

Deny and Opinion Filed November 23, 2015



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01376-CV

IN RE BRET DAVID FOREMAN

On Appeal from the 429th Judicial District Court
Collin County, Texas
Trial Court Cause No. 429-51023-2014

MEMORANDUM OPINION

Before Justices Francis, Myers, and Schenck
Opinion by Justice Francis

Relator Bret David Foreman is confined in the Collin County jail on the trial court's order holding him in criminal and civil contempt for failing to pay court-ordered child support and medical support. Relator filed this petition for writ of habeas corpus claiming the underlying commitment order is void and his due process rights are being violated. He seeks to be discharged from confinement.

A court may punish for contempt. TEX. GOV'T CODE ANN. § 21.002 (West 2004). A habeas corpus proceeding is a collateral attack on a judgment of contempt. *In re Johnson*, 337 S.W.3d 486, 488 (Tex. App.—Dallas 2011, orig. proceeding). Relator has the burden to show the contempt order is void, not merely voidable, and must conclusively show his entitlement to the writ. *Id.* A contempt order is void if it is beyond the power of the court to render it or if it deprives the relator of liberty without due process of law. *Ex parte Burnett*, 600 S.W.2d 252, 254 (Tex. 1980) (orig. proceeding).

We have carefully reviewed the record in this case as well as the issues presented. As to the criminal contempt portion of the order, we conclude relator has failed to show the court was without jurisdiction to render the contempt order or that his due process rights are being violated. As for civil contempt, Foreman must first fully serve the criminal portion of his sentence before he may challenge the civil contempt order. *See In re Spradley*, 05-05-01068-CV, 2005 WL 1950976, at *1 (Tex. App.—Dallas Aug. 16, 2005, orig. proceeding). Relator may file a new petition for writ of habeas corpus if, after he has served his sentence for criminal contempt, he remains confined on the civil contempt order. *Id.*

We deny relator's petition for writ of habeas corpus.

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/Molly Francis/
MOLLY FRANCIS
JUSTICE
