

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHARLES MUSZYNSKI,

Appellant,

v.

Case No. 5D18-2445

MARCIA E. MUSZYNSKI,

Appellee.

_____ /

Opinion filed February 14, 2020

Appeal from the Circuit Court
for Orange County, Tanya
Davis Wilson, Judge.

Gennifer L. Bridges and Douglas K.
Gartenlaub, of Burr & Forman, LLP,
Orlando, and Cynthia L. Greene, of Young,
Berman, Karpf & Gonzalez, P.A., Miami,
for Appellant.

Nicholas A. Shannin and Carol B.
Shannin, of Shannin Law Firm, P.A.,
Orlando, and Lauren M. Ilvento, of Ilvento
Law, P.A., Orlando, for Appellee.

PER CURIAM.

Charles Muszynski (“Former Husband”) appeals the trial court’s order holding him in contempt and threatening further sanctions, including incarceration. Following his divorce from Marcia Muszynski, n/k/a Marcia Waddell (“Former Wife”), Former Husband has failed to adhere to at least three requirements outlined in the parties’ final judgment.

While competent, substantial evidence supports the trial court's conclusion that Former Husband breached his postjudgment obligations, the order on appeal did not actually impose sanctions. Rather, it warned Former Husband of the potential for sanctions if he did not comply in thirty days. Accordingly, this is not a final order, and we dismiss the appeal and remand for further proceedings. See *Torres v. Lefler*, 257 So. 3d 1095, 1096 (Fla. 2d DCA 2018); *Nathanson v. Rishyko*, 140 So. 3d 1054, 1055 (Fla. 4th DCA 2014).

DISMISSED and REMANDED for further proceedings.

LAMBERT and EDWARDS, JJ., concur.

TRAVER, J., concurs and concurs specially, with opinion.

TRAVER, J., concurring and concurring specially.

Because the trial court has not yet rendered a final order, I concur. I write separately to address the remedy suggested by the trial court and Former Husband's arguments in opposition. Some background is necessary. The parties are both 55 years old, and they were married for 17 years. They have no minor children. Former Husband founded a waste management company that has grossed over \$20 million in annual revenue. Their divorce began in 2013, and despite reaching an early agreement on permanent periodic alimony, their equitable distribution dispute required over three years of litigation and a six-day trial to resolve. This dispute focused on whether Former Husband's interest in a trust he had formed to protect his substantial assets from creditors and taxes was marital property. In concluding it was, the trial court found Former Husband had "complete control over the trust as if it were in his own name."

The final judgment declared Former Husband owed Former Wife an equitable distribution equalizing payment of \$1,322,982, due in interest-free monthly installments of \$6,485.21. It also decided special circumstances existed requiring Former Husband to secure Former Wife's future payments. Specifically, the trial court found Former Husband had "failed to follow through" on his financial obligations to Former Wife and his family throughout the divorce, necessitating "numerous motions for contempt." Accordingly, the trial court ordered Former Husband to secure Former Wife's equitable distribution and alimony payments in two ways. First, it directed him to give Former Wife a security interest on his personally held shares in the still-operational waste management company. It also precluded him from selling or transferring this interest until he satisfied his equitable distribution obligation in full. Second, it required him to maintain \$2 million

in life insurance to secure his payment obligations. The trial court found that Former Husband already owned or controlled numerous life insurance policies, and he had the ability to give Former Wife control over them and to designate her as a beneficiary. We affirmed the trial court's final judgment without opinion. See *Muszynski v. Muszynski*, 277 So. 3d 110 (Fla. 5th DCA 2019).

There is no dispute that in the three-plus years since the trial court pronounced judgment, Former Husband has failed to make a single equitable distribution payment. He has also failed to secure his payment obligations. This required Former Wife to file more motions for contempt. The first, filed at the end of 2017, merely resulted in the trial court warning Former Husband to follow the final judgment or face potential sanctions. The order leading to this appeal caused Former Husband to file a motion to stay, which the trial court granted without requiring Former Husband to post a bond. Consequently, a thirty-day grace period imposed to remedy a clear breach has turned into an eighteen-month delay.

Former Husband contends that the trial court erred both legally and factually by holding him in indirect civil contempt for failing to secure his future payment obligations. Legally, he argues trial courts are precluded from enforcing equitable distribution payment obligations via contempt. This is generally true, and the trial court acted correctly in declining to hold Former Husband in contempt for his equitable distribution payment obligations. See Art. I, § 11, Fla. Const.; *Montanez v. Montanez*, 697 So. 2d 184, 185 (Fla. 2d DCA 1997) (citing *State ex rel. Cahn v. Mason*, 4 So. 2d 255, 258 (Fla. 1941)). The Florida Family Law Rules of Procedure contain an exception, however, for situations in which a party is required to perform an act. See Fla. Fam. L. R. P. 12.570(c)(2).

Accordingly, contempt proceedings for failure to secure a post-divorce payment obligation are legal. See *Roth v. Roth*, 973 So. 2d 580, 591–92 (Fla. 2d DCA 2008) (holding contempt proper where former husband failed to sign a note and mortgage to secure his equitable distribution obligations); *Riley v. Riley*, 509 So. 2d 1366, 1370 (Fla. 5th DCA 1987) (finding contempt proper where former husband failed to satisfy life insurance obligations). Factually, Former Husband contends he does not have control over the trusts that own his life insurance policies, and he has transferred his company shares to avoid foreclosure. The trial court disposed of the first argument in its final judgment, which we have affirmed. The second contention illustrates yet another—potentially purposeful¹—violation of the final judgment.

On remand, the trial court should conduct an evidentiary hearing to determine whether to hold Former Husband in contempt for his failure to comply with the final judgment. If it elects to proceed with civil contempt proceedings, it should be mindful that it is required to give Former Husband proper notice and opportunity to be heard. See Fla. Fam. L. R. P. 12.615; *Allman v. Johnson*, 488 So. 2d 884, 885 (Fla. 5th DCA 1986) (“One who fails to obey a valid court order is always entitled to notice and hearing relating thereto, including an opportunity to present any defense thereto, before he is finally adjudicated in contempt.”). Upon a finding of indirect civil contempt, the trial court is not

¹ The parties agreed to subordinate Former Wife’s security interest to a marital debt Former Husband owed to his company, and for which he assumed responsibility under the final judgment. So perhaps some defensible financial reason explains why he transferred his interest despite the final judgment’s clear admonition to the contrary. It is harder, however, to imagine a meritorious reason why he took this action without notice to Former Wife. Notice would have at least allowed her to question the propriety, necessity, and value of Former Husband’s transfer. Instead, it appears Former Husband extinguished an obligation he owed to his own company while saving the company foreclosure litigation costs.

bound by its previously threatened forty-five-day jail sentence, but any incarcerative period must be accompanied by a purge amount that Former Husband has the present ability to pay. See generally William H. Burgess, III, 16 Fla. Prac. *Sentencing* § 13:41 (2019 ed.) (“There is no general rule of procedure governing all indirect civil contempt proceedings, but [Fla. Fam. L. R. P.] 12.615, dealing with contempt in support matters, provides the model to be followed.”); *Lake Worth Utils. Auth. v. Haverhill Gardens, Ltd.*, 415 So. 2d 125, 127 (Fla. 4th DCA 1982) (“[T]he essence of contempt is violation of a court order that the contemnor was able to comply with.”). If the trial court elects to proceed with criminal contempt proceedings, it should strictly adhere to the appropriate rule and be mindful that Former Husband has all the due process rights of a criminal defendant. See Fla. R. Crim. P. 3.840.