

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE L. WAPLES,	§	
	§	No. 26, 2005
Respondent Below,	§	
Appellant,	§	Court Below: Family Court
	§	of the State of Delaware
v.	§	in and for Sussex County
	§	File Nos. CS89-3455; CS92-3660
DIVISION OF CHILD SUPPORT	§	Petition Nos. 01-33018; 01-3301
ENFORCEMENT,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: May 24, 2005

Decided: June 23, 2005

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 23rd day of June 2005, upon consideration of the Rule to Show Cause and the parties' respective responses thereto, it appears to the Court that:

(1) The appellant, Bruce L. Waples, filed this appeal from a decision of a Commissioner of the Family Court dated December 28, 2004, which Waples described in his notice of appeal as a violation of probation (VOP) order. The Clerk of the Court issued a notice to Waples to show cause why the appeal

should not be dismissed for his failure to comply with Supreme Court Rule 42 when taking an appeal from an apparent interlocutory order.¹

(2) After receiving Waples' response to the Rule to Show Cause, the Court directed counsel for the State of Delaware, Division of Child Support Enforcement (DCSE), to reply to Waples' response and to provide the Court with further information clarifying Waples' status as a criminal probationer or civil contemnor. Counsel for the State was further directed to provide the Court with a copy of the transcript from the hearing before the Commissioner, which Waples contends was a violation of probation hearing and the State, alternatively, contends was a civil contempt case review.

(3) After reviewing the record and the supplemental documentation, it is clear that this Court lacks jurisdiction to consider Waples' appeal. The record reflects that Waples has had a long history of noncompliance with his child support obligations dating back to 1989. Since his release from prison on a criminal sentence in 2001, DCSE has filed several civil contempt petitions to coerce Waples to comply with his court-ordered child support obligations. In April 2004, following a hearing at which Waples was represented by counsel,²

¹ See *Redden v. McGill*, 549 A.2d 695 (Del. 1988) (holding that, without the interposing of a judge, a master's order is not a trial court's final order for purposes of appeal to this Court).

² Waples has been represented by counsel throughout the enforcement proceedings because incarceration was a likely sanction for his contempt. See *Black v. DCSE/Black*, 686

the Family Court found Waples in contempt of his support obligations and committed him to detention at Level III probation. The civil commitment order provided that Waples could purge himself of the contempt upon payment of \$2,730. Review of the civil commitment order was scheduled for August 9, 2004.

(4) After failing to appear at the review hearing, the Family Court issued a *capias*, and Waples was apprehended. By stipulated agreement, Waples was committed to work release with the condition that he be supervised at Level III pending space availability. In November 2004, the probation officer filed a progress report with the Family Court alleging that Waples had failed to report to probation or make any child support payments. A *capias* issued, and Waples again was apprehended. Following a hearing on December 28, 2004, the Commissioner found Waples in contempt of his support obligations and ordered him to be held at Level IV (VOP Center) pending space availability in work release. This is the order from which Waples filed the present appeal.

(5) The Family Court's jurisdiction to adjudicate and sanction civil contempt is well-established.³ When a support obligor willfully refuses to pay

A.2d 164, 168 (Del. 1996).

³ See *DiSabatino v. Salicete*, 671 A.2d 1344, 1348-49 (Del. 1996).

court-ordered child support, conditional incarceration may be an appropriate remedy to coerce compliance.⁴ While civil contempt orders ordinarily are appealable to this Court, the appeal may only be taken if the contempt order was issued by a *judge* of the Family Court.⁵ Review of a Commissioner's order, however, must be sought in accordance with 10 Del. C. § 915(d)(1), which provides for a right of review of a Commissioner's order to a judge of the Family Court.⁶ Waples failed to seek review by a Family Court judge in this case. Accordingly, this Court lacks jurisdiction to review the Commissioner's order in the first instance.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Id.* at 1350.

⁵ *See Redden v. McGill*, 549 A.2d at 597.

⁶ DEL. CODE ANN. tit. 10, § 915(d).