

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
COLUMBIANA COUNTY

IN THE MATTER OF:

D.S.G.

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**OPINION AND JUDGMENT ENTRY**  
Case No. 22 CO 0032

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Civil Appeal from the  
Court of Common Pleas, Juvenile Division, of Columbiana County, Ohio  
Case No. C2009-0475

**BEFORE:**

Mark A. Hanni, Cheryl L. Waite, David A. D'Apolito, Judges.

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**JUDGMENT:**

Affirmed.

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*Atty. Christopher P. Lacich*, Roth, Blair, 100 East Federal Street, Suite 600, Youngstown, Ohio 44503, for Appellant and

*Atty. Kelly Linger*, Columbiana County Child Support Enforcement Agency, 7989 Dickey Drive, Suite 2, Lisbon, Ohio 44432, for Appellee. (No Brief filed).

Dated: June 27, 2023

**HANNI, J.**

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{¶1} Appellant, Joshua Golding, appeals from a Columbiana County Common Pleas Court, Juvenile Division decision finding him to be in contempt of court for failure to pay child support and failure to appear before the court for a scheduled hearing.

{¶2} A monthly child support order was put on for Appellant effective October 20, 2009, in the amount of \$276.70. Since that time, Appellant has failed to make regular support payments and has failed to appear for numerous court hearings. The trial court first found Appellant in contempt for failing to make child support payments on June 27, 2011, but gave him the opportunity to purge the contempt. On March 4, 2016, the court found Appellant in contempt both for failure to make child support payments and for failure to appear at two court hearings.

{¶3} Most recently, on September 9, 2020, the court found Appellant in contempt for failing to make child support payments. The court provided Appellant with an opportunity to purge the contempt by coming into substantial compliance with his court-ordered support.

{¶4} Appellant next failed to appear at a December 7, 2020 child support contempt review hearing. The magistrate found that Appellant had failed to purge the contempt, but provided him the opportunity to come into compliance with his support obligation. The magistrate scheduled the matter for another hearing on March 8, 2021, for review and to show cause why Appellant should not be held in contempt for failure to appear.

{¶5} Appellant failed again to appear at the March 8, 2021 hearing. At this hearing, the court was advised that Appellant had made consistent weekly payments dating back to September 2020. Therefore, the magistrate did not issue a bench warrant at that time for Appellant's arrest. The magistrate scheduled a hearing to review the matter and to show cause why Appellant should not be held in contempt for failing to appear at the December 7, 2020 and March 8, 2021 hearings.

{¶6} The next hearing was scheduled for June 21, 2021. Once again, Appellant failed to appear. The magistrate found that Appellant had failed to purge the contempt but gave him another opportunity to purge. The magistrate issued a bench warrant for

Appellant with a \$1,500 bond. The magistrate stated that upon Appellant's apprehension, it would hold a review and show cause hearing.

{¶7} Appellant was apprehended. On August 11, 2021, the magistrate held a hearing for child support review and to show cause why Appellant should not be held in contempt for failure to appear at the last three hearings. The magistrate accepted Appellant's excuses for not appearing at the March 8, 2021 and December 7, 2021 hearings and, therefore, dismissed those causes. The magistrate, however, did not accept Appellant's excuse for failing to appear at the June 21, 2021 hearing. Therefore, the magistrate found Appellant in contempt. The magistrate provided Appellant with the opportunity to purge by timely appearing at all future hearings in this matter. As to child support, the magistrate found that Appellant had failed to purge the contempt but gave him a further opportunity to do so. The magistrate set the matter for a review hearing on November 8, 2021.

{¶8} Appellant failed to appear at the November 8, 2021 hearing. The magistrate found Appellant had failed to purge his contempt but gave him yet another opportunity to do so. The magistrate once again issued a bench warrant for Appellant's arrest and set the matter for a further hearing upon Appellant's apprehension.

{¶9} Appellant was apprehended and the matter proceeded to a July 18, 2022 hearing on the matters of sentencing, show cause, and consideration of bond forfeiture.

{¶10} The trial court found that Appellant was "without reasonable justification or excuse for his repeated failures to appear before the Court for hearings as ordered on November 8<sup>th</sup>, 2021, June 21<sup>st</sup>, 2021 and December 9<sup>th</sup>, 2020." Thus, the court found Appellant in contempt for failure to appear. Consequently, the court sentenced Appellant to 30 days in jail for his failure to appear. It also sentenced him to 30 days in jail for his support contempt, for a total of 60 days in jail. At Appellant's request for some time before his sentence commenced, the court ordered Appellant to appear at the Columbiana County Jail to start serving his sentence on August 20, 2022. The court also ordered Appellant's \$1,500 bond forfeited.

{¶11} Appellant filed a motion for reconsideration of his jail sentence, which the trial court denied because a motion for reconsideration is not a valid motion in the trial court under the Civil Rules.

{¶12} On August 23, 2022, a bench warrant was issued for Appellant’s arrest because he failed to report to jail as scheduled. He was apprehended and began serving his sentence on September 9, 2022.

{¶13} Appellant filed his notice of appeal on September 8, 2022, with leave of this court. He now raises a single assignment of error for our review.

{¶14} Appellant’s sole assignment of error states:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN SENTENCING THE APPELLANT TO AN AGGREGATE TERM OF 60 DAYS IN JAIL FOR INDIRECT CRIMINAL CONTEMPT IN LIGHT OF HIS MEDICAL CONDITIONS AND POVERTY STATUS.

{¶15} Appellant argues that the trial court abused its discretion in imposing a 60-day sentence in this case.

{¶16} As to the 30-day sentence for non-payment of child support, Appellant points out that he was struggling financially and was technically unemployed while he awaited a decision regarding social security benefits. He claims he was in no position to make his child support payments. Appellant points out that he made a child support payment on May 19, 2021, of \$1,455.75 by way of an intercepted tax refund and he indicated that he expected another \$3,000 for the tax year 2022. He argues these amounts could be considered a purge of the contempt.

{¶17} As to the 30-day sentence for failure to appear, Appellant claims the trial court abused its discretion in failing to consider his medical conditions, which caused him to be unable to keep track of his scheduled hearings.

{¶18} As an initial matter, Appellant acknowledges that appeals such this, where the sentence is likely served before the appeal can be heard, can be moot. However, he argues his appeal is not moot because he did not serve his sentence voluntarily.

{¶19} “The completion of a sentence is not voluntary and will not make an appeal moot if the circumstances surrounding it demonstrate that the Appellant neither acquiesced in the judgment nor abandoned the right to appellate review, that the Appellant has a substantial stake in the judgment of conviction, and that there is subject matter for the appellate court to decide.” *Cleveland Hts. v. Lewis*, 129 Ohio St.3d 389,

2011-Ohio-2673, 953 N.E.2d 278. In this case, Appellant contested his jail sentence at the hearing. And Appellant filed a motion for reconsideration of his sentence with the trial court. Moreover, he did not report to jail to serve his sentence. Instead, the court had to issue a warrant for his arrest and have Appellant transported to the jail. Thus, the circumstances demonstrate that Appellant did not acquiesce in the judgment nor did he abandon his right to appellate review, that he has a substantial stake in the judgment, and that there is subject matter for this court to decide.

{¶20} Next, we must move on to the merits of Appellant's argument.

{¶21} A reviewing court will not reverse the decision of the court below in a contempt proceeding absent a showing of an abuse of discretion. *State, ex rel. Ventrone, v. Birkel*, 65 Ohio St.2d 10, 11, 417 N.E.2d 1249 (1981). Abuse of discretion is more than an error of judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶22} R.C. 2705.05(A) sets out the penalties for contempt:

(A) If the accused is found guilty, the court may impose any of the following penalties:

- (1) For a first offense, a fine of not more than two hundred fifty dollars, a definite term of imprisonment of not more than thirty days in jail, or both;
- (2) For a second offense, a fine of not more than five hundred dollars, a definite term of imprisonment of not more than sixty days in jail, or both;
- (3) For a third or subsequent offense, a fine of not more than one thousand dollars, a definite term of imprisonment of not more than ninety days in jail, or both.

{¶23} In this matter, the court found Appellant in contempt and sentenced him at least one other time, on March 4, 2016. At that time, the court sentenced Appellant to 30 days for his child support contempt and 10 days for his failure to appear contempt. Thus, this was at least Appellant's second offense of contempt for both child support and failure to appear. Thus, Appellant was subject to two 60-day jail terms for a total of 120 days.

The trial court did not impose this maximum sentence on either charge of contempt. In light of the facts of the case, the trial court did not abuse its discretion in sentencing Appellant.

{¶24} According to the CSEA attorney, Appellant had an unpaid child support balance of \$14,488.17. (Tr. 2). The last payment the CSEA received was in the amount of \$1,455.75 on May 19, 2022, when it intercepted Appellant's tax refund. (Tr. 2, 3). Prior to that, there had been a payment of \$370 in March 2022 and, prior to that, there was a payment in October 2021. (Tr. 3). Appellant did not contest any of these facts. Appellant told the court that he had not received a paycheck "for some time" but he was now self-employed. (Tr. 4). He also stated that he was on his third claim for Social Security and it was "hard" to go to work. (Tr. 5). Appellant also explained that he is raising another son by himself because his son's mother is in jail. (Tr. 9-10). He stated that any money he makes goes to keep a roof over their heads. (Tr. 11).

{¶25} Clearly, Appellant owes a substantial child support arrearage and has made little effort to pay on it. And while Appellant may not have the income to bring his support obligation current, through tax refunds, work income, and social security income he could have made some amount of minimal weekly or monthly payments toward paying down his arrearage. Additionally, the magistrate gave Appellant numerous opportunities to purge the contempt on: September 9, 2020; December 7, 2020; June 21, 2021; August 11, 2021; and November 8, 2021. Given the circumstances, we cannot conclude the trial court abused its discretion in sentencing Appellant to 30 days in jail on the support contempt.

{¶26} As to his failure to attend the scheduled court proceedings, Appellant admitted that he missed several scheduled hearings stating: "I, I, just, we a lot of change of the dates and everything and I just, I don't know there's no excuse for it. I have missed, I've, hard times with dates and everything." (Sic.; Tr. 6). The court asked Appellant why he had missed three out of the last four hearings. (Tr. 7-8). Appellant stated that he has Tourette's syndrome and necropsy in his neck and it is hard to get away from his house. (Tr. 8).

{¶27} The trial court did not accept Appellant's reasons for failing to appear. It pointed out that Appellant had missed three out of the last four hearings. (Tr. 7-8). And

the court stated it was convinced that Appellant would not have shown up at all if the court had not apprehended him on a warrant. (Tr. 8). Given the trial court's reasoning and Appellant's history of failing to appear, we cannot conclude the court abused its discretion in sentencing Appellant to 30 days in jail on the failure to appear contempt.

{¶28} Accordingly, Appellant's sole assignment of error is without merit and is overruled.

{¶29} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

D'Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division, of Columbiana County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**