

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1480

September Term, 2014

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DOUGLAS ANTHES, et al.

v.

DONALD J. CALLENDER, et al.

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Meredith,  
Berger,  
Salmon, James P.  
(Retired, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: November 10, 2015

\*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 this appeal, we address the validity of a contempt order issued by the Circuit Court for Calvert County imposing sanctions upon Douglas Anthes (“Anthes”), appellant, for failing to remove certain internet postings as required by a temporary restraining order (“TRO”). On appeal, Anthes raises three questions for our review, which we have reordered and rephrased slightly as follows:

1. Whether the circuit court erred by finding Anthes in constructive civil contempt and ordering Anthes to pay a fine for past violations of a court order.
2. Whether the circuit erred by granting a temporary restraining order against allegedly defamatory statements that had not been found to be false and defamatory by a trier of fact following a trial on the merits.
3. Whether the circuit court erred by granting a temporary restraining order against allegedly defamatory statements without notice and an opportunity to be heard.

We shall answer Anthes’s first question in the affirmative and hold that the circuit court’s contempt order was improper. Accordingly, we shall not address the remaining issues raised by Anthes.

### **FACTS AND PROCEEDINGS**

Many of the facts underlying the larger dispute between the parties are irrelevant to the narrow issue raised in this interlocutory appeal of a contempt order. We set forth limited facts necessary to provide context for the issue raised on appeal.<sup>1</sup>

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<sup>1</sup> These facts are based upon the parties’ differing characterizations of the events. In this opinion, we do not resolve any factual disputes raised by the parties. As we shall explain, the facts specifically relevant to this appeal are not in dispute.

In June 2013, Anthes, a resident of Arizona, contacted Donald J. Callender (“Callender”), appellee, to discuss funding Anthes sought for a new business venture. Callender, a resident of Calvert County, Maryland, is the managing partner of Convergence Management Associates, LLC and Convergenx Caribbean, Ltd. Convergence Management Associates, LLC (“Convergence”) is a Maryland limited liability company formed in 2001.<sup>2</sup> Convergenx Caribbean, Ltd. is organized and existing under the laws of The Bahamas and located in Nassau, The Bahamas. Convergence, doing business as Convergenx Caribbean, Ltd., advertises itself as providing assistance to individuals and companies who are seeking investors to finance business ventures. Anthes contacted Callender and Convergence because he sought five million dollars to finance his business venture, Dreamer’s Entertainment Club, LLC.

After various communications between Anthes and Convergence, Anthes signed a Financial Services Agreement in early August 2013. Anthes paid a \$25,000 deposit under the contract. Thereafter, Convergence referred Anthes to a potential funding source, which requested Anthes pay an additional significant fee. At this point, Anthes allegedly believed

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<sup>2</sup> References to “Callender” as a party refer to Callender, Convergence, and Convergenx Caribbean, Ltd.

that he was being “scammed and defrauded” by Callender and Convergence. Anthes requested a refund of the \$25,000 he had paid to Convergence, which was denied.<sup>3</sup>

In the late summer and fall of 2013, Anthes posted complaints about Convergence on various websites, such as Ripoff Report, Complaints Now, Yahoo, and Reviews Talk. The gist of Anthes’s complaints was that Callender and Convergence were operating a scheme that cost him thousands of dollars which produced no results. Anthes described Callender’s business as a “scam.” He also wrote that he had “forwarded this case on to the FBI.”

On October 15, 2013, Robert Damalouji, Callender’s attorney, sent a cease-and-desist letter to Anthes, via certified and first-class mail. The letter asserted that Anthes had made defamatory statements and demanded that Anthes remove the statements and cease posting any future defamatory statements.<sup>4</sup>

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<sup>3</sup> Anthes asserts that he did not post any negative reviews of Convergence until after his request for a refund was denied. Callender asserts that the parties were engaged in discussions regarding the return of Anthes’s deposit when Callender discovered that Anthes had posted negative comments about Convergence on various websites. Callender further asserts that there were no further negotiations about the return of the deposit money as a result of the statements Anthes posted online.

<sup>4</sup> A factual dispute exists regarding the copy of this letter which was sent via certified mail. According to Anthes, the letter was never delivered but instead returned to sender on November 14, 2013. According to Callender, notice of certified mail was given to Anthes on October 18, 2013 and the letter remained unclaimed at a Phoenix post office for several weeks before ultimately being returned to the sender on November 14, 2013.

On November 12, 2013, Callender filed the complaint in this action in the Circuit Court for Calvert County against both Anthes and his company, Dreamers Entertainment Club, LLC. The complaint alleged that the agreement between Anthes and Callender never guaranteed that Callender would find a financing source for Anthes’s business and that Anthes’s internet postings contained defamatory statements. Callender further alleged that the postings violated a non-disclosure agreement. The complaint sought a temporary restraining order, preliminary and permanent relief, damages for defamation, damages for invasion of privacy/false light, and damages for breach of contract. Callender asserts that he attempted to serve Anthes via a private process server during the second half of November 2013, but those efforts were unsuccessful.

On November 15, 2013, the Circuit Court for Calvert County issued a TRO which required Anthes to remove the allegedly defamatory statements he had posted on the internet and refrain from making further defamatory statements. The TRO was set to expire on December 20, 2013. On December 18, 2013, Callender filed a motion to extend the TRO; the circuit court granted Callender’s motion on the same day, extending the TRO through January 22, 2014.<sup>5</sup>

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<sup>5</sup> Copies of the TRO were mailed to Anthes and to Dreamers Entertainment, at addresses which had been previously provided by Anthes to Callender. The copy mailed to Dreamers Entertainment was returned to the court on December 11, 2013, marked by the postal service as “NOT KNOWN” and “UNABLE TO FORWARD.” It is unknown when Anthes received the TRO because there is no tracking available for regular first class mail.

Also on December 18, 2013, the circuit court received a letter from Anthes, which was dated December 12, 2013. In the letter, labeled “Motion to Continue,” Anthes asserted that he did not know that an action had been filed against him until December 10, 2013. Anthes further asserted that he had received only the TRO itself, not the complaint or any supporting material. Anthes expressed that he believed that his internet postings were “within [his] first amendment rights.” In his letter, Anthes provided a new mailing address to the court. In mid-December, Anthes contacted Assistant Attorney General Webster Brenner at the Maryland Attorney General’s Office to discuss the TRO. Anthes further contacted David Rocah, a staff attorney at the American Civil Liberties Union of Maryland, and Paul Alan Levy, an attorney with the Public Citizen Litigation Group in Washington, D.C.

Using the new address provided by Anthes in his December 12, 2013 letter, Callender successfully served Anthes with the complaint and summons by certified mail. Anthes received service of the complaint and summons on December 31, 2013. Sent with the complaint was a letter from Mr. Damalouiji, dated December 27, 2013, which asserted that there still had been no compliance with the TRO, even though Anthes had acknowledged receiving it on December 10. The letter informed Anthes that if he did not take immediate steps to comply with the TRO, Callender would file a motion to have him held in contempt.

On January 10, 2014, Callender filed a motion for contempt, seeking sanctions of \$150 per day of Anthes's noncompliance with the TRO, as well as attorney's fees. Anthes had allegedly begun to take steps to remove his postings on January 3, 2014.<sup>6</sup>

On January 15, 2014, Anthes removed the case to the United States District Court for the District of Maryland. In that court, Callender moved for a further extension of the temporary restraining order. United States District Judge Deborah Chasanow denied the motion at a hearing on January 28, 2014. On April 18, 2014, Judge Chasanow granted Callender's motion to remand the case to the Circuit Court for Calvert County. A hearing was held on Callender's motion for contempt on July 22, 2014 before the circuit court. At the close of the hearing, the circuit court held the motion under advisement.

On August 12, 2014, the circuit court issued a written order and memorandum opinion, finding that Anthes had been in contempt of the TRO from December 10, 2013 -- the date on which Anthes acknowledged learning of the existence of the TRO -- until January 3, 2014 -- the date when Anthes first took steps to remove the internet postings. The court ordered Anthes to pay a sanction of \$100 per day for each day from December 10 to

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<sup>6</sup> The specific date upon which Anthes removed (or attempted to remove) various postings is irrelevant to this appeal because the circuit court found Anthes in contempt only until January 3, 2014 -- the day that Anthes first claims to have taken steps to remove postings.

January 3, totaling \$2,400, into the Court Registry.<sup>7</sup> The court's order explained the reasons for the contempt finding as follows:

[Anthes's] actions, or more accurately, inaction, during the active period of the TRO is what this court addresses today. Finally, the court notes that on January 3, 2014, [Anthes] took action to comply with the TRO. While this is relevant in determining the length of noncompliance, it does not excuse his complete disregard of the TRO in the prior twenty-four days.

It is of vital interest for this court to ensure that its orders are diligently obeyed. Here, [Anthes] admitted that he took no action to comply with the TRO until January 3, 2014, twenty-four days after he received it. [Anthes's] dismissive nature toward this court's Order supports a finding of contempt, and justifies the award of sanctions. This court will order sanctions in the amount of \$100 per day, from the day [Anthes] received the TRO, December 10, 2013, until the day he took action to comply with the TRO, January 3, 2014.

The contempt order did not contain a purge provision as required by Maryland Rule 15-207(d)(2).

This timely appeal followed.

### **STANDARD OF REVIEW**

Maryland Rule 8-131(c) governs our review of an action tried without a jury as follows:

When an action has been 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

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<sup>7</sup> The time period was inclusive of December 10 but exclusive of January 3.



opportunity of the trial court to judge the credibility of the witnesses.

The Court of Appeals has further explained the standard of review under Maryland Rule 8–131(c):

[The appellate courts] give due regard to the trial court’s role as fact-finder and will not set aside factual findings unless they are clearly erroneous. The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed. Questions of law, however, require our non-deferential review. When the trial court’s decision involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court’s conclusions are legally correct . . . . Where a case involves both issues of fact and questions of law, this Court will apply the appropriate standard to each issue. (Citations and internal quotation marks omitted.) (Ellipsis in original.)

*Clickner v. Magothy River Ass’n Inc.*, 424 Md. 253, 266-67 (2012).

## DISCUSSION

Civil and criminal contempt are two distinct forms of contempt in Maryland, and “[t]he distinctions between civil and criminal contempt are important.” *Gertz v. Md. Dep’t of Env’t*, 199 Md. App. 413, 423 (2011) (citing *Dodson v. Dodson*, 380 Md. 438, 44 (2004)).<sup>8</sup> “Civil contempt ‘proceedings are generally remedial in nature and are intended

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<sup>8</sup> Callender attempts to blur the line between civil and criminal contempt under Maryland law, commenting that the Court of Appeals observed in *State v. Roll and Scholl*, 267 Md. 714, 728 (1973), “that the difference [between criminal and civil contempt] ‘is frequently hazy and indistinct.’” A closer reading of *Roll, supra*, indicates that the Court of  
(continued...)

to coerce future compliance.” *Royal Inv. Group, LLC v. Wang*, 183 Md. App. 406, 447 (2008), *cert. dismissed*, 409 Md. 413 (2009) (quoting *Roll, supra*, 267 Md. at 728 (1973)). Criminal contempt, however, “is punishment for past misconduct” and a sanction imposed for criminal contempt “may be purely punitive.” *Id.* (quoting *Roll, supra*, 267 Md. at 728). Criminal contempt must be proved beyond a reasonable doubt, whereas “civil contempt may

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<sup>8</sup> (...continued)

Appeals was attempting to emphasize the importance of differentiating between the two forms of contempt rather than adopt an approach which would encourage an indistinct line between the two. Indeed, the Court explained:

Today, the line between civil and criminal contempt is frequently hazy and indistinct. Often the same acts of omissions may constitute or at least embrace aspects of both. *Tyler v. Baltimore County*, 256 Md. 64, 259 A.2d 307 (1969). When this is the case, an alleged contemnor may be answerable in either a civil or criminal contempt proceeding. **But, in this State, the distinction between the two types of contempt has been preserved and is important.** A civil contempt proceeding is intended to preserve and enforce the rights of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties. These proceedings are generally remedial in nature and are intended to coerce future compliance. Thus, a penalty in a civil contempt must provide for purging. On the other hand, the penalty imposed in a criminal contempt is punishment for past misconduct which may not necessarily be capable of remedy. Therefore, such a penalty does not require a purging provision but may be purely punitive. In this State, to these factors must be added the degree of proof required to establish a contempt—a civil contempt need be proved only by a preponderance of the evidence, while a criminal contempt must be shown beyond a reasonable doubt.

*Id.* (Emphasis added).

be proven by a preponderance of the evidence.” *Gertz, supra*, 199 Md. App. at 424 (citing *Royal Inv. Group, supra*, 183 Md. App. at 448.).

Maryland law further differentiates between “direct” contempt and “constructive” contempt. Direct contempt is “a contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court’s proceedings.” Md. Rule 15-202(b). Constructive contempt is “any contempt other than a direct contempt.” Md. Rule 15-201(a). The permissible sanctions, as well as the necessary procedure, vary depending on whether a contempt is direct or constructive, criminal or civil. For direct contempt, “[t]he court against which a direct civil or criminal contempt has been committed may impose sanctions on the person who committed it summarily if (1) the presiding judge has personally seen, heard, or otherwise directly perceived the conduct constituting the contempt and has personal knowledge of the identity of the person committing it, and (2) the contempt has interrupted the order of the court and interfered with the dignified conduct of the court’s business.” Md. Rule 15-203.

For a constructive criminal contempt, “[a] proceeding . . . shall be docketed as a separate criminal action. It shall not be included in any action in which the alleged contempt occurred.” Md. Rule 15-205(a). A proceeding for constructive criminal contempt cannot be initiated by an adverse party to an underlying civil action. *See* Md. Rule 15-205(b).<sup>9</sup> In

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<sup>9</sup> Md. Rule 15-205(b) prescribes who may institute a constructive criminal contempt proceeding:

(continued...)

contrast, a proceeding for constructive civil contempt “shall be included in the action in

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<sup>9</sup> (...continued)

(1) The court may initiate a proceeding for constructive criminal contempt by filing an order directing the issuance of a summons or warrant pursuant to Rule 4-212.

(2) The State’s Attorney may initiate a proceeding for constructive criminal contempt committed against a trial court sitting within the county in which the State’s Attorney holds office by filing a petition with that court.

(3) The Attorney General may initiate a proceeding for constructive criminal contempt committed

(A) against the Court of Appeals or the Court of Special Appeals, or

(B) against a trial court when the Attorney General is exercising the authority vested in the Attorney General by Maryland Constitution, Art. V, § 3, by filing a petition with the court against which the contempt was allegedly committed.

(4) The State Prosecutor may initiate a proceeding for constructive criminal contempt committed against a court when the State Prosecutor is exercising the authority vested in the State Prosecutor by Code, Criminal Procedure Article, Title 14, by filing a petition with the court against which the contempt was allegedly committed.

(5) The court or any person with actual knowledge of the facts constituting a constructive criminal contempt may request the State’s Attorney, the Attorney General, or the State Prosecutor, as appropriate, to file a petition.

which the alleged contempt occurred,” Md. Rule 15-206(a), and may be initiated by, *inter alia*, a party to an action in which an alleged contempt occurred. Md. Rule 15-206(b).

In the present case, Anthes’s allegedly contemptuous conduct -- namely, his failure to remove various internet postings as required by the TRO -- occurred outside the courtroom, and, accordingly, the contempt action is properly characterized as constructive contempt. Furthermore, because the contempt action was initiated by an adverse party in the underlying civil action and the contempt proceeding was included in the civil action in which the alleged contempt occurred, it is properly characterized as civil rather than criminal.

Having determined that the contempt proceeding in the present case involved constructive civil contempt, we next consider whether the trial court’s order finding Anthes in contempt, as well as the sanctions imposed for contempt, were proper. At the time Anthes was held in contempt, the TRO had expired and Anthes had taken steps to comply with its requirements. Critically, the circuit court found that the allegedly contemptuous conduct ended on January 3, 2014 -- one week before Callender’s motion for contempt was filed and seven months before the court actually found Anthes in contempt.

As discussed *supra*, civil contempt proceedings are “generally remedial” and “intended to coerce future compliance,” while sanctions for criminal contempt “may be purely punitive.” *Royal Inv. Group, supra* 183 Md. App. at 447. The Court of Appeals, as well as this Court, have made clear that sanctions for past noncompliance are generally

impermissible for civil contempt. Indeed, as we shall discuss in more detail, civil contempt sanctions for past noncompliance have been permitted only in extremely limited circumstances.

In *Dodson, supra*, 380 Md. at 445, the Court of Appeals addressed the issue of whether compensatory damages may be awarded in a civil contempt action. In a divorce proceeding, the trial court issued a *pendente lite* order which, *inter alia*, required the husband to pay the insurance premium for the wife's residence. The husband failed to pay the insurance premium due in November 2000, and subsequently, in December 2000, there was a fire at the residence. The wife filed a petition to hold the husband in contempt for failure to pay the premium which had been due in November 2000. The circuit court found the husband to be in civil contempt and awarded the wife \$19,311 in compensatory damages. The contempt order had no purge provision.

The Court of Appeals held that the trial court's contempt order was improper. The Court commented that although a sanction in civil contempt actions is described as "remedial," "remedial' in this context means 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. We have not used the term 'remedial' to mean a sanction, such as a penalty or compensation, where compliance with a prior court order is no longer possible or feasible." *Id.* at 448. Critically, the Court of Appeals explained that "because the purpose of civil contempt is to coerce or

facilitate compliance with court orders, the sanction imposed for civil contempt must provide for purging.” *Id.* at 449 (internal quotation omitted). The Court emphasized that a contemnor must have a *current ability* to comply with the court order, explaining that “in light of the coercive nature of civil contempt, a *present* inability to comply with the prior court order, or with the purging provision if it is different from the prior order, is a defense in a civil contempt action and precludes the imposition of a penalty.” *Id.* (Emphasis in original).

Applying the legal framework for civil contempt to the sanction imposed for the husband’s failure to pay the insurance premium, the Court of Appeals held that the contempt finding was clearly improper, explaining:

It is obvious that the Circuit Court’s order in the present case cannot be reconciled with the above-described nature of a constructive civil contempt action under Maryland law. The purpose of this proceeding and of the Circuit Court’s order was not to coerce the defendant’s present or future compliance with the earlier *pendente lite* order.

The civil contempt order in the case at bar contained no purging provision. [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. There has been no suggestion in this case that [the husband] is presently failing to pay any insurance premiums which he is obligated to pay or that he has failed to pay any such premiums since December 2000.

Unlike every other case in this Court which has upheld a constructive civil contempt sanction, this case involves no current obligation under a court order. Instead, the only failure

to comply with a court order was a single episode of inaction which took place in the fall of 2000. The direct adverse result, namely the cancellation of the insurance policy, was a one-time event in December 2000, and it is over with. It is not possible to reinstate the insurance policy retroactive to December 2000 when the fire occurred. The purpose of [the wife's] civil contempt action was to impose a sanction upon [the husband] for a past failure to comply with a court order. This Court has consistently held that a civil contempt action will not lie for such purpose. Under the circumstances of our prior cases, we have pointed out that a constructive criminal contempt action is the appropriate means to punish a past willful violation of a court order. Under circumstances like those in the case at bar, a tort action sounding in negligence or a breach of contract action would be the appropriate means for the injured party to seek compensation.

*Id.* at 451-52.

Similarly, the civil contempt order issued by the trial court in the present case is likewise problematic. The purpose of the contempt action was not to coerce Anthes's current or future compliance with the earlier TRO. Indeed, by the time the contempt action was filed, Anthes had begun to take steps to comply with the TRO, and by the time the contempt order was issued, the TRO had long expired. As in *Dodson*, the contempt order in the present case contained no purging provision, and Anthes had no *present* ability to comply with a TRO that was no longer in effect. Furthermore, as in *Dodson*, the purpose of Callender's "civil contempt action was to impose a sanction upon" Anthes "for a past failure to comply with a court order." *Id.* at 452. "[A] civil contempt action will not lie for such purpose." *Id.*



Since the Court of Appeals's decision in *Dodson, supra*, this Court has distinguished *Dodson* and upheld monetary awards as civil contempt sanctions in two extremely unusual cases. See *Gertz, supra*, 199 Md. App. 413; *Royal Inv. Group, supra*, 183 Md. App. 406. As we shall explain, these cases are factually dissimilar to the present case, and we are unpersuaded by Callender's attempts to analogize to them. Rather, the general rule of *Dodson* -- namely, that sanctions for a past failure to comply with a court order are inappropriate in a civil contempt action -- applies to the present case.

The dispute in *Royal Inv. Group, supra*, involved a contract for sale of a residential property. 183 Md. App. at 417. Negotiations between the contract purchaser and contract seller broke down before settlement, and the contract seller advised the contract purchaser that the contract was terminated. Thereafter, the contract purchaser demolished the existing home on the property and constructed a new home at a cost of over \$700,000. Litigation ensued and the circuit court, following a seven-day bench trial, found that there was no enforceable contract. *Id.* at 417-18. The court further found the contract purchaser liable for trespass. *Id.* at 418.

After the circuit court issued its orders declaring that the contract seller owned the property, finding that the contract purchaser was liable for trespass, and denying the contract purchaser restitution for improvements it made on the property, the contract purchaser reentered the property and removed a large number of expensive cabinets. *Id.* at 446. The contract seller filed a petition to hold the contract purchaser in contempt. *Id.* Following a

hearing, the circuit court found the contract purchaser in contempt and ordered that he be incarcerated. *Id.* at 452. The contempt order included a purge provision that the contract purchaser pay a \$75,000 fine to the contract seller. *Id.*

On appeal, we affirmed the circuit court’s contempt order, holding that the case presented “exceptional circumstances.” *Id.* at 455. We explained:

[S]ubject to the limitations set forth in *Dodson*, we hold that, under “exceptional circumstances,” a willful violation of a court order, which clearly causes the plaintiff a monetary loss, can form the basis for a monetary award in a civil contempt case. The trial court found that “exceptional circumstances” were present here based on [the contract purchaser’s] willful violation of the October 3 court orders. We agree.

The trial court made the following factual findings: 1) [the contract purchaser] received a copy of the court order granting possession of the Property to [the contract seller] and ejecting [the contract purchaser] from the Property; 2) [the contract purchaser] was advised by counsel for [the contract seller] that he did not have a right to possession of the Property; 3) [the contract purchaser’s] attorney told [the contract purchaser] that he could not advise whether [the contract purchaser] could enter the Property and “take his property out of the premises”; 4) [the contract purchaser] agreed with [the contract seller’s] attorney to “keep the status quo” until the court opened the next day; and 5) “in complete disregard of his earlier agreement to maintain the status quo,” [the contract purchaser] entered the home with several workers and “unscrewed from the walls” and removed \$75,000 worth of installed cabinets from the home. These facts, combined with the facts elicited at the hearing that [the contract purchaser] demolished [the contract seller’s] home before a permit was issued, and, after repeatedly being told by [the contract seller’s] attorney to stay off the Property, constructed the home, amount to egregious conduct by [the contract purchaser].

Moreover, the trial court found that, unlike in *Dodson*, “[t]here was no evidence . . . or even suggestion . . . potential contributory negligence claim, or a potential [contract purchaser] cross claim” that might weigh in favor of requiring a separate tort claim to recover damages. Given this fact, [the contract purchaser’s] egregious conduct, and the protracted litigation that [the contract seller] has already endured, we agree with the trial court that there were “exceptional circumstances” justifying compensatory damages.

*Id.* at 455-56.

The allegedly contemptuous conduct in the present case is a far cry from the egregious conduct in *Royal Inv. Group*. In *Royal Inv. Group, supra*, the trial court emphasized that the contemnor had been informed in varying ways that he was to remain off the property and the contemnor had, in fact, agreed to “keep the status quo” before entering the property and removing \$75,000 worth of installed cabinets. Anthes’s conduct in failing to remove internet postings for a period of roughly three weeks pales in comparison to the contemnor’s flagrantly inappropriate conduct in *Royal Inv. Group*. Furthermore, in *Royal Inv. Group, supra*, we emphasized that there was no indication of any defense or cross claim the alleged contemnor could raise in response to the allegations. *Id.* at 455-56. In contrast, in the present case, Anthes raises multiple substantive defenses based upon his rights under the First Amendment.<sup>10</sup> This weighs heavily towards our conclusion that any damages would be more appropriately determined in the underlying tort and contract action, rather

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<sup>10</sup> Given our resolution of this appeal, we need not reach the merits of the First Amendment issues raised by Anthes. Such issues may be considered, however, in the underlying civil action brought by Callender.

than through the imposition of sanctions for constructive civil contempt. Accordingly, we are unpersuaded that the instant case presents anywhere near the type of egregious conduct that would constitute “exceptional circumstances” as in *Royal Inv. Group*.

Callender’s attempt to analogize to *Gertz, supra*, 199 Md. App. 413, is similarly unavailing. In *Gertz, supra*, we addressed a civil constructive contempt order which required a contemnor, Gertz, to pay a fine of \$72,000, with \$22,000 of the amount suspended contingent on Gertz’s compliance with the court’s order. On appeal, this Court held that the \$22,000 portion which was suspended “clearly qualifie[d] as a remedial sanction designed to compel future compliance.” *Id.* at 426. With respect to the remaining \$50,000 portion, we held that the sanction was not improper based upon the unique circumstances of the case. The sanction had been authorized in a prior 2004 contempt order as a remedial incentive for Gertz to comply with the terms in that order. *Id.* at 427. Gertz had specifically “agreed to pay ‘a stipulated penalty of at least \$10,000 for any violation of’ the deadlines specified therein.” *Id.* We explained that “even though [the \$50,000 sanction] was ultimately imposed in the 2009 Contempt Order, that sanction had its genesis in the 2004 Contempt Order and could have been avoided” had Gertz complied with the terms of the 2004 order. *Id.* Accordingly, we held that “[h]aving consented to a penalty for failing to comply with the deadlines set in the 2004 Contempt Order, with the dollar amount to be determined in the future, Gertz cannot now complain that the penalty was imposed when he failed to comply.” *Id.* at 428. We easily distinguished *Dodson*, which was “factually and

legally inapposite” because “unlike Dodson, Gertz agreed to the imposition of a monetary sanction if he violated the court order in question.” *Id.*

The instant appeal presents none of the unique circumstances which were critical to our holding in *Gertz*. Indeed, our holding in *Gertz* was extremely fact-specific and dependent upon the fact that the penalty which was ultimately imposed in the 2009 contempt order had been previously authorized -- and agreed to -- in the 2004 contempt order. No such issues compel a similar result in the present case.

The facts giving rise to the constructive civil contempt order in the present appeal are unlike the egregious conduct presented in *Royal Inv. Group, supra*, 183 Md. App. 2008, which we held constituted “exceptional circumstances.” Furthermore, the facts in the present case are unlike the unusual facts presented in *Gertz, supra*, 199 Md. App. 413, in which the contemnor had previously agreed to the imposition of sanctions if he failed to comply with a prior order. Accordingly, we hold that the general rule of *Dodson* applies to the present case. Sanctions for a past failure to comply with a court order are inappropriate in a civil contempt action. *Dodson, supra*, 380 Md. at 451-52. Accordingly, we hold that the civil contempt order issued by the trial court in the present case -- the purpose of which was clearly punitive and not to coerce Anthes’s current or future compliance with a court

order -- was improper. We, therefore, shall reverse and direct that the trial court vacate its August 12, 2014 order finding Anthes in contempt.

**JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR CALVERT COUNTY WITH DIRECTIONS TO VACATE THE CONTEMPT ORDER. COSTS TO BE PAID BY APPELLEE.**