parties have endured extensive litigation. Even so, the circuit court did not consider whether there were exceptional circumstances, and the record does not provide a fixed monetary loss that Mr. Rogers incurred because of Windward’s conduct. Therefore, we vacate the contempt order and remand the case to the circuit court for further proceedings. The trial court may determine that there are exceptional circumstances if Mr. Rogers can provide evidence of fixed out-of-pocket expenses that are consistent with the holding in *Wang*. Alternatively, the trial court may also consider whether it is appropriate to refer this matter to the State’s Attorney for the purpose of

bringing a criminal contempt action pursuant to Maryland Rule 15-205(c).

We do not address the imposition of attorney's fees in the Contempt Order. Windward was required to pay attorney's fees as part of the Subparagraph (e) of the December 15 Order. The imposition of attorney's fees was merely a continuation of that directive and was not tied to the contempt.

IV. CONCLUSION

We conclude that the circuit court erred in issuing the contempt order with a sanction that punished Windward's past misconduct. The sanction was punitive in nature and was not a valid purge provision for constructive civil contempt. Therefore, we vacate the finding of contempt remand the case to the circuit court with instructions to hold a contempt hearing and consider whether there were exceptional circumstances to support a finding of constructive civil contempt. Mr. Rogers will have the opportunity to present evidence to establish an exact amount of damages that may have been caused by Windward's willful violations of the court's orders. The circuit court may instead decide to refer this matter to the State's Attorney for criminal contempt proceedings, if it concludes that it is appropriate to do so.

**JUDGMENT OF CONTEMPT
VACATED. CASE REMANDED TO
THE CIRCUIT COURT FOR ST.
MARY'S COUNTY FOR FURTHER
PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO
BE PAID BY APPELLEE.**