

Circuit Court for Caroline County
Case No. C-05-FM-20-000176

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 0468

September Term, 2023

GARY STOLTZ

V.

TINA STOLTZ

Arthur,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: December 21, 2023

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

This case stems from a contempt hearing in a family law proceeding. The circuit court found the father to be in civil contempt and ordered him to “purge” his contempt by complying with its prior orders and by giving the mother additional parenting time. The circuit court also ordered the father to pay the mother’s attorneys’ fees as a “sanction.” For the reasons that follow, we shall reverse the order of the circuit court.

BACKGROUND

Gary Stoltz (“Father”) and Tina Stoltz (“Mother”) were married in 2008. They have three teenaged children.

Mother filed for divorce in 2020. On the second day of a hearing on the merits on May 6, 2022, Father and Mother placed a settlement agreement on the record.

Among other things, the parties agreed that they would have joint legal custody of the children, but that Mother would have tiebreaking authority on medical issues and that Father would have tiebreaking authority on issues of education and “general welfare.” They also agreed that Father would pay Mother \$100,000.00 “within 60 days of this agreement” and that he would incur specified penalties if the payment were not made. They agreed that Mother would sign a special warranty deed for the marital home. Finally, they agreed to a physical custody schedule for the children. Mother’s attorney was to prepare a judgment of absolute divorce that embodied the agreement.

Based on that agreement, Mother’s counsel prepared a proposed judgment of absolute divorce and sent it to Father’s counsel. Because the proposed judgment embodied the parties’ agreement, it required Father’s signature. Father refused to sign the proposed judgment. He admitted that he was trying to renegotiate the agreement.

On July 5, 2022, Father and Mother met to perform part of their obligations under the agreement—Mother signed and delivered the deed to the marital home, and Father gave Mother a check for \$100,000.00. However, after Mother left to deposit the check, Father placed a stop-payment order, causing the check to be dishonored.

Father did not comply with other terms of the parties’ agreement. He denied Mother access to the children on the agreed schedule and prevented other forms of contact between Mother and the children. Two of the children experienced physical injuries that required medical care, but despite the agreement that Mother would have tiebreaking authority in medical matters for the children, Father made the medical decisions unilaterally.

After waiting for several months for Father to approve the proposed judgment of absolute divorce, Mother’s counsel submitted the document to the court on October 24, 2022. The court held off on signing the proposed judgment.

In the meantime, on December 7, 2022, Mother filed a combined petition for contempt, a motion to enforce the settlement agreement, and a motion for attorneys’ fees. Mother argued that Father had failed to comply with unspecified “directives” from the court and with the parties’ agreement. Because the agreement was “placed on the record and accept[ed]” by the circuit court, Mother argued that the agreement stood as a valid order. As Father had not followed the agreement, Mother argued that he should be held in contempt on four bases: first, for his refusal to sign the proposed judgment; second, for his refusal to comply with the custody plan outlined in the parties’ agreement and his interference with Mother’s parenting time; third, for his failure to involve Mother in

medical decisions concerning the children; and fourth, for stopping payment on the \$100,000.00 check. Mother asked the court to hold Father in constructive civil contempt.

After a status hearing on December 21, 2022, the court signed the judgment of absolute divorce. On the following day, the clerk entered the judgment on the docket.

The judgment reflected the agreement that the parties had placed on the record seven months earlier. Among other things, therefore, the judgment required Father to pay a marital award of \$100,000.00 to Mother within 60 days of the agreement, i.e., by July 5, 2022. Father tendered a new check for \$100,000.00 to Mother on the same day that the court signed the order.

On December 28, 2022, the circuit court issued an order requiring Father to show cause why Mother’s petition for contempt should not be granted. Father answered the petition. The court held a hearing on the petition for contempt on March 14, 2023.

At the conclusion of the hearing, the court found that Father had no “valid excuse” for his refusal to sign the proposed agreement and that Father had “willful[ly] and contemptuous[ly]” “subverted” an “order” “to submit a written order.” It also found that Father was “contemptuous and willful” in issuing the \$100,000.00 check and then stopping payment on it. The court did not find Father in contempt for denying Mother tiebreaking authority on medical decisions affecting the children, but did find him in contempt for denying Mother parenting time. The court stated that it would “award an additional three weeks in the Summer to [Mother].” It also stated it would award attorneys’ fees. It did not elaborate on the basis for the award of fees.

The circuit court entered an order granting Mother’s petition on April 14, 2023. In the order, the court found Father in contempt of “prior Orders,” the identity of which it did not specify. The court stated that Father could “purge” his contempt by “complying with [the court’s] prior Orders” and by providing Mother with “[three] additional weeks of parenting time during the Summer of 2023.” In addition, the court imposed what it called a “sanction[.]” in the amount of \$12,000.00, representing Mother’s reasonable and necessary attorneys’ fees. The court required Father to pay the \$12,000.00 to Mother within ten days of the order.

Father noted this timely appeal on May 9, 2023.¹

QUESTIONS PRESENTED

On appeal, Father presents three issues:

- I. Did the trial court err in punishing past noncompliance in its finding of constructive civil contempt?
- II. Were the trial court’s findings of contempt related to a non-existent order clearly erroneous?
- III. Did the trial court err in setting a “forever purge”?

¹ Father asserts that at a hearing on September 7, 2023, while this appeal was pending, the court said that its contempt order contained what it called a “scrivener’s error.” According to Father, the court said that the award of attorneys’ fees was intended as a “purge” provision, and not as a “sanction” (as the order says). In the appendix to Mother’s brief, she has included an order, docketed on October 13, 2023, by which the court corrected its “scrivener’s error” and recharacterized the award of fees as an award under § 9-105 of the Family Law Article of the Maryland Code (1984, 2019 Repl. Vol.). *But see In re Emileigh F.*, 355 Md. 198, 202-03 (1999) (stating that “[p]ost-appeal orders which affect the subject matter of the appeal are prohibited”). At oral argument, Father stated that he has taken another appeal to address the court’s revision of the contempt order during the pendency of his appeal from that order.

For the reasons stated below, we shall reverse the judgment.

DISCUSSION

“‘[T]his 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.’” *Breona C. v. Rodney D.*, 253 Md. App. 67, 73 (2021) (quoting *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016)). “A trial court abuses its discretion when its decision encompasses an error of law, which this Court reviews without deference[.]” *Id.* (citations omitted).

Mother asked the court to hold Father in constructive civil contempt.

“Constructive, as opposed to direct, contempt is contempt that 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. v. Rodney D.*, 253 Md. App. at 73 (quoting Md. Rule 15-202) (footnote omitted). “Civil, as opposed to criminal, contempt proceedings are those that are ‘intended to preserve and enforce the right of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties.’” *Id.* (quoting *Cnty. Comm’rs of Carroll Cnty. v. Forty West Builders, Inc.*, 178 Md. App. 328, 393 (2008)) (further citation omitted). “[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt.” *Id.* at 73-74 (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)).²

² A proceeding for constructive criminal contempt “must be accompanied by a bevy of procedural protections that are not applicable to a proceeding for civil contempt” (*Breona C. v. Rodney D.*, 253 Md. App. at 76 n.5)—most notably, the right to a trial by

“The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Id.* at 74. A sanction may involve incarceration or the imposition of a fine for each day in which the contemnor fails to “purge” the contempt by coming into compliance with the court order. *See id.* at 75. When a court makes a finding of civil contempt, the Maryland Rules require it to “issue a written order” that both “specifies the sanction imposed for the contempt” and “specif[ies] how the contempt may be purged.” Md. Rule 15-207(d)(2).

“[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.” *Breona C. v. Rodney D.*, 253 Md. App. at 74. “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.” *Id.* “And if the sanction imposed is to act in accord with the same legal requirement with which the court seeks to coerce compliance, there is no coercive mechanism at all.” *Id.* “Instead, there is just a second order directing compliance with an existing order.” *Id.* at 74-75.

“In sum, an order holding a person in constructive civil contempt is not valid unless it: (1) imposes a sanction; (2) includes a purge provision that gives the contemnor

jury. *See* Md. Rule 15-205(f). Unlike a proceeding for constructive civil contempt, a proceeding for constructive criminal contempt may not be included in the action in which the alleged contempt occurred, but must be docketed as a separate criminal action. Md. Rule 15-205(a). And if a judge initiates the proceeding for constructive criminal contempt and reasonably expects to be called as a witness, the judge is generally disqualified from sitting at the hearing. Md. Rule 15-207(b).

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.” *Id.* at 74.³

In view of these principles, we see at least five, interrelated problems with the order by which the circuit court found Father in constructive civil contempt. First, although Father violated the agreement that the parties put on the record on May 6, 2022, he did not violate a court order and, thus, was never in contempt of court. Second, because Father was not violating any court orders when the court held him in contempt, the contempt order imposed a penalty for his past conduct, which is the function of criminal, rather than civil, contempt. *See Breona C. v. Rodney D.*, 253 Md. App. at 73-74. Third, insofar as the order stated that Father could “purge” his contempt by “complying with [the court’s] prior Orders,” it is an invalid “forever purge” (*id.* at 72-73), because Father could never fully purge his contempt as long as the “prior Orders” remained in effect. *Id.* at 74. Fourth, insofar as the order permitted Father to “purge” his contempt by giving Mother three additional weeks of parenting time, it imposed a penalty, not a means by which Father could “avoid [a] sanction by taking a definite, specific action of which [he] is reasonably capable.” *Id.* Fifth, insofar as the order

³ *Breona C.* did “not foreclose the possibility that an order of constructive civil contempt could be issued” when “a party is engaged in a continuing or repetitive pattern of conduct in violation of a court order that, due to its continuing or repetitive nature, 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.* at 76 n.6.

imposed a “sanction” in the amount of Mother’s attorneys’ fees, it is invalid because it does not prescribe any way by which Father could avoid the “sanction.” Instead, the “sanction” of attorneys’ fees was another penalty for past conduct, not a coercive measure that Father could avoid by bringing himself into compliance with a court order.

We shall discuss each of these problems in turn.

First, until the court signed the proposed judgment of absolute divorce on December 21, 2022, there was no court order requiring Father to do anything. There was only an oral agreement on the record, which Mother’s counsel was to transform into a written order.⁴ In fact, in her brief, Mother herself recognizes that Father violated an agreement, not a court order. She writes that Father “continued to violate and ignore almost every term of the parties’ agreement.” Similarly, she writes that Father “completely disregarded the decision-making authority terms agreed to by the parties.” The breach of an agreement is not the same thing as the violation of a court order.⁵

⁴ The record contains no transcript of the May 6, 2022, hearing at which the parties placed the agreement on the record. The docket, however, records the contents of a “hearing sheet” that recites the terms of the agreement and states that Mother’s attorney was “to prepare [the] order.” The court confirmed that the parties understood and assented to the terms of their agreement, but it did not order anyone to do anything.

⁵ Citing *Bussell v. Bussell*, 194 Md. App. 137, 155 (2010), and *Billman v. Maryland Deposit Ins. Fund Corp.*, 312 Md. 128, 133 (1988), Mother writes that “an oral decision or ruling from the bench, if there are no further issues to be resolved . . . [,] is a final and binding order.” Even assuming the accuracy of that assertion, we have no indication of “an oral decision or ruling from the bench” in this case. We have only an oral agreement that Mother’s counsel was to transform into a written order.

Second, the court held Father in contempt for refusing to sign the proposed judgment of absolute divorce, stopping payment on the \$100,000.00 check, and denying Mother access to the children. Yet, by the time of the contempt hearing, the court had entered the judgment of absolute divorce (making it irrelevant that Father had refused to sign Mother’s proposed version of that document). Furthermore, Father had paid the \$100,000.00 on the very day on which the court signed the judgment (almost three months before the contempt hearing), and he was allowing Mother to have access to the children in accordance with the judgment. At oral argument before this Court, Mother conceded that, on the day of the contempt hearing, Father was in compliance with the divorce decree. Thus, the circuit court found that Father was in contempt based solely on past, completed conduct. Its order is invalid because “the purpose of civil contempt is to coerce present or future compliance with a court order,” and not to “impos[e] a sanction for past misconduct.” *Breona C. v. Rodney D.*, 253 Md. App. at 73-74 (quoting *Dodson v. Dodson*, 380 Md. at 448).⁶

⁶ Mother attempts to distinguish *Breona C.* She argues that in *Breona C.* the contemnor committed only a few, discrete violations of the court’s order. By contrast, in this case, she says, Father’s violations ranged over the course of many months and continued even after she filed her petition. Mother has identified a factual distinction of no legal import. Under *Breona C.*, it does not matter whether the contemnor violated a court order one time or one thousand times, or whether the violation lasted one hour, one day, or one year. *Breona C.* holds that the circuit court erred in holding the contemnor in civil contempt when she was in full compliance with the court’s orders at the time of the contempt hearing. See *Breona C. v. Rodney D.*, 253 Md. App. at 76 (holding that “no order of constructive civil contempt could have been imposed” at the time of a contempt hearing “because, by that point, [the alleged contemnor] had been in compliance with the [relevant order] for several months”).

Third, the order permitted Father to “purge” his alleged contempt by “complying with [the court’s] prior Orders.” This is precisely the kind of ongoing “forever purge” that *Breona C.* condemned. As long as the “prior Orders” remained in effect, Father could never purge his contempt. “Here,” as in *Breona C.*, “the perpetual obligation to comply with the [prior Orders] is not a valid purge provision because it does not permit [Father] to avoid a defined sanction by engaging in specific conduct.” *Id.* at 75. The court erred in decreeing that Father could “purge” his contempt by doing what the court had already required him to do. *Breona C. v. Rodney D.*, 253 Md. App. at 74-75.

Fourth, the order states that Father can “purge” his contempt by giving Mother three additional weeks of parenting time during the summer of 2023. This is a penalty for past, completed conduct, not a valid purge provision. If Father had been in contempt—which he was not—he would purge his contempt by bringing himself into compliance with an existing court order, not by complying with an additional obligation, such as an order requiring him to forfeit parenting time. *See State v. Crawford*, 239 Md. App. 84, 125 (2018). The award of additional parenting time could not have the effect of coercing compliance with an existing order, because Father was in full compliance with the court’s order when the court held him in constructive civil contempt. Thus, the award had the effect of punishing Father for his past conduct, which, again, is the function of criminal contempt. *Dodson v. Dodson*, 380 Md. at 448.⁷

⁷ We express no opinion as to whether the circuit court could have awarded additional parenting time on another ground, such as § 9-105 of the Family Law Article.

Fifth and finally, the court imposed a “sanction[]” in the amount of \$12,000.00, representing the fees that Mother had incurred in pursuing the contempt petition. This was not an appropriate “sanction” for civil contempt. An appropriate sanction is something that the contemnor “is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable.” *Breona C. v. Rodney D.*, 253 Md. App. at 74. Under the court’s order, however, Father has no way to avoid the obligation to pay the \$12,000.00: to the contrary, the order expressly requires him to pay it within 10 days. Moreover, in her brief, Mother reports that on July 11, 2023, she petitioned the circuit court to hold Father in contempt because of his “failure to pay the attorneys’ fees as ordered.” Mother herself, therefore, did not understand the award of attorneys’ fees to be a “sanction” for civil contempt, which Father could avoid by purging his contempt and bringing himself into compliance with a court order.⁸

Mother contends that the court could have awarded fees under § 9-105 of the Family Law Article or under the parties’ agreement.⁹ In addition, Mother cites *Royal Investment Group, LLC v. Wang*, 183 Md. App. 406 (2008), for the proposition that in

⁸ As previously stated, the appendix to Mother’s brief includes an order, docketed on October 13, 2023, by which the circuit court corrected what it reportedly called a “scrivener’s error” in the order that is on appeal and recharacterized the award of attorneys’ fees as an award under § 9-105 of the Family Law Article. Father has noted an appeal from that order.

⁹ Reflecting the agreement, the judgment of absolute divorce states that if Father failed to pay the \$100,000.00 marital award by July 5, 2022, he would be responsible for (among other things) “any and all attorney’s fees incurred by [Mother] to enforce and collect the marital award.”

“exceptional circumstances” a court may make a monetary award, such as the award of fees in this case, in a civil contempt case. The short answer to those contentions is that, in the order on appeal in this case, the court did not base the award of fees on any of those grounds. Instead, it purported to award the fees as a “sanction” for Father’s constructive civil contempt of court. In doing so, the court erred.

In summary, the court erred in holding Father in constructive civil contempt, because he had not violated a court order, because he was not violating any court orders when the court held him in contempt, because the contempt order contained an invalid “forever purge,” and because the order imposed an improper penalty for past conduct by awarding additional parenting time to Mother and requiring Father to pay Mother’s attorneys’ fees.¹⁰

CONCLUSION

We do not condone Father’s conduct. We understand why Mother sought, and why the circuit court sought to devise, a remedy to address his conduct. Father’s conduct, however, was not a basis for an award of constructive civil contempt. We express no opinion about whether the circuit court could have imposed a similar remedy through a mechanism other than constructive civil contempt.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY REVERSED;

¹⁰ In Mother’s reformulation of the questions presented, she asked whether she should be granted attorneys’ fees in this appellate litigation. In the body of her brief, Mother argued that Father’s appeal is “frivolous.” Mother’s argument is not well founded. First, Father’s appeal is far from frivolous. Second, this Court does not award attorneys’ fees. Maryland Rule 2-706 prescribes the method by which a party may ask a circuit court to award attorneys’ fees incurred in connection with an appeal.

**CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION; COSTS TO BE PAID BY
APPELLEE.**