

Circuit Court for Montgomery County
Case No. C-15-FM-23-807120

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1342

September Term, 2023

MEGAN CHAVA EVANS

v.

MARK H. DREDZE

Nazarian,
Kehoe, S.,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: July 17, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

In early 2023, Mark Dredze (“Father”) walked in on his daughter speaking with Megan Evans (“Mother”) over the phone. Mother became enraged and yelled at Father, who ended the call. Mother then called the police to Father’s home, as she claimed her daughter was unsafe. However, responding officers quickly determined this was not true and left. Later in the evening, Mother attacked Father physically at his home. That same night, Father obtained a protection order against Mother.

In the ensuing months, Mother violated the order’s terms continually. Father then filed a petition for contempt, which led to a hearing and the entry of a contempt order against Mother.

On appeal, Mother argues that the contempt order is invalid because her conduct was not willful and because the order’s basis, purge provision, and sanction are illegal. We reverse.

I. BACKGROUND

A. Divorce and Custody.

Mother and Father were married and had three children together—G,¹ A, and M. Eventually, the parents separated and their divorce was finalized in 2020. Although the divorce included a specific custody plan, the plan was modified on August 2, 2022 to grant Mother access to her “children for six (6) out of every fourteen (14) overnights.” The plan would be modified again by the protection order.

¹ To protect the children’s identities, we will refer to them using initials.

B. The Protection Order.

On the evening of January 9, 2023, Mother spoke to G over the phone. After Father entered the room where G was, Mother became upset and yelled at Father. Father took G’s phone and ended the call. Mother then sent “multiple inappropriate, abusive, and harassing text messages and emails. She repeatedly called [Father] despite asking her to stop.”

Later that night, Mother called police because, she claimed, G had told her she felt unsafe and wanted to leave Father’s home. But when police arrived at the home, they determined that G was secure and had never claimed to feel unsafe. Then, less than an hour later, Mother and her fiancée, KJ, arrived at Father’s home.

While Mother remained in the car, KJ went up to the front door and spoke with Father. Father asked KJ to leave multiple times, but she didn’t. During this conversation, Mother yelled at Father from the car. But this didn’t last long: Mother went to the front door, “kicked open the door and attacked [Father], attempting several times to climb the stairs to access the [children] sleeping upstairs. [Mother] repeatedly punched [Father] in the face, pushed him, and bit him. [Mother] eventually left the home and then reentered attacking [Father] again.” A neighbor who witnessed the altercation called the police and Mother was arrested and charged for home invasion, first-degree assault, and other misdemeanors.

Father filed a petition for a protection order that same evening. A temporary protection order was granted the following day. The final protection order, issued on January 17, 2023, established that Father would have sole legal and physical custody of the

children and that Mother could not contact or harass or abuse Father and the children. Mother was allowed only to send Father written communications relating to the children. And if Mother wanted to contact the children, she had to be supervised and must have obtained Father's consent in advance.

C. The Contempt Order And Hearing.

Mother violated the terms of the protection order repeatedly. In February 2023, Mother sent multiple emails that made Father uncomfortable such as “you have a long and rich history of abusing your authority and not making good choices . . .” “[y]ou’ve got an amazingly robust sense of entitlement and personal piety,” and “I’m not harassing you. I’m an adult explaining her chosen course of action to another adult. I dare you to ask a judge whether [this] communication is disparaging or harassing. I dare you.”

On March 3, 2023, at 3:30 p.m., Father scheduled a Zoom call for Mother and the children. However, Mother was unable to access the virtual room, so she called G directly. Under the parents’ agreement, the call was recorded and Father was present for the entire conversation. An hour after the call, Mother called G again without Father’s knowledge. Once Father learned of the second conversation, he texted Mother to ask her to end the call because it violated the protection order. The call ended soon after, at 5:53 p.m., but Mother texted G again stating that she “just sent somebody to the house to make sure [she was okay.]” Then around 6:30 p.m., police arrived at Father’s home because Mother had claimed G was in trouble and needed help. The police determined that Mother’s accusations were unfounded and left the home.

On March 6, 2023, Father filed the contempt petition before us in this appeal. He alleged that Mother’s messages, communications with G, and the accusations made to the police violated the protection order and amounted to contempt. That same day, Mother admitted herself voluntarily into a hospital to receive mental health treatment after being alarmed by the fact that she could not remember the March 3rd incident. Mother was discharged on March 9th and diagnosed with post-traumatic stress disorder.

Four months later, on July 14, 2023, a contempt hearing was held to resolve Father’s petition. Mother argued she could not be held in contempt because (1) her mental illness prevented her from having the requisite intent at the time to violate the protection order and (2) she could not be punished for prior completed actions. The court disagreed and granted Father’s petition.

Mother filed a motion to reconsider on July 21, 2023, but it was denied because it was premised on the same arguments made at the contempt hearing. After the denial, the circuit court entered a purge provision that said that Mother could purge the contempt by “continuing mental health treatment . . . , taking medication as directed, and having [the supervised visitation provider] supervise [Mother’s] communication with the children through January 17, 2024” Mother timely appealed the contempt order.

II. DISCUSSION

Mother presents four issues² for review, which we condense and rephrase as one: whether the circuit court abused its discretion in issuing the contempt order.

“Generally, this 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.” *Kowalczyk v. Bresler*, 231 Md. App. 203, 209 (2016). “But where the order involves an interpretation and application of statutory and case law, we must determine whether the circuit court’s conclusions are ‘legally correct’ under a *de novo* standard of review.” *Id.*

A. The Circuit Court Abused Its Discretion In Granting The Contempt Order.

Mother argues that the circuit court erred in issuing the contempt order against her because it was based on her prior conduct and because both the sanction and purge provision were improper. We agree. And because it is sufficient to find that the contempt order itself was deficient, we will not address Mother’s “willfulness” argument.

² Mother’s Questions Presented lists the issues as:

- I. Did the Circuit Court err in finding that Appellant’s conduct was willful and therefore in contempt of the Final Protective Order?
- II. Did the Circuit Court err by holding Appellant in constructive civil contempt for her alleged past, completed conduct?
- III. Did the Circuit Court err in failing to provide a legal purge provision?
- IV. Did the Circuit Court err in failing to provide a legal sanction?

Father did not submit a brief.

The purpose of a constructive civil contempt order—the kind at issue here—is to bring a violating party into compliance not to punish past conduct. And importantly, a contempt order must accomplish this prospective purpose by imposing a sanction that the violator can purge:

[A]n 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 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. Moreover, and critical to our analysis here, to 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. 67, 74 (2021). All three requirements must be met.

Id. Unfortunately, the contempt order at issue here failed to satisfy these criteria.

1. *The sanction does not coerce future compliance.*

“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.” *State v. Roll*, 267 Md. 714, 728 (1973). The important difference between civil and criminal contempt orders is that “[i]f the punishment is coercive . . . it is civil but if the sanction is *to punish* it is criminal.” *Id.* at 729 (emphasis added).

The contempt order in this case ordered Mother to pay a \$5,000 sanction that she could purge by complying with treatment and supervision conditions beyond the original scope of the order:

ORDERED . . . [I]f [Mother] fails to purge the contempt by continued compliance with the conditions below through January 17, 2024 and continues to have the ability to meet the purge, a sanction will be entered for a judgment of \$5,000 against [Mother] and in favor of [Father]

ORDERED, that the contempt may be purged by [Mother] continuing mental health treatment with her treatment provider, taking medication as directed, and having [specified individual] supervise [Mother]’s communication with the children through January 17, 2024.

But although the order does contain a sanction, that sanction does not serve the purpose of coercing *future* compliance with the protection order. *First*, the sanction coerces Mother to comply with the purge provision, not the original protection order. As the court stated, Mother may purge the contempt finding by adhering to the purge provision, which includes “continuing mental health treatment with her treatment provider.” The purge provision does not involve the core requirements of the protection order, such as prohibiting Mother from harassing Father or directly contacting the children. *Second*, the sanction consists of a one-time \$5,000 fine to be paid to Father if Mother does not satisfy the purge provision. This means that, in theory, Mother could pay the fine and continue to defy the protection order with no repercussions and no incentive for her to continue to comply after paying. Typically, civil contempt sanctions involve the payment of a daily fine or some other mechanism to ensure that the defendant is motivated to comply with the order consistently. *See Jones v. State*, 351 Md. 264, 278 (1998) (One category of sanctions involves “coercive

sanctions, which are civil sanctions, such as . . . a fine to be applied *until* the contemnor complies” (Emphasis added). *Third*, and finally, because the contempt here arose from violations of a protection order, the monetary sanction doesn’t fit. Although contempt orders can contain remedial monetary sanctions, “such as a civil fine payable to the plaintiff,” those are to “compensate the plaintiff for losses suffered as a result of the contemnor’s non-compliance.” *Id.* Here, the order related solely to protecting Father and the children. The disconnect between the original order and the current sanction resulted in a sanction that punished Mother’s past actions, which is only allowed in the criminal context, rather than bringing her into compliance. *See Dodson v. Dodson*, 380 Md. 438, 448 (2004). So although the court imposed a sanction, that sanction could not fulfill the purpose of coercing Mother to comply with the original protection order.

2. *The purge provision added obligations that did not exist in the original protection order.*

Again, “because the purpose of civil contempt is to coerce compliance with a court order, a court in a civil contempt proceeding ‘seeks *only* to secure obedience to its *prior order.*’” *State v. Crawford*, 239 Md. App. 84, 125 (2018) (emphasis added) (*quoting In re Marriage of Berto*, 800 N.E. 2d 550, 556, Ill. App. Ct. (2003)). This means that a violator may be coerced only into complying with the specific terms of the original order, not additional terms or obligations imposed after the fact. *See Id.*

In the original protection order, the circuit court directed Mother to stay away from her ex-husband and children and not to direct abusive, threatening, or harassing behaviors toward them. The order also stated that Mother was “responsible for the costs of

supervisions.” By contrast, the contempt order states that the contempt may be purged if Mother continues “mental health treatment . . . , tak[es] medication as directed, and [has designated supervisor] supervise [her] communication with the children” None of these obligations were in the original final protection order. Adding new obligations to the existing order defeats the purpose of civil contempt and invalidates the purge provision. *See Crawford*, 239 Md. App. at 125. Although we acknowledge that in creating the final protection order a court may “direct the respondent . . . to participate in professionally supervised counseling” and “order any other relief that [it] determines is necessary to protect a person eligible for relief from abuse,” Md. Code (1984, 2019 Repl. Vol.), § 4-506(d)(11), (14) of the Family Law Article, the issue here is the court used those powers when creating the contempt order, not the original protection order. Had the terms of the purge provision been part of the original protection order, it likely would have been valid.

3. *The contempt order was created to punish Mother’s past, completed behavior.*

The primary purpose of constructive civil contempt orders is to coerce the violator’s *future* compliance with the original court order and must not punish a defendant for “past, completed conduct.” *Breona C.*, 253 Md. App. at 74. This is because “imposing a sanction for past misconduct is the function of criminal contempt.” *Id.* at 76 (*quoting Dodson*, 380 Md. at 448). Punishment in the civil context does not achieve the compliance purpose that an appropriate civil contempt order is meant to fulfill. *See id.*

At the contempt hearing, Father presented evidence indicating Mother had violated

the contempt order several times between January and May 2023. But the hearing occurred on July 14, 2023, and Father did not present evidence demonstrating that Mother had violated the order after May. As such, the evidence proved only “past behavior.” Based on this past behavior, the court concluded, “by clear and convincing evidence that these orders were violated [by Mother], whether it’s calling him a racist, entitled.”

To be sure, the record supports the court’s conclusion that Mother had violated the protection order multiple times in the past. But Father never introduced evidence that Mother was presently in violation or, indeed, had violated the protection order in the two preceding months. The order punished Mother for her past, completed conduct, which is not allowed in the civil contempt context. *Candolfi v. Allterra Grp., LLC*, 254 Md. App. 221, 246 (2022). This flaw requires us to reverse the order.

We recognize that constructive civil contempt can be frustrating for circuit courts to implement, especially in the family law context. Here, the court’s question to Mother’s counsel at the contempt hearing concisely summarizes the difficulties in these cases: “[s]o, under your theory anybody could just violate the protective orders[?]” Obviously, the answer to that question is “no,” but it can be challenging to devise a combination of sanction and purge that effects the compliance goals of a constructive civil contempt order. If the goal is to punish, the aggrieved party may need to involve law enforcement or file criminal charges or seek to have the violator held in criminal contempt, which is available for that purpose but requires additional due process protections. The passage of time and abatement of ongoing violations may well, as here, prove fatal to constructive civil

contempt, at least in the absence of evidence revealing some likely failure of near-future compliance.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY REVERSED. APPELLEE
TO PAY COSTS.**