

# P E N N S Y L V A N I A LAW WEEKLY

## Compliance v. Punishment

*The differences between civil and criminal contempt*

By Dorothy K. Phillips  
Special to the Law Weekly

Many attorneys as well as judges do not understand the differences between civil contempt, criminal contempt, and indirect criminal contempt. The Pennsylvania Superior Court recently addressed these differences in *Godfrey v. Godfrey*, PICS Case No. 06-0302 (Pa. Super. Feb. 28, 2006) Panella, J. (17 pages).

The trial court found the defendant in civil contempt for failure to appear at a contempt hearing and for failure to pay child support. The trial court imposed on the defendant consecutive prison sentences, a monetary sanction, a requirement to find employment, and a bond requirement. The Superior Court vacated the part of the order concerning sentencing, the monetary sanction, the securing of employment and the bond requirement and remanded the matter.

Section 4344 of the Domestic Relations Code governs contempt for failure of an obligor to appear. That statute provides in pertinent part, as follows:

"A person who willfully fails or refuses to appear in response to a duly served order or other process under this chapter may, as prescribed by general rule, be adjudged in contempt." *Id.*

Section 4345 governs contempt for non-compliance with a support order and provides, in part: "A person who willfully fails to comply with any order under this chapter, except an order subject to section 4344 (relating to contempt for failure of obligor to appear), may, as prescribed by general rule, be adjudged in contempt."

Section 4347 provides for security for attendance or performance: "At any stage of the proceedings under this chapter, upon affidavit filed that the obligor is about to leave this Commonwealth or the judicial district or, where in the judgment of the court, the obligor has habitually failed to comply with court orders under this chapter, the court may, as prescribed by general rule, issue appropriate process directing that the obligor be brought before the court or to comply with any order of the court."

In *Godfrey*, the record reveals that Godfrey was held in civil contempt at three (3) different hearings. The domestic relations section filed a fourth petition for contempt on Aug. 17, 2004. Because Godfrey did not appear, a bench warrant issued and he was taken into custody, after which a hearing on the Contempt Petition took place on April 6, 2005. The trial court found Godfrey was properly served at his last known address. As for non-support, Godfrey's arrearages were more than \$34,000.

# P E N N S Y L V A N I A LAW WEEKLY

On April 7, 2005, the trial court entered an order finding Godfrey in contempt for failure to appear at the Dec. 30, 2004 hearing. The trial court also found Godfrey in contempt pursuant to Section 4345 for his willful non-compliance with the support order against him. The trial court imposed two consecutive terms of six months imprisonment providing that Godfrey could purge himself of contempt by " 'immediately securing employment and by applying for and paying to the Domestic Relations Section his IRS refund check.' "

The trial court ordered Godfrey not be released from incarceration even at the expiration of the two contempt sentences unless he posted a bond in for \$25,000 to secure payment of his child support obligation. The Superior Court found that with regard to proper notice, the trial court was without error and its finding of contempt for failure to appear at the hearing was upheld. The conditions of purge that Godfrey secure employment, pay \$2,500 and pay his IRS refund check together with the imposition of the bond requirement constituted reversible error.

The *Godfrey* court then addressed the differences between civil and criminal contempt and relied on *Wetzel v. Suchanek*, 541 A.2d 761 (Pa. Super.1988).

" 'Civil contempt has as its dominant purpose to enforce compliance with an order of court for the benefit of the party in whose favor the order runs, while criminal contempt has as its dominant purpose, the vindication of the dignity and authority of the court and the protection of the interest of the general public. This distinction between civil and criminal contempt is important because the type of contempt being punished will determine the manner in which the contempt is to be adjudicated as well as the punishment which may be imposed. It must be noted that the characteristic that distinguishes civil from criminal contempt is the ability of the contemnor to purge himself of civil contempt by complying with the court's directive," wrote the *Godfrey* court, quoting *Wetzel*.

The Supreme Court reiterated the distinction between civil and criminal contempt in *Commonwealth v. Bowden*, 838 A.2d 740 (Pa. 2003).

To be found in civil contempt, a person must have violated a court order. *Hyle v. Hyle*, 868 A.2d 601 (Pa. Super. 2005). The complaining party must show by a preponderance of the evidence that the other party violated a court order. *Sinaiko v. Sinaiko*, 664 A.2d 1005 (Pa. Super. 1995). Assuming that these criteria are satisfied, "The alleged contemnor may then present evidence that he has the present inability to comply and make up the arrears."

Godfrey was not employed and therefore had no IRS refund check to look to; thus, the trial court set up an impossible condition to perform. By requiring as a condition for purge that Godfrey secure employment, the trial court violated the law because the law requires that the contemnor has the *present* ability to comply. Securing employment was in the future and therefore did not comport with the law. On remand, the trial court was required to set conditions for purge which would enable Godfrey to presently comply with the order. Finally, the Superior Court reversed the trial court's imposition of the \$25,000 bond. While Section 4347 permits the imposition of a

# P E N N S Y L V A N I A LAW WEEKLY

bond, the defendant argued that the imposition of a \$25,000 bond was equal to a life sentence because he had no means to pay for the bond. As the Superior Court stated, "The bond requirement the trial court has imposed thus converts the coercive sentence based on the findings of civil contempt into a punitive sentence. Absent constitutionally mandated criminal safeguards, this punitive aspect of the sentence is constitutionally impermissible."

The sentence imposed by the court in a finding of civil contempt must give a purge condition which can realistically be met by the contemnor. As the court has frequently stated, the defendant must be given the keys to the jailhouse door.

Criminal contempt has as its dominant purpose the vindication of the dignity and authority of the court and protection of the interest of the general public. The *type* of contempt being punished is what determines the manner in which the contempt is to be adjudicated as well as the punishment which may be imposed. Direct criminal contempt occurs in the presence of the court or so near to the court as to interfere with the court's business. Indirect criminal contempt occurs outside the presence of the court. Punishment for indirect criminal contempt can only be limited to fines. 42 Pa. C.S. Section 4131. The only exception with regard to punishment for indirect criminal contempt is when a restraining order or injunction has been violated; in that event, imprisonment may be permitted. 42 Pa. C.S. Section 4135. Also see *Commonwealth v. Marcone*, 410 A.2d 759 (Pa. 1980); *Simmons v. Simmons*, 335 A.2d 764 (Pa. Super. 1975). The main characteristic which distinguishes civil criminal from contempt is the ability of the contemnor to purge the civil contempt by complying with the court's directive. *Janet D. v. Carros*, 362 A.2d 1060 (Pa. Super. 1976); *Cipolla v. Cipolla*, 398 A.2d 1053 (Pa. Super. 1979) In the event that there is a proceeding for criminal contempt, whether direct or indirect criminal contempt, all procedural safeguards must be afforded when a party could be incarcerated, fined or both. *In re Martorano*, 346 A.2d 22 (Pa. 1975).

When a complaining party files for a hearing to hold a defendant in contempt, both the practitioner and the court must exercise caution. A party may be found in civil contempt for violating a court order; however, if the contemnor presents evidence that he does not have the ability to comply with the order, the court must be very careful to set conditions for the contemnor to purge the contempt with which the court believes beyond a reasonable doubt the contemnor has the present ability to comply.

In *Rhoades v. Pryce*, 874 A.2d 148 (Pa. Super. 2005), a wife refused to sign an authorization for a husband to reduce the amount of life insurance in existence which collateralized his obligation, pursuant to a final divorce order. On three separate occasions, the court ordered wife to comply with the terms of the divorce order and to sign the authorization. When wife continually refused to do so, husband filed for sanctions and the court awarded sanctions of counsel fees to husband. The Superior Court found the wife in willful non-compliance with the orders of the court and also found she was given the ability to purge a finding of civil contempt by signing the authorization.

# P E N N S Y L V A N I A LAW WEEKLY

If a court characterizes proceedings as criminal, whether direct or indirect, all of the safeguards of due process must be afforded to the party accused, including notice, knowledge of the charges against which he must defend, and there must be a finding of guilt beyond a reasonable doubt. The Supreme Court has held that a criminal adjudication of contempt punishes with a certain term of imprisonment or a fine which the contemnor is powerless to escape by compliance.

Both practitioners and the courts blur the lines when there is a feeling of outrage. A person held in indirect or direct criminal contempt of court has earned punishment and not the ability to purge. Frequently, a court will make the correct determination and find a defendant in civil contempt of a court order. However, should that court cross the line into the criminal contempt arena, and impose a sentence which cannot be complied with by the defendant, the order will not stand. When a court finds a defendant in civil contempt but gives into the feeling of outrage and makes a punitive order with which the defendant cannot comply, the order will be reversed, as it was in *Godfrey*. Civil contempt seeks compliance whereas criminal contempt seeks punishment. Reason must prevail over emotion or justice cannot be served. •

*Dorothy K. Phillips is the founder and managing partner of Dorothy K. Phillips & Associates in Philadelphia. She focuses her practice on domestic relations law. A former family therapist, she is a frequent author and lecturer on a variety of family law issues.*

*For more information contact Dorothy K. Phillips, Esq at (215) 568-7757.*