

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

GIOVANNI SIMON COHEN PIRELLI,
Appellant,

v.

PATRICIA C. BOLANOS,
Appellee.

No. 4D09-3008

[February 16, 2011]

PER CURIAM.

We affirm as to all issues raised by the former husband including the trial court's finding that the former husband was in contempt. However, the trial court's order of incarceration is erroneous in light of its failure to specify the basis for its finding that the former husband had the financial ability to pay the purge amount. *See Martyak v. Martyak*, 873 So. 2d 405, 407 (Fla. 4th DCA 2004) (holding that to incarcerate an alleged contemnor for failing to pay court ordered support, the trial court must "make separate affirmative findings that [the alleged contemnor] has the ability to pay the purge amount, *and the basis for such ability*") (emphasis added). We therefore reverse the order of the trial court to that extent and remand for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings consistent with this opinion.

POLEN, CIKLIN and LEVINE, JJ., concur.

* * *

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Catherine M. Brunson, Judge; L.T. Case No. 502003DR010483XXXXMB FC.

Robin Bresky, Boca Raton, for appellant.

Lewis Kapner of Kapner, Calebrese & Kapner, P.A., West Palm Beach,
for appellee.

Not final until disposition of timely filed motion for rehearing.