STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1632

In re the Matter of: Jessica Leah Weiss, petitioner,
Respondent,

Hennepin County, intervenor,
Respondent,

vs.

Alfred Aaron Griffin,
Appellant

Filed April 17, 2017
Affirmed
Hooten, Judge

Hennepin County District Court
File No. 27-PA-FA-08-558

Sonja M. Nyberg, Metzger & Nyberg, LLC, Minneapolis, Minnesota (for respondent)

Michael O. Freeman, Hennepin County Attorney, Theresa Farrell-Strauss, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

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Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

In this contempt dispute arising out of appellant's failure to pay child support, appellant argues that the district court abused its discretion by modifying his purge conditions and partially revoking the stay of execution of his contempt sentence. We affirm.

FACTS

Appellant Alfred Aaron Griffin and respondent Jessica Leah Weiss are the parents of one minor child. Griffin was ordered to pay child support to Weiss. In an order filed on February 8, 2013, the district court found Griffin in constructive civil contempt of court for failing to pay child support. The district court sentenced Griffin to serve 90 days in jail, but stayed execution of the sentence provided that Griffin "complies with purge conditions that will be set by the [district] [c]ourt from time to time." The initial purge conditions set by the district court required Griffin to pay $900 per month toward his child support obligation.[1]

At a review hearing held on November 2, 2015, the county sought revocation of the stay of execution of the jail sentence. At the hearing, the county and Griffin agreed that Griffin was $9,400 behind in purge payments. Because Griffin argued that he had a good faith basis for nonpayment of the purge payments, the district court scheduled a hearing to determine if Griffin's nonperformance was excusable. The district court also ordered

[1] Because the purge payments of $900 were less than Griffin's monthly child support obligation, his arrears increased during the time when he was paying $900 monthly.

Griffin to disclose to the county and Weiss' counsel financial details relating to the estate of Griffin's recently deceased father.

On December 10, 2015, the county moved for a restraining order preventing Griffin from "spending, transferring, or dissipat[ing] . . . the $100,000 distributed to him" from his father's trust.[2] The hearing was held the following day, and the county served its motion for the restraining order on Griffin at the beginning of the hearing. At the hearing, the county noted that Griffin had paid $11,200 the previous day, bringing him current with his purge payments through December 2015. The county therefore withdrew its request for revocation of the stay of execution, but suggested that the district court increase the amount of Griffin's monthly purge payments. Because the county was no longer seeking revocation of the stay, instead of focusing on whether Griffin's nonperformance was excusable, the hearing focused on two issues: (1) whether it was appropriate to modify the purge condition in the contempt order by increasing the amount of Griffin's purge payments and (2) whether the district court should grant the county's motion for the restraining order preventing Griffin from spending or dissipating his inheritance.

At the hearing, Griffin testified that he had eschewed the $100,000 received from his father's estate in favor of the child. Griffin stated that he put the entire $100,000 in

[2] An investigator employed by the Hennepin County Attorney's Office obtained a December 1, 2015 order from a Nebraska state district court that ordered U.S. Bank to disburse $100,000 to Griffin and an additional $50,000 to Griffin as custodian of the child. The investigator stated in her affidavit that she verified with U.S. Bank that it had dispersed the funds of the trust of Griffin's father and that Griffin had received $100,000.

three separate educational accounts for the child, but was unable to provide any documentation regarding the accounts.

Following the hearing, the district court increased Griffin's purge payment to $1,611.60 per month, 120% of Griffin's child support obligation at that time. The district court ordered that Griffin provide the county and Weiss' attorney with documentation regarding the funds Griffin received related to his father's death and ordered that Griffin was restrained from spending, transferring, or dissipating any of the funds he had or would in the future receive related to his father's death.

On February 17, 2016, the county again moved to revoke the stay of execution and moved for an order requiring Griffin to pay the arrearages "in full by a date certain within a reasonable time subsequent to the hearing" or, in the alternative, to place the $100,000 that he received from his father's estate into escrow in order to ensure timely payment of child support. In an affidavit attached to the motion, the attorney representing the county stated that the county had obtained copies of two checks totaling $100,000 that U.S. Bank had issued to Griffin on December 2, 2015, and that Griffin had failed to provide any information or documentation regarding his receipt of the $100,000. In an affidavit submitted in connection with his memorandum in opposition to the county's motion, Griffin represented that he had spent $99,216.80 of the money that he received from his father's estate, including $50,000 that he placed in five educational accounts for the child.

After a hearing on April 11, 2016, the district court issued an order finding that Griffin had "been given ample opportunities to provide credible documentation regarding his income, his ability to pay, and his inheritance" from his father's estate. The district

court determined that Griffin lives in a residence that is owned or paid for by a trust, his living expenses are paid for by a trust, and he is not disabled from working. Based on these findings, along with Griffin's unwillingness to provide information regarding his income and assets, the district court ordered Griffin to pay $50,000 towards his arrears by May 11, 2016 and to continue to pay $1,611.60 per month as a purge condition.

Griffin failed to pay $50,000 toward his arrears by the due date. In an affidavit filed June 23, 2016, Griffin stated that he had spent $118,942 of the money that he had received from his father's estate on various expenses. A hearing regarding Griffin's failure to comply with the purge conditions was held on June 28, 2016, and the district court subsequently issued an order on August 24, 2016, finding that Griffin was not in full compliance with his purge conditions and that he had failed to show a good faith effort to comply with such conditions. The district court found that Griffin "had between $150,000 and $200,000 available to him and it is unclear where all of those funds have gone." The district court found that it was more likely than not that incarceration would compel compliance, ordered revocation of 30 days of Griffin's 90-day contempt sentence, and stated that Griffin could obtain release by paying $10,000. Griffin appealed from the April 11, 2016 and August 24, 2016 orders.

D E C I S I O N

The district court has broad discretion to hold a party in civil contempt, and we review the district court's decision for an abuse of discretion. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). "Factual findings of a contempt order will be reversed only if they are clearly erroneous." *Id.*

I. The district court had authority to enforce Griffin's child support obligation.

Griffin argues that the county lacked authority to seek and enforce child support under Minn. Stat. § 393.07, subd. 9 (2016), because Weiss is not receiving public assistance and such statutory authority is only available in cases where a party is receiving public assistance. This argument is without merit.

"[T]he state has a compelling interest in assuring parents provide primary support for their children." *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. App. 1998). Because of this interest, the legislature gave the county the right to intervene as a matter of right "to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of child, medical, and child care support." Minn. Stat. § 518A.49(b) (2016).[3] Moreover, Minn. Stat. § 393.07, subd. 9, provides that if an individual is in default on child support payments, "the local social services agency shall take such steps as may be necessary to compel the person in default on such payments to make them." Such steps may include contempt proceedings. Minn. Stat. § 393.07, subd. 9.

Griffin's argument stems from a misreading of the statute. In relevant part, Minn. Stat. § 393.07, subd. 9, provides:

> The county attorney in . . . contempt proceedings or upon a separate motion supported by order to show cause and affidavits may move the court that any defaults or delinquent payments under such order of support be reduced to a judgment against the defaulting party, and *where the local social services*

[3] Minn. Stat. § 518A.49(b) addresses IV-D cases. "'IV-D case' means a case where a party . . . has applied for child support services under title IV-D of the Social Security Act, United States Code, title 42, section 654(4)." Minn. Stat. § 518A.26, subd. 10 (2016). The record reflects that the county was providing IV-D services in this case.

> *agency or any other public agency has advanced and expended funds to supply the unmet needs of such children* because of such default by failure to pay the court order, such local social services agency or other public agency shall be subrogated and may recover under such judgment.

(Emphasis added). While Griffin reads the emphasized portion of the statute to suggest that the statute only applies to cases involving participants in a public welfare program, the emphasized part of the sentence merely provides a right of subrogation when a child support obligee received public assistance because of the obligor's failure to make support payments. Further, this court has previously held that a "county attorney is authorized to represent a custodial parent in support of [child support] matters even if the parent is not a recipient of public assistance." *Krogstad v. Krogstad*, 388 N.W.2d 376, 384 (Minn. App. 1986) (citing Minn. Stat. § 393.07, subd. 9 (1984)); *see also* 42 U.S.C. § 654(4)(A)(ii) (2012) (requiring that states provide services relating to establishment and enforcement of child support obligations to "any other child, if an individual applies for such services with respect to the child").

Griffin also argues that the county lacked authority to ask for the relief it sought, namely, an order requiring Griffin to either pay the full amount of his arrears as calculated by the county or place $100,000 in escrow. Griffin notes that Minn. Stat. § 393.07, subd. 9, states that the county may move the court to reduce delinquent child support payments to a judgment against the defaulting party in contempt proceedings. We reject this argument. Minnesota law specifically provides that a district court may require an obligor to post security for his obligations.

> In all cases when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them.

Minn. Stat. § 518A.71 (2016). Therefore, the district court could have required Griffin to post security for his obligations even before he failed to make a payment. Moreover, Griffin's argument ignores the fact that it is permissive for the county to seek a judgment under Minn. Stat. § 393.07, subd. 9, as the statute only provides that the county may seek the default payments be reduced to a judgment. *See* Minn. Stat. § 645.44, subd. 15 (2016) ("'May' is permissive.").

II. This court can review the December 11, 2015 order.

Griffin makes a number of procedural and substantive arguments regarding the district court's orders pertaining to his contempt proceedings. Some of Griffin's arguments pertain to events that occurred at the December 11, 2015 hearing and the order issued by the district court following that hearing. While the county and Weiss contend that this court cannot review the December 11, 2015 order, Minn. R. Civ. App. P. 103.04 provides that an appellate court "may review any order affecting the order from which the appeal is taken and on appeal from a judgment may review any order involving the merits or affecting the judgment." The December 11, 2015 order affects the April 11, 2016 and August 24, 2016 orders because it provides the increase in the purge payments, which contributed to the eventual revocation of the stay of execution. Therefore, we conclude that we can address Griffin's arguments regarding the December 11, 2015 order.

III. We need not address Griffin's arguments relating to the ex parte motion for a temporary restraining order.

Griffin argues that he received insufficient notice of the ex parte motion seeking to restrain him from using or transferring the funds received from his father's estate and that the district court granted the motion in violation of the factors provided by *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 137 N.W.2d 314 (1965), for determining whether to grant a temporary restraining order.[4]

The district court did not cite Griffin's expenditure of the funds in violation of the order as a basis for imposing the purge condition that Griffin must pay $50,000 toward his arrears or for partially revoking the stay of execution. Therefore, the temporary restraining order had no effect on the contempt order from which Griffin appeals. Moreover, affidavit evidence submitted by Griffin indicated that he violated the district court's order by spending at least $118,942 of the funds he received in relation to his father's estate. Because Griffin failed to abide by the restraining order, he cannot argue that the restraining order affected his rights in any way. Therefore, we need not decide any issues relating to the ex parte motion.

[4] Griffin argues that the county's request for revocation was moot at the time that the district court partially revoked the stay of execution because he was current on his purge conditions at that time. Even if Griffin was current on his monthly purge payment, it is undisputed that he failed to pay $50,000 toward his arrears, as required by the district court's April 11, 2016 order.

IV. The district court did not abuse its discretion by increasing Griffin's purge condition.

Griffin raises a number of arguments challenging the district court's increase of his monthly purge condition from $900 to $1,611.60. None of these arguments has merit.

First, Griffin argues that he received no notice that the county was going to attempt to increase the amount of his monthly purge payments at the December 11, 2015 hearing. However, the initial contempt order stated that the execution of Griffin's sentence was stayed provided that Griffin complied with the purge conditions the district court would set "from time to time." The order then specified that it was setting "[t]he *present* purge conditions." (Emphasis added). Griffin was on notice from the district court's original order that Griffin's purge conditions could be modified at any time.

Griffin next argues that the district court made insufficient findings in increasing his purge payments. When holding an individual in contempt, a district court must satisfy certain procedural requirements, including that the district court may not compel a person to do something he is wholly unable to do, but the contemnor has the burden of proving inability.[5] *Hopp v. Hopp*, 279 Minn. 170, 174–75, 156 N.W.2d 212, 216–17 (1968).

At the December 11, 2015 hearing, the district court heard testimony regarding Griffin's income, assets, and employment. Following the hearing, the district court

[5] Griffin also contends that some of the other *Hopp* factors were not met with regard to the December 11, 2015 hearing and order, but the *Hopp* factors largely apply to the initial determination of whether an individual is in civil contempt and were fulfilled when the district court issued its initial contempt order in February 2013. The only factor at issue at the December 11, 2015 hearing was whether Griffin had the ability to pay an increased monthly purge condition.

determined that, based on testimony indicating that Griffin lives in a house that is owned or paid for by a trust, that Griffin's living expenses are paid for by a trust, and that Griffin is not disabled from working, Griffin was able to pay 120% of his child support obligation. Given Griffin's lack of expenses and ability to work, we conclude that the district court did not abuse its discretion in increasing Griffin's monthly purge obligation.

V. Griffin failed to show that the referee was biased.

Griffin contends that the referee who presided over the December 11, 2015 hearing was biased and that the referee's bias taints the referee's December 11, 2015 order increasing the amount of Griffin's monthly purge condition. Griffin argues that the referee improperly interfered with the county attorney's questioning of him and stated a number of times on the record that he did not believe Griffin's testimony.

We presume that a district court judge or referee discharged his or her duties properly and without bias. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). An allegation of judicial bias "must be proved in light of the record as a whole." *Id.* Notably, in this case Griffin only provided the transcript of the December 11, 2015 hearing, not any of the previous hearings that the referee presided over. *See In re Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003) ("On appeal, the duty to provide a transcript is on the party seeking review of the rulings being challenged.").

Nevertheless, the transcript shows that Griffin repeatedly interrupted the referee during the December 11, 2015 hearing, was evasive in testifying, and provided incomplete or nonresponsive answers to the questions of the county attorney and the referee. The referee's comments reflect that he was frustrated by Griffin's evasive behavior, but do not

indicate that he was biased against Griffin. Griffin's assertions of bias are not supported by the record, and he fails to overcome the presumption that the referee discharged his duties properly.

VI. The district court did not abuse its discretion in ordering that Griffin pay $50,000 toward his arrears.

Griffin argues that the district court abused its discretion by ordering him to pay $50,000 toward his arrears within 30 days while knowing that Griffin did not have the ability to make such a payment. In its order, the district court found that Griffin had recently received $100,000, was evasive regarding his income, had no living expenses, and was not disabled from working. Given these findings, the district court did not abuse its discretion in ordering that Griffin pay $50,000 toward his arrears.

VII. The district court did not err in ordering that Griffin could effectuate his release by making a $10,000 payment.

Next, Griffin argues that in its August 24, 2016 order partially revoking the stay of execution of Griffin's contempt sentence, the district court failed to find that he was able to make a $10,000 payment to effectuate his release. However, the district court found that Griffin "had between $150,000 and $200,000 available to him and it is unclear where all of those funds have gone."[6] It is clear that the district court determined that Griffin had the

[6] At oral argument, Griffin argued that the district court's finding that he had between $150,000 to $200,000 in his control was not supported by the record, pointing to his testimony at the December 11, 2015 hearing regarding $100,000 he received from his father's estate. However, Griffin only ordered transcripts from the December 11, 2015 hearing. In the absence of transcripts of the other hearings, including the June 28, 2016 hearing, "[w]e are limited to determining whether the trial court's findings of fact support its conclusions of law." *Am. Family Life Ins. Co. v. Noruk*, 528 N.W.2d 921, 925 (Minn.

ability to make the $10,000 payment based on his control of between $150,000 and $200,000. Moreover, Griffin had the burden of proving his inability to pay, which he did not meet. *Hopp*, 279 Minn. at 175, 156 N.W.2d at 217. Additionally, while Griffin argues that the district court failed to find how he can pay $10,000 to secure his release, "there is no statutory requirement that the court determine how an obligor access the money necessary to meet the purge conditions, only that it determine the obligor is able to meet them." *Crockarell*, 631 N.W.2d at 837.

VIII. The district court's failure to determine the amount of arrears does not invalidate the district court's order.

Griffin mentions several times in his brief that the district court never determined the amount of his arrears and suggests that the lack of a determination as to the amount of arrears invalidates the district court's orders. The amount of arrears has been in dispute since the initial contempt order. At that time, the district court noted that while the county claimed that Griffin was in arrears in the amount of $50,673.53, Griffin contended that he had made payments that the county had failed to record and the amount of arrears were somewhere between $30,000 and $40,000. The district court did not determine the amount of arrears at that time. In its July 11, 2014 order, the district noted that it had previously directed Griffin's counsel to bring a formal motion to address the amount of arrears, but Griffin's counsel failed to do so. The district court then ordered that Griffin file a motion if he wanted to challenge the county's accounting of arrears. In its December 11, 2015

App. 1995), *review denied* (Minn. Apr. 27, 1995). Moreover, Griffin's June 2016 affidavit stated that he had spent almost $119,000 that he had received from his father's estate.

order, the district court ordered that the county "serve and file a motion for a final determination of existing arrears," but the county never made such a motion and the district court never determined the amount of arrears.

However, the fact that the district court did not determine the amount of arrears does not affect the validity of the contempt orders. First, Griffin failed to file a motion challenging the county's calculation of arrears. And, at the time that the county moved that the district court require Griffin to pay his arrears, in February 2016, the county presented affidavit evidence of a child support officer indicating that the total arrears at that time were $75,417.61. Moreover, the district court only ordered that Griffin pay $50,000 toward his arrears, not the $75,417.61 that the county alleged he owed. Given that Griffin had admitted over three years earlier that he was in arrears in the amount of $30,000 to $40,000 and made no arguments regarding erroneous calculations of the county with regard to arrears accrued after the initial contempt hearing, the district court did not err in ordering that Griffin pay $50,000 toward his arrears without determining the exact amount of the arrears.

In conclusion, because Griffin has failed to show that the district court erred in increasing the amount of his monthly purge payments or in requiring him to make a payment of $50,000 toward his arrears, we affirm the district court's partial revocation of the stay of Griffin's contempt sentence.

Affirmed.