

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOSEPH G. NEWMAN,)
)
 Appellant,)
)
v.)
)
DIANE E. NEWMAN n/k/a DIANE E.)
PORRINO, and DEPARTMENT OF)
REVENUE,)
)
 Appellees.)
_____)

Case No. 2D19-1672

Opinion filed October 23, 2020.

Appeal pursuant to Fla. R. App. P. 9.130
from the Circuit Court for Polk County;
Reinaldo Ojeda, Judge.

Debra J. Sutton of Sutton Law Firm, Bartow,
for Appellant.

Ralph B. Fisher of Fisher's Law Office,
P.A., Lutz, for Appellee Diane Elizabeth
Newman n/k/a Diane E. Porrino.

Ashley Moody, Attorney General,
Tallahassee, and Toni C. Bernstein, Senior
Assistant Attorney General,
Tampa, for Appellee Department of
Revenue.

KELLY, Judge.

Joseph Newman (the former husband) appeals from the order on the Former Wife's Petition for Modification and Motion for Contempt and the denial of his motion for rehearing. We affirm in part and reverse in part.

Upon request of the former husband, this court relinquished jurisdiction so that the trial court could address the former husband's pending Amended and Supplemental Motion for Relief from Judgment. After the trial court obtained jurisdiction, the court granted the former husband's motion and proceeded to vacate orders rendered on September 22 and 29, 2017, on enforcement of child support. The former husband contends that as a result of the vacation of the orders ab initio, a valid enforcement order was never in effect and therefore he cannot be held in contempt of a nonexistent order. He urges this court to reverse the trial court's finding of contempt and to order the return of his wages intercepted by the Department of Revenue pursuant to the now-vacated 2017 enforcement orders.

The former husband has continued to pursue his dispute of his garnished wages in the trial court simultaneously with his pursuit of this appeal. Consequently, some of the former husband's issues on appeal have been rendered moot. Of the remaining issues, the former husband contends that the trial court erred in finding him in contempt and in allowing Diane Porrino (the former wife) to keep the garnished wages.

As to the portion of the order finding the former husband in contempt, we note that the trial court did not impose a coercive sanction or set a purge amount and it reserved jurisdiction to determine the former husband's ability to pay, pending

documentation of the former husband's disability. As such, no valid contempt order was ever rendered. See Fla. Fam. L. R. P. 12.615(e); Porush v. Porush, 23 So. 3d 1284, 1285 (Fla. 4th DCA 2010) (reversing a civil contempt order because it failed "to include a purge amount and a finding of the former husband's present ability to pay it").

Regarding the wages intercepted by the Department of Revenue, we express no opinion as to the propriety of the trial court's recent order vacating the orders rendered in September 2017, as that order is not the subject of this appeal. Also, as a result of proceedings in the trial court since the pendency of this appeal, entitlement to the garnished wages cannot be determined from the existing record. A review of the record presently before this court shows that the former husband was ordered to pay \$101 per week by the final judgment of dissolution of marriage. He has paid little or no child support since the final judgment was rendered in 2007. As of 2017 the former husband had amassed over \$54,000 in arrearages despite being gainfully employed until 2018. The trial court found that any alleged agreement by the parties to waive child support, if it existed, was against public policy and therefore void.

We affirm the trial court's findings that the provisions of the final judgment are in full force and effect and that there was no valid waiver of the obligation to pay child support. See State Dep't of Revenue v. Ortega, 682 So. 2d 589, 590 (Fla. 2d DCA 1996) (stating that an agreement for the mother to waive child support in exchange for the father's agreement to waive visitation violated public policy). However, because the order fails to determine the former husband's current financial situation and his child support obligation, we reverse and remand for further proceedings.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion.

SILBERMAN and MORRIS, JJ., Concur.