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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-61**

County of Anoka, ex rel Alena M. Hubacher,
Appellant,

vs.

Djan M. Davis,
Respondent.

**Filed January 15, 2008
Affirmed
Klaphake, Judge**

Anoka County District Court
File No. F8-04-10686

Robert M.A. Johnson, Anoka County Attorney, D. Marie Sieber, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, 7th Floor, Anoka, MN 55303 (for appellant)

Kelly C. Wolford, Anoka Professional Building, 403 Jackson Street, Suite 300, Anoka, MN 55303 (for respondent)

Alena M. Hubacher, 600 Central Avenue W., #110, St. Paul, MN 55103

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and Worke, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant County of Anoka, appearing on behalf of Alena M. Hubacher, challenges the district court's denial of its motion to hold respondent, Djan M. Davis, in

contempt for failure to pay child support. Because the record provides support for the decision, we conclude that the district court did not abuse its discretion, and we affirm.

D E C I S I O N

We review the district court's civil contempt order under an abuse of discretion standard and its findings of fact for clear error. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001).

The purpose of civil contempt proceedings is to induce future performance, not to punish past nonperformance. *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). In order to find a party in civil contempt, (1) the district court must have jurisdiction over the subject matter and person; (2) the court order must clearly define the acts the party must perform; (3) the party subject to the order must have notice and time to reply; (4) the party seeking compliance must apply to the court, giving specific grounds for the complaint; (5) the party charged with nonperformance must be afforded a hearing and be given the opportunity to show compliance or reasons for failure; (6) the district court must determine whether there was a failure to comply and whether conditional confinement is likely to compel full or partial compliance; (7) confinement must not be ordered if the nonperforming party is wholly unable to perform; the burden of proving this is on the nonperforming party; and (8) if confined, the nonperforming party must be given the opportunity to purge his noncompliance. *Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212, 216-17 (1968).

Although the district court's findings can be described as cursory, it is clear from the record that respondent had multiple medical problems that precluded him from

working for periods of time, and that he applied for work, notified the county when he obtained employment, cooperated by giving the county additional information about his job so that the county could begin automatic wage withholding, and was accustomed to paying support for two other children through wage withholding. The district court had the opportunity to assess respondent's credibility during his testimony and apparently found him credible. *See* Minn. R. Civ. P. 52.01 (giving due regard to trial court's opportunity to judge credibility of witnesses).

Because civil contempt is intended to induce future performance, rather than punish past nonperformance, the district court must determine whether conditional confinement is reasonably likely to force compliance, and whether the party subject to contempt is wholly unable to perform as ordered. *Hopp*, 279 Minn. at 175, 156 N.W.2d at 217. Respondent is an unskilled laborer who is subject to other monthly child support orders totaling \$795 per month. At the time of the hearing, he was working about 25 hours per week at \$8.00 per hour; there is no indication that he has any assets; he has no apparent skills or training. The district court's findings and order indicate that it did not find respondent to be deliberately and contumaciously ignoring the court's order, particularly because respondent had cooperated with the county in establishing wage withholding, the threat of confinement would not likely improve his compliance, and respondent may be wholly unable to perform.

There is no question that respondent has been dilatory in the payment of support, and we note that a future contempt order may be necessary and appropriate. But under

these limited circumstances, the district court's decision to deny the county's motion for contempt was not an abuse of discretion. We therefore affirm.

Affirmed.