

Circuit Court for Baltimore City
Case Nos. 818085006, 818085010, and 818085011

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2384

September Term, 2018

IN RE: B.T., B.T., AND B.B.

Meredith,
Shaw Geter,
Raker, Irma S,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: February 25, 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.

In March 2018, the Baltimore City Department of Social Services (the “Department”) filed a Petition with Request for Shelter Care on behalf of B.T., B.T., and B.B. (collectively, the “Children”) in the Circuit Court for Baltimore City. In August 2018, the court ordered the Children’s mother, A.B., appellant (“Mother”), to make the Children available for a home visit by the Department and to bring the Children to the next scheduled hearing before the court. Despite that direct order, Mother failed to make one of the Children, B.B., available to the Department and failed to bring that same child to the next scheduled hearing. As a result, the court found Mother in direct civil contempt and ordered that she be jailed until B.B. was made available to the Department. The following day, B.B. was brought to court and Mother was released from custody. In this appeal, Mother presents the following question for our review, which we have rephrased as:

Where Mother purportedly had no ability to purge the contempt at the time she was incarcerated, did the circuit court commit error in finding Mother in direct civil contempt?

For reasons to follow, we conclude that, because Mother was released from prison and has purged the contempt, the issue is moot. Accordingly, we dismiss Mother’s appeal.

BACKGROUND

On March 26, 2018, the Department filed a petition in the circuit court requesting that the Children be declared children in need of assistance (“CINA”) and that they be placed in shelter care.¹ On April 2, 2018, the court denied the Department’s petition and

¹ Section 3-801(f) of the Courts and Judicial Proceedings Article of the Maryland Code defines “child in need of assistance” as “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental

placed the Children in the custody of Mother under an Order Controlling Conduct. As part of that order, Mother was required to cooperate with the Department and to allow the Department access to the Children.

On July 26, 2018, the Department filed a “Motion for Immediate Review and Request for Production of Respondents and Shelter Care.” In that motion, the Department alleged, among other things, that Mother had violated the circuit court’s Order Controlling Conduct by repeatedly denying the Department access to the Children.

On August 7, 2018, the circuit court held a hearing on the Department’s motion. Following the hearing, the court found that Mother had in fact failed to make the Children available to the Department, per the court’s order. As a result, the court issued an order directing Mother to make the Children available to the Department for a home visit the following day, August 8, 2018. The court also ordered Mother to bring the Children to court at 9:30 a.m. on August 9, 2018. The court then warned Mother that, because those two orders were “a direct order from the Court,” if Mother did anything contrary to those orders, the court “might just hold [her] in direct contempt.” At that point, Mother did not say anything to indicate that she would be unable to comply with the court’s orders.

When the parties reconvened in court at 9:30 a.m. on August 9, the Department informed the court that it had attempted to go to Mother’s home on August 8, but that those efforts were frustrated because Mother had given the Department an incomplete address. The Department stated that when it finally did obtain the full address and made contact

disability, or has a mental disorder; and (2) [t]he child’s parent, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.”

with Mother inside her home, Mother informed the Department that one of the Children, B.B., was in the custody of “an alleged paternal grandfather,” later identified as Mr. F, who lived in Virginia. The Department stated that it then contacted Mr. F, who informed the Department that he lived “four hours away” and did not have transportation to bring B.B. to Maryland.

Mother then testified regarding the circumstances that led to B.B. being in the care of Mr. F. She explained that, because she “got out of court so late” on August 7, some of her family members became “very concerned,” so they sent B.B. “with his grandfather,” which Mother claimed was “a normal thing.” Mother stated that, when she eventually arrived home following her court appearance on August 7, she learned that B.B. had gone with Mr. F. She further stated that she did not know that Mr. F. lived in Virginia because she normally visits with him at his sister’s home in Glen Burnie, Maryland. Mother testified that, after learning of B.B.’s whereabouts, she contacted Mr. F. and asked him to bring B.B. to Maryland. According to Mother, Mr. F. indicated that he needed “at least like 48 hours.”

The court found Mother had been “unduly combative with the Department” and “unwilling to comply with the Court’s orders.” The Court then stated that it was “going to hold [Mother] in direct civil contempt.” The court further stated it would impose sanctions if B.B. was not brought to court by 4:30 p.m., which was approximately four hours from then. The court then recessed.

When the court reconvened at 4:30 p.m. the same afternoon, Mother’s counsel informed the court that counsel had contacted Mr. F. during the break and informed him of the situation and that Mr. F. stated that he could not have B.B. in court by 4:30 p.m. Defense counsel also asked the court to dismiss the contempt proceedings and to “follow the procedure required when the Court does hold an individual before the Court in constructive civil contempt.” The court responded that it did not hold Mother in constructive civil contempt, but rather in direct civil contempt and that the conduct for which the court found Mother in direct contempt had “already taken place.” The court explained that it did not impose sanctions right away because it hoped “that a miracle would happen and the child would be here.”

In the end, the court ruled that Mother had violated a direct order of the court and was “found to be in direct civil contempt under Maryland Rules 15-203(a) and (b).” The court explained that Mother had “frustrated that direct order in several ways,” specifically, by failing to give the Department a complete home address, which “caused the Department to take additional steps to identify the actual address,” and by failing to make B.B. available to the Department and the court. The court found Mother’s actions had “interrupted the order of the Court, interfered with the dignified conduct of the Court’s business and placed at risk the safety of her one-year-old child.” The court then ordered Mother incarcerated until B.B. was “given to the care and custody of the Department.”

Mother was thereafter incarcerated per the court’s order. The following day, on August 10, B.B. was brought to court and Mother was released from prison. This appeal followed.

DISCUSSION

“[A] person whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties, has committed a contempt.” *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 114 (2009) (citations omitted). “[T]he universe of contempt proceedings is divided into four quadrants: direct and constructive contempt; and criminal and civil contempt.” *State v. Crawford*, 239 Md. App. 84, 109 (2018) (citation and quotations omitted).

A direct contempt occurs “when the contempt is ‘committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.’” *Id.* (quoting Md. Rule 15-202(b)). “In that circumstance, the judge will have sufficient knowledge of the contemptuous act which tends to interrupt the proceedings and will not have to rely on other evidence to establish all the details, though some of them can be supplied by additional testimony.” *Arrington v. Dep’t of Human Resources*, 402 Md. 79, 93 (2007) (citations and quotations omitted). The procedures a court must follow when finding a person in direct contempt are governed by Maryland Rules 15-203 and 15-204.

Constructive contempt, on the other hand, is any contempt that is not a direct contempt. Md. Rule 15-202(a). In other words, a constructive contempt occurs outside of the judge’s presence and requires the judge to “look at extrinsic evidence to determine that a contempt has been committed.” *Fisher*, 186 Md. App. at 115 (citing Md. Rule 15-202(a)). The procedures a court must follow when finding a person in constructive contempt are governed by Maryland Rules 15-205, 15-206, and 15-207.

In addition to being either direct or constructive, a contempt is also either civil or criminal. “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.” *Crawford*, 239 Md. App. at 110 (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). “Criminal contempt proceedings, in contrast, are intended to punish for past misconduct, which may no longer be capable of remedy.” *Id.*

Regardless of whether the contempt is criminal or civil, “[i]f the contempt was direct, the party or court follows the same rules to dispose of the case[.]” *Fisher*, 186 Md. App. at 114. Those rules permit a court to impose summary sanctions immediately, or shortly after the contempt is committed, “to protect the orderly administration of justice and vindicate the dignity of the court.” *Crawford*, 239 Md. App. at 109; Md. Rule 15-203(a). If the contempt is civil, i.e. intended to coerce present or future compliance with a court order, and the court decides to impose sanctions summarily, the court may issue

coercive sanctions, such as imprisonment until the contemnor complies with the court’s order, or remedial sanctions, such as a fine payable to a plaintiff. *Stevens v. Tokuda*, 216 Md. App. 155, 171 (2014). If the contempt is criminal, the court may issue determinate sanctions, such as a jail sentence for a specific period of time. *Id.*

When a civil sanction is imposed, the court must also indicate how the contempt may be purged. *Fisher*, 186 Md. App. at 115–16. “A purge provision offers the party ‘the opportunity to exonerate him or herself, that is, to rid him or herself of guilt and thus clear himself of the charge.’” *Crawford*, 239 Md. App. at 110 (citing *Jones v. State*, 351 Md. 264, 281 (1998)). Before a purge provision may be imposed, however, “the contemnor must have the ability to comply with the purge provision.” *Fisher*, 186 Md. App. at 120. “To that end, a court may not impose incarceration as a sanction for civil contempt when the defendant is unable to meet the purge condition in time to avoid the incarceration.” *Stevens*, 216 Md. App. at 169. Moreover, because civil contempt proceedings are remedial in nature and intended to coerce future compliance, any resulting sanctions must not be purely punitive, i.e. intended to punish the contemnor for past misconduct. *Dodson*, 380 Md. at 448–49.

Here, Mother argues the circuit court committed error when it found her to be in direct civil contempt of its order. Although Mother does not dispute that she violated the court’s order when she failed to make B.B. available to the Department and the court, she nevertheless maintains the court’s finding of contempt was erroneous because, at the time the court issued the sanction of imprisonment, she did not have the present ability to purge

the contempt, as B.B. was not in her custody but rather was in Virginia. Mother further contends the court’s sanction of imprisonment “went beyond the scope of the purpose of civil contempt” because the court, in imposing that sanction, intended to “punish her for allowing B.B. to be in such a precarious position.”

The State argues, and we agree, that Mother’s argument is moot. “A case is moot when there is ‘no longer an existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.’” *Bradford v. State*, 199 Md. App. 175, 190 (2011) (quoting *Suter v. Stuckey*, 402 Md. 211, 219–20 (2007)). “[A]s a general proposition, an appeal of an order of contempt is moot if the contempt is purged.” *Id.* (citing *Arrington*, 402 Md. at 90). In such a situation, “[a]bsent a challenge to the contempt finding itself, there is nothing for this Court to consider.” *Young v. Fauth*, 158 Md. App. 105, 113 (2004); *see also Arrington*, 402 Md. at 90–91 (holding that defendant’s release from prison rendered moot his challenge to the validity of his civil contempt incarceration). “Courts do not entertain moot controversies.”² *Bradford*, 199 Md. App. at 190.

As noted, Mother does not challenge the court’s finding that she was in direct civil contempt of the court’s August 7 order. That is, Mother does not dispute that the court ordered her to make B.B. available to the Department on August 8 and to bring B.B. to court on August 9, and that she failed in both respects. Rather, Mother’s sole contention

² Although courts may entertain moot controversies under “exceptional circumstances,” none of those circumstances are applicable here. *Arrington*, 402 Md. at 91.

is that the court’s sanction of imprisonment, which the court imposed pursuant to its finding of direct civil contempt, was impermissible. That sanction was lifted, however, when B.B. was brought to court on August 10th and Mother was subsequently released from prison the same day. Accordingly, the status about which Mother complains—her imprisonment—no longer exists. *Arrington*, 402 Md. at 91. Moreover, in having B.B. brought to court, Mother purged the court’s contempt finding. As a result, the sanction of imprisonment cannot be reinstated absent a new finding of contempt. *Id.* For those reasons, the sole issue before this Court—the validity of Mother’s incarceration following the court’s finding of contempt—is moot.

Mother asserts that the issue is not moot because her “contempt adjudication is a matter of public record and could affect [her], especially as a party in an ongoing CINA matter before the trial court in Baltimore.” Mother also maintains that the Court of Appeals, in *Bryant v. Howard County Dept. of Social Services*, 387 Md. 30, 44 (2005), held that “a finding of contempt, in and of itself, is appealable and not moot, even when the trial court does not imprison the contemnor or impose a sanction.” Finally, Mother asserts that, under *Lynch v. Lynch*, 342 Md. 509 (1996), a finding of contempt is impermissible when a court institutes a purge provision that a defendant cannot meet.

Mother is mistaken. In *Bryant*, the Howard County Department of Social Services filed a petition for contempt against the defendant, Joseph Bryant, for failure to pay court-ordered child support. *Bryant*, 387 Md. at 34. The court ultimately found Bryant in constructive civil contempt and ordered that he be placed on “supervised probation,” that

he attend Narcotics Anonymous meetings, and that he submit to drug testing. *Id.* at 36. When Bryant failed to meet those last two conditions, the court again found him in contempt. *Id.* at 39. Bryant appealed that order, arguing that the court did not have the authority to impose the two conditions that served as the basis for the court’s contempt finding. *Id.* at 40–41.

On appeal before the Court of Appeals, the State argued that Bryant’s argument was moot because he had not been incarcerated or otherwise sanctioned because of the trial court’s contempt finding. *Id.* at 41. The Court disagreed, holding Bryant’s argument was not moot because he was directly challenging the trial court’s finding of contempt. *Id.* at 41–42. The Court reasoned that, even though the trial court’s finding of contempt was unaccompanied by a sanction, Bryant was still “adjudged to have willfully violated a court order and may well [be] subject to future punishment at the will of the court.” *Id.* at 45. The Court then went on to hold that the conditions imposed by the trial court—that Bryant attend NA meetings and submit to drug testing—were invalid because they “constituted an unlawful criminal sentence imposed in a civil contempt proceeding” and that, as a result, they could not serve as a lawful basis for the trial court’s finding of contempt. *Id.* at 51–52.

Here, although Mother claims the circuit court erred when it found her in direct civil contempt, she does not challenge the circuit court’s authority to impose the conditions that served as the basis for the court’s finding of contempt. To the contrary, Mother concedes that her “violation of the court’s August 7, 2018, order is not in dispute.” Thus, the issue

raised in *Bryant*, i.e. the authority of a court to hold a defendant in contempt, was not present here. Accordingly, Mother’s reliance on *Bryant* is misplaced. *See Arrington*, 402 Md. at 90–91 (concluding that the holding in *Bryant* is inapplicable where the defendant “complains only about the validity of the incarceration, which no longer exists[.]”).

Mother’s reliance on *Lynch* is equally misplaced. In that case, the Court of Appeals held, where the defendant had no present ability to comply with her court-ordered child support obligations and thus could not meet the trial court’s purge provision prior to being incarcerated, the court could not find her in constructive civil contempt of those obligations based on the fact that she may have been able to meet those obligations at some point prior to the contempt finding. *Lynch*, 342 Md. at 528–29. The Court concluded, in that instance, the defendant’s inability to comply with the purge provision affected the validity of both the sanction and the finding of contempt because “a finding of contempt, where there is no possibility of enforcing compliance with the court order to which it relates, simply labels the defendant a contemnor and imputes guilt to him or her.” *Id.* at 529; *see also Bryant*, 387 Md. at 45 (quoting same).

In the present case, although Mother may not have been able to comply with the court’s request to have B.B. brought to the courthouse by 4:30 p.m. on August 9, that inability had little if anything to do with the circuit court’s decision to hold her in direct civil contempt. Rather, that decision was based on Mother’s total failure to bring B.B. to court on August 9, her failure to give the Department a complete address prior to the home visit on August 8, and her failure to make B.B. available to the Department at the scheduled

home visit. In short, Mother’s purported inability to comply with the court’s purge provision was not the sole reason why she was held in direct civil contempt.

Moreover, the Court of Appeals’ decision in *Lynch* involved a finding of *constructive* civil contempt for failure to pay child support and has since been modified by the adoption of Maryland Rule 15-207, which governs constructive civil contempt proceedings. See *Arrington*, 402 Md. at 92–98 (discussing the effect of Rule 15-207 on the Court’s holding in *Lynch*). Here, by contrast, Mother was found in *direct* civil contempt for failure to follow a direct order of the court. There is nothing in *Lynch* to suggest that the Court’s holding applies with equal force in the context of a direct civil contempt, which, as noted, is governed by Maryland Rule 15-203. See *Dodson*, 380 Md. at 450–51 (“[N]ormally in a *constructive* civil contempt action there cannot even be a finding or adjudication that the defendant is in contempt unless the defendant has the present ability to comply with the earlier court order or with the purging provision.”) (citing *Lynch*, 342 Md. at 520–29) (emphasis modified).

**APPEAL DISMISSED; COSTS TO BE PAID
BY APPELLANT.**