

Circuit Court for Queen Anne’s County
Case No. C-17-FM-18-000410

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0100

September Term, 2023

WAYNE STEPHEN WAGNER, JR.

v.

BARBARA AUTUMN LEE PIERCE, ET AL.

Reed,
Zic,
Salmon, James P.**
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: August 29, 2024

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

** Salmon, J., participated in the hearing of the case, and in the conference regarding the Court’s decision, but he was no longer a member of the Court prior to the adoption of the opinion. The remaining judges sitting on the panel constitute a quorum. Because they agree as to the reasoning and outcomes of the appeal, there is a “concurrence of a majority of [the] panel.” Md. Code Ann., Cts. & Jud. Proc., § 1-403(b) (2020 Supp.); *see also Jackson v. State*, 408 Md. 231, 239-40 (2009).

Appellant, Wayne Wagner, Jr., initiated a custody proceeding in December 2018, and a consent order was entered by the Circuit Court for Queen Anne’s County in June 2019. Mr. Wagner stopped making payments towards his child support obligation to appellee Barbara Autumn Lee Pierce in November 2020, and the Queen Anne’s County Office of Child Support (the “Office”) filed a petition for contempt against Mr. Wagner in May 2022. The circuit court found Mr. Wagner to be in contempt, which Mr. Wagner appealed, arguing that he did not “willfully” fail to pay his child support obligations.

Mr. Wagner appealed the decision of the circuit arguing that the court erred in holding him in contempt for failing to pay child support because he has been enrolled in residential inpatient rehabilitation treatment centers to treat his addiction disorder. Mr. Wagner argues that the treatment centers inhibit his ability to be employed and accordingly prevent his ability to pay child support. The Office argues that Mr. Wagner did not provide sufficient evidence, in accordance with Md. Rule 15-207(e)(1), that he lacked the ability to pay more child support and that he diligently sought employment. For the reasons that follow, we agree with the Office, and we affirm the circuit court.

QUESTION PRESENTED

Mr. Wagner presents one question for our review:

Did the [circuit] court err by finding [Mr. Wagner] in contempt of court?

For the reasons that follow, we answer Mr. Wagner’s question in the negative and, therefore, affirm.

BACKGROUND

Mr. Wagner and Ms. Pierce are the parents of a child who was born in August 2016. Mr. Wagner initiated a custody proceeding in the Circuit Court for Queen Anne’s County on December 26, 2018. During a pretrial conference in March 2019, Ms. Pierce indicated that Mr. Wagner’s addiction to narcotics and potential for relapse were primary concerns.

On May 23, 2019, the parties entered into a consent order resolving custody and child support. This agreement included an “explanatory statement” signed by both parties, outlining the “mutual intention to be involved and supportive parents,” the requirement that Mr. Wagner’s visits with their son be supervised, the requirement that Mr. Wagner would need to be sober, and the requirement that Mr. Wagner submit to regular drug testing and pay \$772.00 per month in child support. The payments would be made through “continuing wage withholding through the Maryland Child Support Account.” Mr. Wagner’s monthly income was listed as \$2,750. The court entered the consent order on June 3, 2019, and Ms. Pierce was granted primary custody of the child.

Court-Ordered Child Support Payments

Starting July 2019, Mr. Wagner began making weekly payments of \$178.15 through an earnings withholding order in place with his then-employer, Wood Floors.

On March 31, 2021, Ms. Pierce filed a Motion for Child Support Wage Withholding Order. The motion alleged that Mr. Wagner had been circumventing the wage withholding process and making payments directly to Ms. Pierce, until he stopped making payments in November 2020 when he lost his job. The motion alleged that Mr.

Wagner was recently newly employed and requested the court to order child support payment through a wage withholding order at this new job. On April 19, 2021, the court granted the motion and ordered Mr. Wagner’s wages be withheld by his employer to fulfill his child support obligation. Additionally, the court was to be notified if Mr. Wagner’s employment was terminated.

The Office Files A Petition For Contempt

By May 10, 2022, Mr. Wagner’s child support arrearage had grown to \$7,579.08. On May 27, 2022, the Office filed a petition for contempt, alleging that Mr. Wagner had “willfully” refused to make support payments “while having the means to pay[,]” made his last payment on April 1, 2022, and owed the \$7,579.08 in arrearages.

The contempt proceeding was held on September 1, 2022. Mr. Wagner explained that he had not made child support payments since April because he has not been employed since April. He advised the court that he had a job prospect and upcoming interview with a company called Overhead Door the following week. He also advised the court that prior to his last child support payment, he experienced a drug relapse which led him to complete a 60-day rehabilitation program that ended on June 7, 2022. Since his release from the facility, he had been attending Narcotics Anonymous meetings. Mr. Wagner also mentioned that he had never missed a child support payment when he was employed. The court advised Mr. Wagner to inform the Office if he was hired by Overhead Door, so that the Office could begin the process to withhold his support obligation from his wages. The court set the contempt hearing for November 3, 2022

based on the representation that Mr. Wagner would be employed and making payments toward his child support by that date, if not prior to that date.

Mr. Wagner failed to appear for the November 3, 2022 hearing. The court issued a writ of body attachment. Mr. Wagner filed a motion to quash on December 5, 2022, in which he explained that he had been admitted to an inpatient drug rehabilitation facility in Cambridge, Maryland called Avenues on October 19, 2022. The motion was accompanied by a letter from a case manager and social worker, confirming Mr. Wagner’s presence at the facility. The court granted the motion, recalling the writ of body attachment and setting a remote hearing for January 3, 2023.

Mr. Wagner failed to appear for the January 3, 2023 hearing. As a result, the court issued a second writ of body attachment for Mr. Wagner. On January 10, Mr. Wagner filed a motion to recall the writ, explaining that Mr. Wagner was in a new inpatient rehabilitation facility in Greensboro, Maryland called Choptank Recovery. The motion was accompanied by a letter from the treatment center confirming his enrollment and stating that his case manager did not receive the zoom link for the hearing. The case manager and Mr. Wagner “were waiting for the Link and prepared to ‘appear’ on January 3” but were unable to do so. The motion was denied. Mr. Wagner turned himself in pursuant to the warrant and was released on January 19, 2023 on his own personal recognizance to return to his treatment center.

A contempt hearing was held on March 7, 2023. The Office presented evidence from its child support enforcement case manager and Mr. Wagner. The Office’s case

manager confirmed that Mr. Wagner was under an order dated June 3, 2019 to pay \$772 per month in child support, but he did not regularly make his child support payments.

She continued, testifying that a petition for contempt was filed with the court on May 27, 2022, as a result of the missed payments, with the amount of arrears alleged being \$7,579.08. She stated that additional arrearage had accrued since the contempt filing, and the only amount Mr. Wagner had paid since the filing was \$100 on October 4, 2022. As of March 7, 2023, Mr. Wagner's arrearage was \$15,199.08. The case manager further testified that she did not timely receive documentation regarding his various treatment facility attendances and also had not timely received documentation regarding Mr. Wagner's employment status. Accordingly, she did not file anything to suspend or recalculate Mr. Wagner's child support.

Mr. Wagner also testified at the hearing on March 7, 2023. He said that during the September 1, 2022 court hearing for contempt, he presented documentation of his rehabilitation program at the Avenues, from which he had been released, and had indicated that he had an upcoming interview with Overhead Door. He explained that when he was employed by Overhead Door, he was able to make the \$100 payment in October 2022. But, subsequently, he checked back into the Avenues rehabilitation program and eventually ended up in Choptank Recovery and shortly thereafter, Hudson Health, a different inpatient rehabilitation facility located in Salisbury, Maryland. As a result of the rehabilitation facilities and recovery process, he struggled to stay employed. He testified that he would be starting to work the following week at Walker and Laverge in Delmar, Maryland, where he would have an hourly wage of \$17 and guaranteed 40

hours per week, installing glass windows. Mr. Wagner's insurance paid for his housing at the rehabilitation facility, and he was scheduled to be out of the facility in July.

The court found Mr. Wagner to be in contempt for failing to pay child support in the amount of \$15,199.08. In its ruling, the court mentioned that Mr. Wagner did not notify the Office of his employment timelines, so the court found that his lack of notice prevented the Office from perfecting an earnings withholding to pay the required child support. The court also noted that Mr. Wagner alleges the lack of notice and payment is due to his admittance in rehabilitation facilities, but Mr. Wagner failed to notify the Office of the locations and dates of the various treatment facilities. The court continued,

Mr. Wagner will have the ability to purge his contempt by perfecting -- allowing the department to perfect an earnings withholding order on his new employment at Walker and Laverge so that they may begin collecting regular payments from him through his employment.

He is also required to continue to keep the court and child support enforcement involved of his address. If he leaves his current address at Hudson [Health] and then any other employment changes in the future. I do not believe jail is appropriate for him, either. He's doing his treatment program and he has the ability to now be working and so he needs to be working and providing his child support.

Finally, the court added that while an earnings withholding agreement was pending, Mr. Wagner should make payments directly to Ms. Pierce and keep a record of the payments. Mr. Wagner filed a timely notice of appeal.

STANDARD OF REVIEW

Maryland’s appellate courts “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. Maryland Dep’t of Env’t*, 199 Md. App. 413, 424 (2011) (internal quotation marks and citations omitted); *see also Droney v. Droney*, 102 Md. App. 672, 683-84 (1995) (“The decision of whether to hold a party in contempt is vested in the trial court. . . . Ordinarily, in a review of contempt proceedings, the Court does not weigh the evidence; rather, we merely assess its sufficiency.”).

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR BY FINDING MR. WAGNER IN CONTEMPT OF COURT.

A. Parties’ Contentions

Mr. Wagner, quoting Maryland Rule 15-207(e)(3)(A), contends that “the lower court erred in finding that [he] ‘had the ability to pay more than the amount actually paid’ and/or had not ‘made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment.’” Mr. Wagner cites to *Dodson v. Dodson*, in which the Supreme Court of Maryland explained that an alleged contemnor “may not be held in contempt of a court order unless the failure to comply with the court order was or is willful. A negligent failure to comply with a court order is simply not contemptuous in a legal sense.” 380 Md. 438, 452 (2004). Mr. Wagner, quoting *Arrington v. Dep’t of Hum. Res.*, argues that if the alleged contemnor proves “by a

preponderance of the evidence, that, despite making reasonable efforts, he or she never had the ability to pay more than was paid[,]” then the court may not make a finding of contempt. 402 Md. 79, 100-01 (2007).

Mr. Wagner argues that he made child support payments when he had been employed, but due to his “difficulty remaining sober,” which has been an ongoing “concern for both parties” over the course “of their custody and child support” litigation, Mr. Wagner has been engaged in intensive drug treatment programs. Mr. Wagner contends that many of these programs required Mr. Wagner to reside at the treatment facilities and finding employment geographically nearby was difficult. Mr. Wagner argues that he did not willfully fail to pay child support; his commitment to treating his addiction interfered with his ability to be employed, and by extension, his ability to pay child support.

The Office argues that Mr. Wagner failed to establish by a preponderance of the evidence that he did not have the ability to pay more than he actually paid, and thus, the court correctly found Mr. Wagner to be in contempt. We agree.

B. Discussion

Mr. Wagner failed to establish by a preponderance of the evidence that he did not have the ability to pay more than he actually paid, and thus, the court correctly found Mr. Wagner to be in contempt. The relevant rule states:

(1) *Applicability*. This section applies to proceedings for constructive civil contempt based on an alleged failure to pay spousal or child support, including an award of emergency maintenance under Code, Family Law Article, Title 4, Subtitle 5.

(2) Petitioner’s Burden of Proof. Subject to subsection (3) of this section, *the court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing.*

(3) When a Finding of Contempt May Not Be Made. *The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of evidence that (A) from the date of the support order through the date of the contempt hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment, or (B) enforcement by contempt is barred by limitations as to each unpaid spousal or child support payment for which the alleged contemnor does not make the proof set forth in subsection (3)(A) of this section.*

Md. Rule 15-207(e)(1)-(3) (first sentence emphasis in original and subsequent emphasis added).

Only Maryland Rule 15-207(e)(3) is at issue in this case. Mr. Wagner testified that he had been at various inpatient rehabilitation centers, namely the Avenues, Choptank Recovery, and Hudson Health, which, he alleges, resulted in periods of unemployment and an ensuing inability to pay the \$772 per month. He contends that while he was employed, he continually made timely child support payments. Mr. Wagner, however, did not provide dates corresponding to when he entered and departed from the programs. The Office’s case manager stated that the Office never received appropriate documentation of Mr. Wagner’s enrollment at the treatment facilities. Additionally, Mr. Wagner did not provide immediate notice to the Office when his employment status changed over the years.

In its ruling, the court explained the ongoing lack of notice provided to the Office and the court:

I don't know how long he worked for Overhead Door, so I don't even know if \$100 was appropriate or not. He could have been there for a longer period of time and should have more payment. The fact he did not notify the bureau of support that he had the job at Overhead, when he got it and when he lost it, this is new news today about that employment and certainly his status of where he has been during the last few months was unknown until the [c]ourt was involved with a bench warrant and Mr. Wagner finally obtained counsel to assist him. . . .

However, the [c]ourt will find that he is in contempt; that he did have the ability to pay. Since he stopped paying in November of 2020, this was the last payment on his earnings withholding order; that *he did not provide notice to -- that he has had employment and did not provide notice to the department so they could perfect an earnings withholding order from him in Overhead Door[] and he has lapses of payments. He alleges to be due to his treatment facilities, but even then the testimony wasn't clear of what dates he was there, what his ability was to pay, to be working.*

(Emphasis added).

The circuit court was not persuaded by the evidence presented by Mr. Wagner that he was never able to pay or “made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment” pursuant to Maryland Rule 15-207(e)(3). Mr. Wagner failed to provide dates of employment. For example, when Mr. Wagner testified that his employment at Overhead Door enabled him to make the \$100.00 child support payment, he provided no evidence of when his employment began or ended, and he did not provide evidence regarding his rate of pay or how many

hours he worked while employed with that company. This lack of information and detail persisted throughout Mr. Wagner’s testimony.

For example, Mr. Wagner also did not provide the dates of attending treatment facilities. He provided the names of the facilities and proof of treatment at various court hearings, but he did not provide dates of treatment. Furthermore, this information was not timely provided to the Office, if at all. He also failed to provide proof or explanation regarding the alleged impossibility of employment while being treated at Choptank Recovery or Avenues. At most, Mr. Wagner testified on March 7, 2023 that he transferred to Hudson Health because “[i]t was very hard to find employment [in Greensboro, Maryland during his stay at Choptank Recovery], so that’s why [he] transferred to Salisbury,” which is the location of Hudson Health. Presumably, Mr. Wagner is referring to geographic location as the reason for his unemployment. But, he provided no explanation or detail as to what difficulties or roadblocks existed. Moreover, to the contrary, Mr. Wagner testified that same day on March 7, 2023 that although he was expected to remain at the treatment facility Hudson Health until July 2023, he was scheduled to start a new job the following week. Again, he provided no explanation as to why he could be employed during his stay at this inpatient rehabilitation center as opposed to the other facilities.

Mr. Wagner’s testimony was the crux of his presentation, and the circuit court, as the trier of fact, “[is] entitled to accept—or reject—*all, part, or none* of the testimony of any witness[.]” *Omayaka v. Omayaka*, 417 Md. 643, 659 (2011) (emphasis in original). Furthermore, “[t]o prove by a preponderance of the evidence means to prove that

something is more likely so than not so[,] [meaning that] when considered and compared with the evidence opposed to it, has more convincing force” *Mathis v. Hargrove*, 166 Md. App. 286, 311 n.5 (2005) (citations omitted). Mr. Wagner did not provide sufficient evidence to meet the required standard.

CONCLUSION

We hold that the circuit court did not err in finding Mr. Wagner to be in contempt and did not abuse its discretion in finding Mr. Wagner’s behavior to be contemptuous.

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