

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

May 16, 2008

WILLIAM L. WILBUR, III,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D07-2996
	)	
ROSALIE M. WILBUR, n/k/a	)	
ROSALIE M. MARTIN,	)	
	)	
Appellee.	)	
_____	)	

BY ORDER OF THE COURT:

Appellant's motion for rehearing, motion to supplement record, and request for written opinion is granted to the extent that the opinion dated January 4, 2008, is withdrawn, and the attached opinion is substituted therefor. The motion for rehearing is denied in all other respects.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRKHOLO, CLERK

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

WILLIAM L. WILBUR, III, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 ROSALIE M. WILBUR, n/k/a )  
 ROSALIE M. MARTIN, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Case No. 2D07-2996

Opinion filed May 16, 2008.

Appeal from nonfinal order of the Circuit  
Court for Pinellas County; Cynthia J.  
Newton, Judge.

Douglas M. Buchwalter, Clearwater, for  
Appellant.

William A. Borja, Clearwater, for Appellee.

ALTENBERND, Judge.

William Wilbur appeals an order in a postdissolution proceeding that holds him in civil contempt for willful failure to pay support payments to his former wife, Rosalie M. Martin. We affirm the trial court's finding that Mr. Wilbur owed Ms. Martin \$61,806.80 at the time the contempt order was entered and that he owned real estate

with sufficient accessible equity to give him the ability to pay this amount as a purge. Under the circumstances presented, the undisputed fact that the real estate from which he might obtain an equity loan to satisfy his obligation is homestead does not protect Mr. Wilbur as a matter of law from this obligation. See Gepfrich v. Gepfrich, 582 So. 2d 743 (Fla. 4th DCA 1991).<sup>1</sup> To the extent Mr. Wilbur expresses concern on appeal that he may be unable to procure such a loan despite his best efforts, we note that the order on appeal contains the language required by Family Law Rule of Procedure 12.615(e). If a writ of bodily attachment were to issue based upon Mr. Wilbur's failure to pay the purge, it would require a hearing within forty-eight hours at which evidence in this regard could be presented.<sup>2</sup>

Affirmed.

STRINGER and DAVIS, JJ., Concur.

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<sup>1</sup> Notably, the current order does not place a lien on the property nor require a forced sale; it simply recognizes that the equity in the homestead, equity Mr. Wilbur has tapped into for other reasons, provides evidence of his ability to pay his support obligation to his former wife.

<sup>2</sup> There is no doubt that even in the absence of a home equity loan, Mr. Wilbur has some ability to make payments on his outstanding obligation. It may therefore behoove Mr. Wilbur to make good faith payments on the amount due while attempting to obtain the larger purge amount—something Mr. Wilbur has resisted doing since 2003 when the obligation was declared nondischargeable.