

Circuit Court for Charles County
Case No. 08-C-02-002000

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 282

September Term, 2019

DAMIAN DARNELL CHAPMAN

v.

NINA MARIE BLACK, ET AL.

Kehoe,
Leahy,
Wells,

JJ.

Opinion by Leahy, J.

Filed: September 1, 2020

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

The Circuit Court for Charles County found Damian Darnell Chapman, appellant, in constructive civil contempt for failure to comply with a court order to pay child support and ordered that the contempt could be purged upon payment of \$251 prior to his next hearing date. The appellees are the Charles County Office of Child Support Enforcement (“the Office”) and Nina Marie Black, who is the mother and sole legal and physical custodian of the child. Mr. Chapman appealed and presents one question for our review: “Did the lower court err in proceeding with the contempt hearing when Appellant was not represented by a public defender?”

For the reasons that follow, we hold that the circuit court erred in conducting the contempt proceeding in violation of Mr. Chapman’s right to counsel. Accordingly, we reverse the contempt judgment and remand for further proceedings consistent with this opinion.

BACKGROUND

On July 31, 2015, Mr. Chapman was ordered to pay \$251 per month, plus \$25 per month towards his arrears, in child support for his son with Ms. Black. As of January 28, 2019, Mr. Chapman was \$5,595 in arrears and had not made a payment since November 1, 2018.

Consequently, on February 6, 2019, the Office filed a “Petition to Cite for Contempt” (“the Petition”), the body of which stated:

The Petitioner, the Child Support Administration of the Charles County Department of Social Services, certifies that the above-named Defendant is delinquent in the payment of support monies as required by Order of Court.

Wherefore, the Petitioner requests the Court to issue an Order directing the Defendant to show cause why he/she should not be held in contempt.

The Petition was signed by “Special Counsel” for the Office.

Directly below the Petition on the same page, the show cause order, entitled “Rule to Show Cause” (the “Order”), provided:

Upon consideration of the Petition, it is this 31 day of January 2019, by the Circuit Court for Charles County, Maryland,

ORDERED, that you, the Defendant, shall appear in Circuit Court before the Family Magistrate, Charles County, LaPlata, Maryland at 9:00 a.m. on the 11th day of March, 2019, and show cause, if any, why you should not be adjudged in contempt of this Court for failing to obey the Order of Support; and it is further,

ORDERED, that you bring with you any evidence you have to show that payment has been made; and it is further,

ORDERED, that your personal appearance is required and that failure to appear will result in a body attachment being issued for your arrest.

TO THE PERSON ALLEGED TO BE IN CONTEMPT OF COURT:

1. It is alleged that you have disobeyed a court order, *are in contempt of court, and should go to jail until you obey the court’s order.* **Your ability to pay will be a critical question in the civil contempt.**

2. You have the right to have a lawyer. If you already have a lawyer, you should consult the lawyer at once. If you do not have a lawyer, please note:

- a. A lawyer can be helpful to you by:
 1. explaining the allegations against you;
 2. helping you determine and present any defense to those allegations;
 3. explaining to you the possible outcomes; and
 4. helping you at the hearing.

- b. Even if you do not plan to contest that you are in contempt of court, a lawyer can be helpful.
- c. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. You must contact the Public Defender at least 10 business days before the date of the hearing. The court clerk will tell you how to contact the Public Defender.
- d. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
- e. **DO NOT WAIT UNTIL THE DATE OF YOUR HEARING TO GET A LAWYER.** If you do not have a lawyer before the hearing date, the court may find that you have waived your right to a lawyer, and the hearing may be held with you unrepresented by a lawyer.

3. IF YOU DO NOT APPEAR FOR THE HEARING, YOU MAY BE SUBJECT TO ARREST.

(Bold emphasis in original; italicized emphasis added.) The Order was signed by a judge.

The March 11, 2019 hearing was set before a family magistrate. Mr. Chapman appeared without counsel. On the day of the hearing, however, the case was reassigned to a circuit court judge. At the outset of the hearing, Mr. Chapman told the judge that he did not think he was “supposed to be seeing [her] today.” The judge explained to Mr. Chapman that the magistrate’s docket was very busy and that she had some time to hear the case. Mr. Chapman responded that by seeing a judge without seeing a magistrate first, he was being denied his right to due process. After some discussion on another aspect of the case, Mr. Chapman requested “to have this whole case continued on another day” because he had been “denied [his] judicial right have a public defender to represent

[him].” The judge responded that she understood that he was asking for a continuance to obtain representation and he affirmed that was correct. She then explained that the Office of the Public Defender (“OPD”) had a memorandum of understanding which references the “types of cases they represent people” and that “the public defender is not going to represent you before a magistrate.” Mr. Chapman responded that he understood that was the OPD policy and that was why he was requesting a continuance *and* that his case be rescheduled before a circuit court judge so that he would be eligible for representation through the OPD.

The Office opposed Mr. Chapman’s request. Its position was that the case should go forward that day for the limited purpose of determining the amount Mr. Chapman was able to pay and to order him to pay that amount prior to the next hearing, which was typical of how its cases proceeded before a magistrate. It suggested that the next hearing could be scheduled before a circuit court judge.

The court restated the Office’s position to Mr. Chapman as follows: “So right now, [the Office does not] object to having the Court, after I hear from you, after I hear from them, setting an amount, then setting it before a Circuit Court judge. Which is what you want, right?” Mr. Chapman replied, “Uh-huh.” The court added that he could then get a public defender for his next hearing.

The court also clarified the procedure it would follow:

[THE COURT]: So, today, I think that in reference to what’s going to happen today, we’re all on the same page? Do you understand?

[MR. CHAPMAN]: Okay.

[THE COURT]: We're just going to . . . I'm going to take testimony about what you think you can pay. And it could be nothing, do you understand?

[MR. CHAPMAN]: Yes, Your Honor.

[THE COURT]: It's going to be up to you to give me that information, okay? I'm going to take information from [the Office] about what they think you should pay.

[MR. CHAPMAN]: Okay.

[THE COURT]: Then, I will come up with an amount, and then we will reset this before a Circuit Court judge.

[MR. CHAPMAN]: Yes, Your Honor.

[THE COURT]: Okay? Do you have any questions?

[MR. CHAPMAN]: No, not right now.

The remainder of the hearing was devoted to assessing Mr. Chapman's ability to pay child support. He testified that he was 44-years old and lived with his fiancée and their four daughters, ages 12, 10, 6, and 6. He had not been employed since November 2012, when he was terminated from his job as an HVAC technician because of criminal charges against him. Mr. Chapman sustained a service-connected injury to his shoulder during his military service, was qualified for 30% permanent disability, and received \$417 per month in disability income. He testified that his fiancée paid their rent and utilities, but he paid for his cell phone, trash collection, clothing and toiletries. He could not remember the last time he had applied for a job. Instead, he spent his days caring for his daughters. Mr. Chapman claimed that while he "had the ability to work[,]" he did not

have the ability “right now because [he was] going through therapy for [his] service-connected injury on [his] shoulder.”

At the close of the evidentiary portion of the hearing, the Office argued that the court should find that Mr. Chapman had the ability to pay child support, order him to pay \$300, and set the matter for a hearing before a circuit court judge two months later.

The court found that Mr. Chapman was in contempt of the July 31, 2015 child support order and that his total arrears were \$5,595. The court ordered that he could purge his contempt by paying \$251 before the next hearing, which was scheduled for May 15, 2019, before a circuit court judge. The circuit court memorialized its ruling in a written order entered March 13, 2019.

This timely appeal followed. The circuit court stayed its order pending resolution of this appeal.

DISCUSSION

The central question in this appeal concerns the right to be represented by counsel in a civil contempt proceeding under the Maryland Rules and the Public Defender Act, Maryland Code (2001, 2018 Repl. Vol., 2019 Supp.), Criminal Procedure Article (“CP”), §§ 16-101–16-403. We review questions of law involving statutory interpretation without deference to the circuit court’s interpretation of statutes and rules. *See Salamon v. Progressive Classic Ins. Co.*, 379 Md. 301, 307 (2004) (issues of statutory interpretation are reviewed de novo); *Rawlings v. Rawlings*, 362 Md. 535, 555 n. 19

(2001) (noting that issues of interpretation of court rules are treated the same as statutory interpretation issues).

Mr. Chapman contends that “the substitution of [a circuit court judge] for a [family magistrate] made all the difference *vis a vis* [his] right to counsel and entitlement to representation by the [OPD].” Because a magistrate could not have found Mr. Chapman in contempt or imposed incarceration as a sanction, the substitution “changed the amount of risk to which [he] was exposed[.]” Given that the judge did find him in contempt, he asserts that he was denied due process and is entitled to a reversal of the contempt finding and remand for a new hearing.

The Office counters that Mr. Chapman had no right to be represented by the OPD or other appointed counsel “in a civil contempt proceeding at which incarceration [was] not sought.” It emphasizes that the Petition did not seek incarceration and that incarceration was not mentioned at the March 11, 2019 hearing. Thus, in the Office’s view, relying on *Rutherford v. Rutherford*, 296 Md. 347, 363 (1983), because the circuit court judge agreed to limit herself to “determining contempt and a purge amount to be paid prior to the next hearing,” there was “no risk to Mr. Chapman’s liberty and no threat of ‘actual incarceration.’” Therefore, Mr. Chapman did not have a right to appointed counsel at the hearing.

Mr. Chapman replies that because the Order expressly stated that he could “go to jail” for failure to obey the child support order, he did face the threat of incarceration and was entitled to counsel at the contempt hearing once it was reset before a circuit court

judge. He further maintains that the Office may not rely upon the fact that incarceration was not imposed at the end of the hearing as a post hoc rationalization for why he was not entitled to representation during the hearing. Mr. Chapman asserts that “the mere possibility of a contempt finding” triggered his right to counsel and that the circuit court erred by not granting the request for a continuance to permit him to apply for representation through the OPD.

The Court of Appeals has instructed that “[a] defendant in a civil contempt proceeding is entitled to receive notice of the alleged violation, *if incarceration is sought, the right to be represented by counsel and appointed counsel if indigent*, and an opportunity to be heard on the merits of the charge of contempt.” *Jones v. State*, 351 Md. 264, 273-74 (1998) (emphasis added). In a civil contempt proceeding, a defendant’s right to counsel is protected by both the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights and is triggered when a defendant in a civil contempt proceeding faces a possibility of actual incarceration. *Rutherford v. Rutherford*, 296 Md. 347, 363 (1983) (holding that “an indigent defendant in a civil contempt proceeding cannot be sentenced to actual incarceration unless counsel has been appointed to represent him or he has waived the right to counsel” (footnote omitted)).

Maryland Rule 15-206, governing constructive civil contempt proceedings, implements this right. If a contempt case is initiated by a party to the action, the petition for contempt “shall expressly state whether or not incarceration is sought.” Md. Rule 15-

206(c)(1). Once “incarceration to compel compliance with the court’s order is sought, a notice to the alleged contemnor” must be included in the show cause order issued by the court. Md. Rule 15-206(c)(2)(C). The mandatory notice language, which appeared in the Order, referenced above, informs an alleged contemnor that he or she has the right to representation and that, if he or she cannot afford to hire private counsel, “the Public Defender may provide a lawyer for you.” Md. Rule 15-206(c)(2).

The Public Defender Act provides that an “indigent defendant[.]” is eligible for representation in any “proceeding in which confinement under a judicial commitment of an individual in a public or private institution may result[.]” CP § 16-204(b)(1)(iv). As discussed at the hearing in this case, the OPD does not provide representation at civil contempt proceedings held before a magistrate, because magistrates are not empowered to find an alleged contemnor in contempt or to impose a sanction, such as incarceration. *See* Md. Rule 9-208(b)(6) (empowering a magistrate to “recommend contempt proceedings or other sanctions to the court”). Rather, Maryland Rule 9-208 requires that, during a constructive civil contempt hearing, if

[a] magistrate concludes that there are reasonable grounds to believe that the party is in contempt *and that incarceration may be an appropriate sanction*, the magistrate shall: (1) set a de novo hearing before a judge of the circuit court, (2) cause the alleged contemnor to be served with a summons to that hearing, and (3) terminate the magistrate’s hearing without making a recommendation.

Md. Rule 9-208(d) (emphasis added). Further, if the alleged contemnor was not represented by counsel before the magistrate, the de novo hearing before a circuit court judge “shall be at least 20 days after the date of the magistrate’s hearing and, before the

magistrate terminates the magistrate’s hearing, the magistrate shall advise the alleged contemnor on the record of the contents of the notice set forth in Rule 15-206(c)(2).” *Id.* If a magistrate concludes that the party should be found in contempt but that incarceration is not an appropriate sanction, he or she may proceed with the hearing and, at the end of the hearing, “prepare written recommendations, which shall include a brief statement of the magistrate’s findings and shall be accompanied by a proposed order.” Md. Rule 9-208(e)(1). In contempt cases, if the magistrate recommends “that an individual be found in contempt, the circuit court may hold a hearing and direct the entry of an order at any time” but “[t]he order may not include a sanction of incarceration.” Md. Rule 9-208(h)(3)(A) (emphasis added).

The Order in the present case stated that incarceration was being sought. It directed Mr. Chapman to appear and “show cause, if any, why you should not be adjudged in contempt of this [c]ourt for failing to obey the Order of Support.” The Order then included the mandatory notice language required by Rule 15-206(c)(2)(C) that must appear only if incarceration is sought. This language expressly advised Mr. Chapman that “it [was] alleged that you have disobeyed a court order, are in contempt of court, and *should go to jail* until you obey the court’s order.” (Emphasis added.) While the Office argues that the Petition itself did not “expressly state” that incarceration was being sought as a sanction, we note that it also failed to state that incarceration was *not* being sought as the Rule required. *See* Md. Rule 15-206(c)(1). Instead, pursuant to the Order, a finding of civil contempt posed an immediate threat of incarceration upon Mr. Chapman.

Under the circumstances in the present case, we hold that the threat of incarceration at the March 11, 2019 hearing triggered Mr. Chapman’s right to counsel, as implemented by Rule 15-206 and the Public Defender Act. Mr. Chapman was advised in the show cause order that incarceration was being sought, and the record reflects that the circuit court judge did not affirmatively state that she would eliminate incarceration as a potential sanction. Indeed, the fact that the circuit court judge found Mr. Chapman in contempt demonstrates that she did not limit her ruling solely to determining the amount of child support arrearages he was able to pay. Without the advice of counsel, therefore, Mr. Chapman participated in a hearing at which he was found in contempt and could have been incarcerated, or, based on the hearing record, incarcerated at the subsequent hearing.

We hold that the substitution of a circuit court judge in place of a magistrate to hear the contempt proceeding in this case altered Mr. Chapman’s risk exposure to include incarceration, and he became eligible for representation through the OPD. To be sure, when Mr. Chapman’s hearing was scheduled before a magistrate, he did not face the possibility that incarceration would be imposed as a sanction for his disobedience of the child support order. *See* Md. Rule 9-208(h)(3). As detailed above, a magistrate would not have been empowered to find Mr. Chapman in contempt or even recommend a sanction of incarceration. Md. Rule 9-208(b)(6), (d), (h)(3)(A). The circuit court judge, in contrast, was not limited in the sanctions that she could impose, including

incarceration. This threat to Mr. Chapman’s liberty triggered his entitlement to representation by the OPD. CP § 16-204(b)(1)(iv).

Once Mr. Chapman’s right to counsel was triggered by being brought before the circuit court on the contempt petition that was filed in this case, the judge could not satisfy his right to counsel by simply not discussing incarceration as a potential sanction. We do not analyze Mr. Chapman’s risk exposure and right to counsel in light of the hearing result. Rather, Mr. Chapman’s right to counsel “applies at every stage of such a contempt proceeding [where there is a possibility of imprisonment].” *Redmond v. Redmond*, 123 Md. App. 405, 415 (1998).

Accordingly, because the contempt proceeding was conducted in violation of Mr. Chapman’s right to counsel, the circuit court’s contempt judgment must be reversed, and the case remanded for a new proceeding consistent with this opinion.

**JUDGMENT OF THE CIRCUIT
COURT FOR CHARLES COUNTY
REVERSED; CASE REMANDED
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS
OPINION; COSTS TO BE PAID BY
APPELLEES.**