

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

ADAM BISS,

Appellant,

v.

Case No. 5D19-1112

DEVONA CODY BISS,

Appellee.

_____ /

Opinion filed March 13, 2020

Appeal from the Circuit Court
for Flagler County,
Christopher A. France, Judge.

David D. Naples, Jr. and John J. Spence, of
Naples & Spence, Attorneys at Law, PLLC,
St. Augustine, for Appellant.

Alicia R. Washington, of Alicia R.
Washington, P.A., Bunnell, for Appellee.

EVANDER, C.J.,

Adam Biss (“Former Husband”) appeals an order that: (1) denied his motion to vacate a qualified domestic relations order (“QDRO”); and (2) found him in contempt for improperly claiming both of the parties’ children as exemptions on his 2017 tax return. Because of the lack of a transcript, we can only address errors that appear on the face of the record. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla.

1979) (holding lack of transcript to be fatal flaw where appellate court could not conclude that trial court erred without knowing factual context). We affirm, without discussion, the trial court's denial of Former Husband's motion to vacate the QDRO and its decision to find Former Husband in contempt of court. We conclude, however, that the contempt sanction imposed by the trial court was improper.

In 2016, the court approved the parties' agreement to modify the final dissolution judgment with respect to claiming tax exemptions, as follows:

Father shall be entitled to claim [S.B.] for purpose of the dependency deduction and the Mother shall be entitled to claim [C.B.] for the purpose of the dependency deduction[.] When only one child is eligible to be claimed, the parties shall rotate claiming the remaining child yearly giving first rotation to the parent who did not claim [C.B.] the year prior.

Although the parties' oldest child had reached the age of majority in 2017, it was undisputed that both children were eligible to be claimed as tax exemptions for that tax year. After determining that Former Husband violated the modification order by taking both children as tax exemptions for 2017, the trial court ordered, as a sanction, that Devona Biss ("Former Wife") "shall claim ALL eligible offspring . . . as tax dependents for the next four (4) tax years." This was error.

Contempt may be either civil or criminal. See *Parisi v. Broward Cty.*, 769 So. 2d 359, 363 (Fla. 2000). In the instant case, the contempt process utilized was for civil contempt. Punishment for civil contempt is remedial and for the benefit of the complainant. *Id.* at 364. "Judicial sanctions in civil contempt proceedings may . . . be employed for either or both of two purposes; to coerce the [contemnor] into compliance with the court's order, and to compensate the complainant for losses sustained." *United States v. United Mine Workers of Am.*, 330 U.S. 258, 303–04 (1947); see also *Nical of*

Palm Beach, Inc. v. Lewis, 815 So. 2d 647, 650 (Fla. 4th DCA 2002). If compensation is intended, the sanction imposed must be based on evidence of the injured party's actual loss. *Parisi*, 769 So. 2d at 366. Here, the sanction imposed by the trial court went beyond compensating Former Wife for her actual loss. Accordingly, the contempt sanction ordered below is reversed. On remand, the trial court shall impose a sanction that fairly compensates Former Wife for her actual loss.

AFFIRMED, in part; REVERSED, in part; and REMANDED.

WALLIS and TRAVER, JJ., concur.