DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LION LIOR HASON,

Appellant,

v.

JUDITH PARTOUCHE HASON,

Appellee.

No. 2D22-1396

August 18, 2023

Appeal from the Circuit Court for Pinellas County; Frederick L. Pollack, Judge.

K. Dean Kantaras of Kantaras Law Firm, Palm Harbor, for Appellant.

No appearance for Appellee.

CASANUEVA, Judge.

On the surface of the record and the order before us, the issue is whether the trial court properly adjudicated the Former Husband, Lion Lior Hason, to be in contempt. Beneath the surface a different issue hides, and it is one that we find necessary to discuss. The issue is the extent or limit of judicial authority to craft an appropriate remedy in these circumstances.

We explain.

I. Factual Background

The parties' fourteen-year marriage was dissolved by a final judgment entered on January 11, 2019, which incorporated the parties' martial settlement agreement. Prior to dissolution, the parties had four children together. And pursuant to the marital settlement agreement, the Former Husband was obligated to pay $5,000 a month in support payments—$2,000 in permanent periodic alimony and $3,000 in child support—until May 31, 2031. Payments were to be made through the Florida Disbursement Unit starting February 1, 2019. The Former Husband also agreed to purchase a home for the Former Wife and pay her $2,000 per month for rent as additional nontaxable alimony until a home was purchased—totaling $7,000 in payments per month to the Former Wife.

Shortly after the final judgment was entered, the Former Wife filed an amended motion for contempt and enforcement and a second motion for civil contempt and enforcement. Both motions were heard on December 22, 2020.[1] In a written order entered December 29, 2020, the circuit court denied the Former Wife's motions without prejudice as to the contempt issue but granted the motions to the extent the Former Wife sought enforcement of the existing final judgment. In pertinent part, the December order stated that the Former Husband shall pay child support and alimony obligations through the Florida State Disbursement

[1] The Former Wife and the Former Husband were pro se at the time of the hearing. However, the Former Husband did not appear at the hearing, which was conducted via video conference. The Former Husband received proper notice of the hearing.

Unit and that no credit would be given for any payment not made through the Disbursement Unit.

On December 27, 2021, the Former Wife filed an amended motion for contempt and enforcement alleging, among other things, that the Former Husband failed to make full support payments and that any payments received were not paid through the Disbursement Unit. During an evidentiary hearing on the motion, the Former Wife presented evidence that the Former Husband made partial payments totaling $55,575.37 directly to the Former Wife in 2021.[2] Because the Former Husband did not make payments through the Disbursement Unit as ordered by the final judgment and the December order, the circuit court determined that the Former Husband would receive no credit for the support payments made directly to the Former Wife in 2021—that is $24,000 in alimony and $9,000 in child support.[3] The circuit court found the Former Husband in contempt and ordered him to make the support payments through the Disbursement Unit. Thus, to purge the contempt, the Former Husband would be required to repay $33,000 of

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[2] The Former Wife provided the circuit court with a detailed spreadsheet of payments she received from the Former Husband. The spreadsheet indicated that the Former Husband was required to pay a total of $84,000 in support payments—including the rent payments—in the year 2021. And according to the Former Wife, the Former Husband paid $55,575.37 directly to her and still owed her $28,424.63 in unpaid support payments.

[3] The circuit court's order did not include the $2,000 per month rent payments in its calculation of what was due and owing as those payments could be paid directly to the Former Wife. And the court included only the first three months of payments for child support because the Former Husband filed a Supplemental Petition to Modify Final Judgment on March 11, 2021, which was still pending before the court.

support payments.[4] The court further found that the Former Husband had the present ability to satisfy the delinquent obligation in full.

Our concern stems from the power, or lack thereof, to craft such a punishment. As discussed below, the court's inherent judicial powers are not limitless. The remedy fashioned by a court must have a rational nexus to the wrong it seeks to correct.

II. History of the Judiciary's Inherent Powers

As identified by the United States Supreme Court, the existence of certain inherent powers within our courts have long been recognized as "powers 'which cannot be dispensed with . . . because they are necessary to the exercise of all others.' " *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *United States v. Hudson*, 11 U.S. 32, 34 (1812)); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (" '[I]nherent power,' [is] governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."). Among the recognized inherent powers is the power to punish for contempt. *Chambers*, 501 U.S. at 44. This contempt power extends to "conduct before the court and [conduct] beyond the court's confines." *Id.* In fact, the concern that orders of the judiciary would be disobeyed, regardless of whether it impacted the decorum within the court, "gave rise to the contempt power." *Id.* (quoting

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[4] Because the circuit court determined that the Former Husband owed $33,000 in support payments for 2021, his total obligation at the time of the hearing, including rent ($24,000), would have been $57,000. The spreadsheet provided by the Former Wife did not indicate what funds were allocated to rent versus what funds were allocated to the child support and alimony payments. However, if the Former Husband was given credit for rent payments out of the $55,575.37 he paid directly to the Former Wife, there is evidence that the Former Husband gave at least $31,575.37 in support payments directly to the Former Wife.

Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 798 (1987)).

More recently, in *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016), the Court stated that while it had not precisely determined the outer boundaries of a court's inherent powers, "the Court has recognized certain limits on those powers." The Court looked to two principles to define those limits. "First, the exercise of an inherent power must be a 'reasonable response to the problems and needs' confronting the court's fair administration of justice." *Id.* (quoting *Degen v. United States*, 517 U.S. 820, 823-24 (1996)). And second, "the exercise of an inherent power cannot be contrary to any express grant of or limitation on the . . . court's power contained in a rule or statute." *Id.* Thus, "an inherent power must be a reasonable response to a specific problem and the power cannot contradict any express rule or statute." *Id.* at 46.

The inherent power of the judiciary has also been long recognized in Florida. In 1923, the Florida Supreme Court stated that

> courts and judges have, under constitutional government, inherent power by due course of law to appropriately punish by fine or imprisonment or otherwise, any conduct that in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of judicial functions. And appropriate punishment may be imposed by the court or judge whose authority or dignity has been unlawfully assailed.

Ex parte Earman, 95 So. 755, 760 (Fla. 1923). Florida's doctrine of inherent judicial powers was given further substance when our supreme court wrote that the "doctrine of inherent judicial power . . . is a derivative of the concepts of separation of powers and judicial independence. As such, it is a very narrow doctrine positing only that courts have authority to do things that are absolutely essential to the performance of their judicial functions." *Rose v. Palm Beach County*, 361

So. 2d 135, 137 (Fla. 1978). It is the "inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, subject to valid existing laws and constitutional provisions." *Id.* The court warned that "extreme caution should be used by trial courts in seeking solutions to practical administrative problems that have not been resolved or provided for by the [l]egislature." *Id.* at 138.

III. Discussion

The matter before us arises from a civil contempt proceeding for, among other things, the Former Husband's failure to make support payments in accordance with the final judgment of dissolution and the circuit court's December order. "A civil contempt consists in failing to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party . . . ." *Ex parte Earman*, 95 So. at 760. The purpose of a civil contempt proceeding "is to obtain *compliance* on the part of a person subject to an order of the court." *Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985). And the "use of civil contempt powers for the enforcement of support payments in domestic relations cases has been approved." *Fishman v. Fishman*, 656 So. 2d 1250, 1252 (Fla. 1995) (first citing *Bronk v. State*, 31 So. 248 (Fla. 1901); and then citing *Phelan v. Phelan,* 12 Fla. 449 (1868)).

Here, the final judgment and the December order clearly and precisely required the Former Husband to pay his support obligations through the Disbursement Unit. The December order also clearly states that "[n]o credit for payment will be given to the [Former Husband] for any payment not made payable to the State of Florida State Disbursement Unit. No credit for payment will be given to the [Former Husband] for any payment given directly to the Former Wife." The

evidence provided to the circuit court clearly demonstrates that the Former Husband violated the circuit court's orders by making payments directly to the Former Wife, not the Disbursement Unit, and that he had the ability to comply but willfully refused. *See Varner v. Varner*, 356 So. 3d 312, 313 (Fla. 5th DCA 2023) (stating that a court may hold a party in contempt for violating a court order where the order is clear and precise, the party's behavior is in violation of the order, and the party has the ability to comply but refuses to do so). Therefore, the circuit court properly found the Former Husband in indirect, willful, civil contempt for his failure to make the support payments through the Disbursement Unit and thereby failing to comply with prior court orders. The circuit court was required to fashion a reasonable response to address this failure.

It is important to note that a majority of the support payments which the Former Husband received no credit for were received by the Former Wife. And as discussed above

> [p]unishment for contempt of court is allowed to be imposed, not to satisfy an offended judge, but to vindicate the authority and dignity of the judicial office; and the penalty should have reference to the nature and enormity of the act complained of and to the wrong done to the court.

Ex parte Earman, 95 So. at 761. Civil contempt proceedings, such as the one before this court, "leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct." *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994). This power must be exercised reasonably in response to the problem. *See Dietz*, 579 U.S. at 45. Here, the remedy fashioned by the circuit court to address the Former Husband's failure to pay through the Disbursement Unit is concerning. The fair administration of justice is exceeded when the circuit court ignores the historical fact of

payments made and orders an additional sum of a like amount to be paid in penalty. The circuit court's order imposing repayment of child support and alimony obligations in these circumstances does not suggest a "reasonable response" to the problem.

IV. Conclusion

Our ability to address the issue of inherent authority is foreclosed by the law of preservation of error and by the law governing the preservation of an alleged fundamental error for appellate review.

We cannot help but recall the prescient observation made over a century ago by Justice Benjamin Cardozo: "The judge . . . is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness." Benjamin N. Cardozo, The Nature of the Judicial Process, 141 (1921).[5] Were we permitted to roam this judicial ground we would conclude that the order on appeal exceeds the power afforded by the inherent authority of the trial court.

Accordingly, albeit reluctantly, we affirm.

Affirmed.

MORRIS and LUCAS, JJ., Concur.

Opinion subject to revision prior to official publication.

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[5] Also cited in *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).