

Circuit Court for Queen Anne's County
Case No. 17-C-12-017040

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2144

September Term, 2017

MICHAEL E. LINK

v.

CHRISTINA LINK

Berger,
Leahy,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 7, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of a divorce proceeding in the Circuit Court for Queen Anne’s County between appellant, Michael Link (“Michael”), and appellee, Christina Link (“Christina”).¹ Following a trial, the court entered a judgment of absolute divorce and ordered Michael to pay Christina alimony, child support, and \$318 per month as contribution towards a home improvement loan. After Michael failed to make the monthly contribution payments, the court held Michael in contempt and ordered him to pay \$318 a month for thirty-six months to purge the contempt.

Approximately one year later, Christina filed a second petition for contempt alleging that Michael breached the previous contempt order. After holding a hearing, the court found that Michael was in contempt, and consequently, ordered Michael to pay \$318 for thirty-six months to purge the contempt. The court further ordered Michael to pay \$12,813.01 within sixty days. This amount accounted for unpaid interest, late fees, court costs, and attorney’s fees that had accrued on the home improvement loan as a result of Michael’s failure to pay.

¹ We refer to the parties by their first name for clarity. We mean no disrespect to either of them by referring to them by their first names.

On appeal, Michael raises three questions, which we consolidate and rephrase as follows²:

1. Whether the circuit court erred in ordering Michael to pay \$318 per month for thirty-six months to purge his contempt.
2. Whether the circuit court erred in ordering Michael to pay \$12,813.01 within sixty days.

For the reasons explained herein, we affirm.

² The issues, as framed by Michael, are as follows:

1. Where the record showed that Michael had no ability to make certain court-ordered payments to his ex-wife, was the Circuit Court's decision to hold him in contempt inconsistent with this Court's decision in *Lynch v. Lynch*, 342 Md. 509 (1996) and with *Turner v. Rogers*, [564 U.S. 431] (2011) which require that the court find an ability [to] pay?
2. Where the record showed that Michael had no ability to make a payment of \$12,813.01 to his ex-wife within sixty [days], was the Circuit Court's decision to hold him in contempt inconsistent with this Court's decision in *Lynch v. Lynch*, 342 Md. 509 (1996) and with *Turner v. Rogers*, [564 U.S. 431] (2011) which require that the court find an ability to pay?
3. Was the decision of the Circuit Court's order requiring that Michael [pay] Christina \$12,813.01 improper because it constituted an award of compensatory damages in a contempt action which is not permitted under the decision of the Court of Appeals in *Dodson v. Dodson*, 380 Md. 438 (2004)?

FACTS AND PROCEEDINGS

Michael and Christina were married in July 2001. During their marriage, the couple took out a loan to make improvements on their home.³ Thereafter, Michael and Christina separated, and in January 2013, obtained an absolute divorce. In the divorce order, the Circuit Court for Queen Anne’s County ordered Michael to pay Christina \$100 a month in alimony, \$1,403 a month in child support, and \$318 a month as contribution towards the home improvement loan.

In January 2016, Christina filed a petition for contempt alleging that Michael failed to make his \$318 monthly contribution payments. On May 3, 2016, the Magistrate held a hearing. At the hearing, Michael opposed Christina’s petition, arguing that he did not have the financial resources to make the \$318 monthly payments. The Magistrate disagreed and ultimately recommended that Michael be held in contempt. On May 31, 2016, the circuit court approved the Magistrate’s recommendation, holding Michael in contempt and ordering him to purge his contempt by making the \$318 monthly payments for thirty-six months. Michael did not file any exceptions or file a timely appeal.

On May 11, 2017, Christina filed another petition for contempt. In this petition, Christina alleged that Michael failed to comply with the circuit court’s May 31, 2016 order because Michael did not make any of the \$318 monthly contribution payments. Christina further argued that the home improvement loan accrued \$12,813.01 in interest, late fees,

³ The loan was solely in Christina’s name.

costs, and attorney's fees as a result of Michael's failure to make the monthly payments. On July 20, 2017, the Magistrate held a show cause hearing.

At the hearing, Michael testified that he could not afford to make the contribution payments in addition to child support and alimony. In support of his testimony, Michael produced three pay stubs and a self-prepared spreadsheet listing his expenses. Michael further testified that he paid \$50 every month towards the loan. After hearing from both Michael and Christina, the Magistrate issued her oral recommendation. The Magistrate stated: "Magistrate recommends finding of contempt. [Michael] to pay \$12,813.01 within 60 days or reduced to judgment. [Michael] to resume to pay \$318.00 on 9/1/17 and continue for 36 months."

On July 28, 2017, Michael filed exceptions to the Magistrate's recommendations. Thereafter, on October 19, 2017, Michael filed supplemental exceptions. Michael asserted that he did not have the financial wherewithal to pay more than \$50 each month towards the loan. Michael further argued that he should not have to pay the accrued costs associated with the home improvement loan because the loan was personal to Christina.

On December 20, 2017, the circuit court approved the Magistrate's recommendations. In a memorandum opinion, the circuit court ruled as follows:

The Magistrate went through the merits of Defendant's financial resources. She did not find credible -- nor does the Court find credible -- Defendant's claim of having given two checks to [Christina] of \$200.00 and \$150.00 respectively purportedly paying her a reduced payment of \$50/month. [Michael] was employed earning approximately \$39,000/year in 2016 for Del-Mar-Va Council, Inc., and a base salary of approximately \$30,000/year in 2017 for Atlantic Broadband.

The Magistrate recommended that Defendant be adjudicated in contempt for failing to pay \$318/monthly to [Christina] as a contribution towards the home improvement loan in accordance with the 1/31/13 judgment and 5/31/16 order; that, as a purge provision, [Michael] was directed to pay the monthly contribution amount, less any agreed credits, commencing 9/1/17, over a period of 36 months; that the interest, late fees, attorney’s fees, and court costs related to the non-payment of the loan of \$12,813.01 be reduced to judgment if not paid within 60 days; and that [Michael] sign over the Mazda Van to [Christina] with net proceeds to be paid per the parties’ agreement. The findings of fact and conclusions of the Magistrate were proper and in accordance with the subject orders and the law.

Consequently, the exceptions are overruled.

This timely appeal followed.

STANDARD OF REVIEW

In a case tried without a jury, “the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “An appellate court may reverse a finding of civil contempt only ‘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.’” *Gertz v. Md. Dep’t of Env’t*, 199 Md. App. 413, 424 (2011) (quoting *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 448 (2008)).

Under the clearly erroneous standard, “we must consider the evidence in the light most favorable to the prevailing party and decide not whether the trial judge’s conclusions

of fact were correct, but only whether they were supported by a preponderance of the evidence.” *City of Bowie v. Mie Props., Inc.*, 398 Md. 657, 676-77 (2007) (internal citations and quotations omitted). With respect to legal conclusions, however, we “must determine whether the [trial] court’s conclusions are legally correct[.]” *White v. Pines Cmty. Improvement Ass’n, Inc.*, 403 Md. 13, 31 (2008) (internal citations and quotations omitted).

DISCUSSION

I.

Michael’s first contention is that the circuit court erred in holding him in contempt for failing to make the \$318 monthly contribution payments. In doing so, Michael argues that there was no evidence before the circuit court that established his present ability to purge the contempt.⁴ We disagree.

It is well established that a finding of constructive civil contempt requires a determination that the alleged contemnor has the present ability to comply with the prior court order or with the purge provision. *Dodson v. Dodson*, 380 Md. 438, 449 (2004). “[T]he burden is on the contemnor to establish his or her inability to meet the purge.” *Arrington v. Dep’t of Human Res.*, 402 Md. 79, 102 (2007). Michael, therefore, bore the burden in demonstrating at the show cause hearing that he did not have the ability to comply with the purge on September 1, 2017.

⁴ The circuit court ordered Michael’s purge to begin on September 1, 2017. As such, Michael’s “present ability to purge the contempt” refers to whether Michael was financially able to comply with the purge on September 1, 2017.

In recommending that the purge amount be set at \$318 a month for thirty-six months, the Magistrate explained:

I went and did the math on my own and what I concluded, just so we're clear of what our starting point is, that you had year-to-date earnings as of July 1st of 2017 because that's the pay ending date, not the paid date. The pay ending date was July 1st, 2017, that's \$15,675.90. That's 22 and a half weeks roughly because you started in the middle of the week having started on January 24th, so I said at 23 weeks that that was extrapolated earnings of \$35,441.12. That's what I have you at with expenses of \$2,9 or excuse me, monthly earnings of \$2,953.43. So \$35,441.12 annually is \$2,953.43 per month. So that's what I have as your gross earnings per month. Okay.

Now, take from that, right off the top, as is appropriate, the \$100 per month that's being paid in alimony through February of next year and \$865 that's paid in child support. That leaves you with \$1,988.43 per month. Then there's an additional \$1,313 in expenses. That's without the \$50 payment. That brings you down to \$675.43. If I take out the \$318 payment, that leaves you with \$357.43. I appreciate that you have your taxes that you have to pay and you're fiddling around with the numbers with your employer going from eleven to zero, trying to figure out what works best for you and I see that you some things that you've put on that statement -- Defendant's Exhibit No. 2, your sort of spreadsheet of expenses and income and you've got some insurance, mandatory retirement, things of that nature that I've not included because it's not appropriate for me to do so because I don't know what about that is -- no one has told me that it's mandatory. You have it here, but I don't know what [that] really is. There's nothing in your statement that says it's mandatory, in terms of on your actual earnings statement.

So I don't know the details of that, but what I do know is that you have some federal taxes, state taxes, Medicare, Social Security. I took the average of your high and your low and gave you \$488.65 in taxes. So, then, at that point, you have a shortfall of \$131.22. All right. If I give you the benefit of all of these expenses, including \$203 for cell phone that according

to testimony, perhaps your son didn't really need, but I also understand you bought a cell phone for your daughter, you guys didn't communicate, you end up with a spare cell phone, so you give it your son. Fine, but you got the \$100 in childcare that's going to come out when school starts again in September. You're not going to have to worry about that. Then you have a shortfall of \$31.22. As far as I'm concerned, you can find a way to come up with \$31.22 to pay your obligation to Ms. Link.

Michael argues that the Magistrate miscalculated his monthly expenses by failing to account for \$216 he pays each month in child support arrears. As such, Michael maintains that he has a "shortfall" of \$247.22 instead of \$31.22. Critically, however, Michael did not testify that he pays \$216 a month in child support arrears. Rather, at the show cause hearing, Michael testified that he pays \$100 a month in alimony and \$865 in child support.⁵ Despite being asked several times at the hearing to clarify his expenses, Michael never testified about his purported \$216 monthly payments.

In support of his contention that he pays \$216 in arrears, Michael relies solely on the pay stubs he produced at the show cause hearing from March, June, and July 2017. The three pay stubs indicate biweekly deductions of \$545.19. Each pay stubs lists the deduction

⁵ At the hearing, the Magistrate and Michael had the following exchange:

[The Magistrate]: Refresh my memory as to the alimony payment, what is that a month?

[Michael]: \$100 a month.

[The Magistrate]: What is the child support payment?

[Michael]: I have the breakdown here, Your Honor, it's [\$]864 -- \$865.

as “Support Order.” There was no testimony at the hearing about what the “Support Order” entailed. Furthermore, there was no evidence or testimony that the “Support Order” was to continue past July 2017. Put simply, there was no evidence before the circuit court that Michael had a present obligation, as of September 1, 2017, to pay \$216 a month in child support arrears.

Nevertheless, even if we consider the arrears, we conclude that Michael had the ability to purge the contempt. While Michael may have been required to curb his expenses to satisfy the purge, he nonetheless had an ability, and therefore, an obligation to pay it. Critically, the circuit court found substantial evidence in the record that Michael has had the opportunity to work overtime to comply with the purge. Indeed, the two most recent pay stubs Michael produced at the show cause hearing demonstrate monthly net earnings of \$1,729.27. Thus, without questioning any of Michael’s self-calculated expenses, Michael would have a remainder of at least \$366.27 to satisfy the \$318 purge.⁶

Finally, Michael maintains that the circuit court erred in adopting the Magistrate’s recommendation because the Magistrate did not consider the cost of “unexpected expenses,” clothing expenses, or co-pay medical expenses. Michael did not, however, testify about any of the alleged expenses, or include those expenses in the spreadsheet he provided at the show cause hearing. In essence, Michael asks us to ignore his own testimony and financial statement, which we decline to do.

⁶ To the extent Michael argues that he was only permitted to work overtime in the summer, we disagree. Critically, Michael’s March 17, 2017 pay stub indicates that he worked overtime, albeit not as many hours as he worked in June 2017.

Based on the evidence presented at the show cause hearing, we conclude that the circuit court did not clearly err in finding that Michael was able to comply with the purge. We, therefore, affirm the circuit court's contempt order.

II.

Michael further asserts that the circuit court's order requiring him to pay Christina \$12,813.01 within sixty days (the "lump sum award") constituted an award of compensatory damages that was improper in a civil contempt action. As we shall explain, we are not persuaded that the court's order requiring payment of \$12,813.01 was improper.

Michael characterizes the lump sum award as an impermissible award of compensatory damages in a contempt case. In support, he relies upon *Dodson v. Dodson*, 380 Md. 438 (2004), in which the Court of Appeals held that "compensatory damages may not ordinarily be recovered in a civil contempt action." *Id.* at 454. In our view, however, the lump sum award is more appropriately characterized as an award of costs, and not as a contempt purge.

In *Dodson*, a husband failed to pay a quarterly insurance premium as required by the court's *pendente lite* order. *Id.* at 440-41. Subsequently, a fire occurred, resulting in property damage. *Id.* at 441. Apparently, the husband had not received the most recent bill for the insurance premium due to an error with his address. *Id.* The wife filed a contempt action and sought compensatory damages, and the circuit court ruled in the wife's favor, awarding \$19,311 in damages. *Id.* at 444. This Court affirmed in an unreported opinion, and the Court of Appeals reversed.

The Court of Appeals explained that sanctions for civil contempt are “remedial” in nature in that they are intended “to coerce compliance with court orders for the benefit of a private party or to issue ancillary orders for the purpose of facilitating compliance or encouraging a greater degree of compliance with court orders.” *Id.* at 448. The Court observed that the husband “had no present ability to comply with any requirement that the insurance premium due on November 1, 2000, be paid so that there would be no December 2000 cancellation of the insurance policy on the condominium’s contents” and that the case “involve[d] no current obligation under a court order.” *Id.* at 451-52. The Court explained that a tort action or breach of contract action would be “the appropriate means for the injured party to seek compensation.” *Id.* at 452.

In this case, unlike *Dodson*, Michael had already been found in contempt more than a year prior to the July 20, 2017 hearing. Furthermore, Michael’s failure to pay his monthly obligation of \$318 was ongoing and not a single incident like in *Dodson*, and Michael continues to have an obligation under a court order going forward. The sanction imposed in this case is remedial and intended to coerce Michael’s future compliance with the terms of the court’s orders.

In addition, our opinion in *Corapcioglu v. Roosevelt*, 170 Md. App. 572 (2006), a case that post-dates *Dodson*, is instructive with respect to this issue. In *Corapcioglu, supra*, we addressed whether a \$200,000 judgment entered following a constructive civil contempt hearing was a contempt fine or an award of counsel fees and costs. We discussed the difference between civil and criminal contempt sanctions, explaining:

If a contempt is civil, the sanction is coercive, that is, it is designed to remedy a contemptuous act or omission, by prompting conduct on the part of the contemnor, and must allow for purging. *State v. Roll*, 267 Md. 714, 728, 298 A.2d 867 (1973). If a contempt is criminal, the sanction is punitive, that is, to penalize the contemnor for past conduct. *Id.*; *see also Betz v. State*, 99 Md. App. 60, 64, 635 A.2d 77 (1994) (stating that the “hallmark distinction” between civil and criminal contempt “is whether the sanction is coercive or punitive in nature.”).

Corapcioglu, supra, 170 Md. App. at 607. We concluded that the \$200,000 award was not a fine because it served to reimburse the mother for “the sums she had expended in pursuing [the parties’ minor child’s] return to the United States” after the father abducted the child and took him to Turkey. *Id.* at 607-08. We emphasized that “the judge hearing the contempt motion stated that he was awarding Mother \$200,000 as ‘costs.’” *Id.* at 608. We further considered that the written order “implementing the court’s oral ruling states that Father could purge the contempt order by submitting himself to the jurisdiction of the court, i.e., by returning to Maryland with [the minor child].” We explained:

The order does not say (nor does the transcript of the ruling say) that the \$200,000 was a purge amount that Father no longer would have to pay if he returned [the child] to Maryland. Indeed, the order makes plain that Father could purge the contempt merely by returning to Maryland with [the minor child].

Id.

Similarly, in the present case, the recommendations of the Magistrate and the order of the circuit court each distinguish between the lump sum award and the \$318 per month purge provision. The Magistrate’s recommendation specifically provided that Michael

“may purge the contempt by paying directly to [Christina] \$318 per month no later than the 15th of each month, beginning June 15, 2016.” The circuit court’s order held Michael in contempt and provided “that [Michael] may purge this contempt by paying [Christina] an amount totaling \$318 per month, beginning September 1, 2017, in strict compliance with the Order.” The circuit court separately ordered that Michael “shall pay \$12,813.01 to [Christina] within 60 days, representing the unpaid interest, late fees, court costs and attorney’s fee on the loan, as of July 12, 2017.”

The lump sum award of \$12,813.01 was intended to reimburse Christina for “unpaid interest, late fees, court costs, and attorney’s fees on the loan.” The interest, fees, and costs accrued due to Michael’s failure to pay Christina \$318 per month toward the payment of a home improvement loan. Michael was required to make these payments beginning on February 1, 2013, but he failed to do so. As in *Corapcioglu, supra*, the purge provision and the separate lump sum award are distinct. In *Corapcioglu*, the father could purge the contempt by returning to Maryland with the minor child, while in the present case, Michael can purge the contempt by paying Christina \$318 per month. In *Corapcioglu*, the \$200,000 was awarded to reimburse the mother for expenses incurred in pursuing the child’s return to the United States, while in the present case, the lump sum award of \$12,813.01 was to reimburse Christina for interest and fees incurred due to Michael’s previous and ongoing failure to pay.

Accordingly, we reject Michael's contention that the lump sum award was an inappropriate award of compensatory damages in a contempt case.⁷ We, therefore, hold that the circuit court did not err in ordering Michael to pay the lump sum award within sixty days.

**JUDGMENT OF THE CIRCUIT COURT
FOR QUEEN ANNE'S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**

⁷ In light of our holding that the \$12,813.01 was an award of costs and not a contempt purge, we need not consider Michael's argument that he was unable to pay the lump sum.