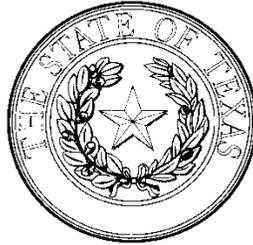


Opinion issued January 6, 2012.



**In The
Court of Appeals
For The
First District of Texas**

NO. 01-11-00336-CV

IN RE CAMERON SHANE CLAUNCH, Relator

Original Proceeding on Petition for Writ of Habeas Corpus

MEMORANDUM OPINION

Relator, Cameron Shane Claunch, has filed a petition for writ of habeas corpus. In three issues, he argues that: (1) the trial court's commitment order is inadequate to legally incarcerate him because it does not contain language directing the sheriff or other ministerial officer to take him into custody and detain him; (2) the trial court issued conflicting commitment orders, or, alternatively, the trial court issued a single commitment order that holds him in contempt for acts

which were not complained of in the motion for contempt; and (3) he cannot be detained on civil, coercive grounds only when he does not have the present ability to pay the funds necessary for his release.

We previously ordered that Claunch be released on bond pending the outcome of this proceeding, and we now grant habeas relief.

Background

Claunch divorced real party in interest Michelle Trevino by a decree of divorce signed on June 12, 2002, which contained a provision requiring Claunch to pay child support to Trevino. Claunch failed to make some of his payments.

Trevino moved to enforce the child support orders in the divorce decree on April 20, 2010. Trevino argued in her motion to enforce that Claunch failed to provide health insurance for his children as required by the divorce decree and that he failed to pay the \$400 monthly child support for the months of July 2002 through March 2010, totaling \$37,200 in overdue child support. Trevino also argued that, pursuant to a July 3, 2007 order, Claunch was required to pay \$1,500 as monthly child support beginning June 1, 2007, totaling \$28,500 in overdue child support. She argued that he had not made those payments for the months of October 2008 through April 2010. She also stated that, based on his past behavior, she believed he would also fail to make future payments and requested that

Claunch be held in contempt and fined for “each failure to comply with the order of the Court from the date of this filing to the date of the hearing on this petition.”

The trial court held a hearing, and, in its June 22, 2010 order of enforcement by contempt and suspension of commitment, it found Claunch in contempt for failing to pay \$1,500 in monthly child support as ordered for February, March, and April 2010 and ordered that he pay \$31,023.70 for past-due child support and medical expenses. The trial court ordered that Claunch be confined for civil contempt, but it suspended commitment and placed Claunch on community supervision for 180 days under the conditions that Claunch pay child support as ordered and maintain health insurance for the children. The parties then entered into an agreed order modifying the amount of Claunch’s child support payments.

Trevino moved to revoke the suspension on February 23, 2011. Trevino asserted that Claunch had committed additional violations by failing to pay the ordered child support payments for the months of June 2010 through February 2011, and she requested that Claunch be committed in accordance with the trial court’s June 22, 2010 order.

On April 7, 2011, the trial court found Claunch guilty of new acts of contempt, including failure to make certain payments from November 2010 through April 2011, and it signed an order revoking the suspension of commitment. The trial court also increased the amount of the judgment against

Claunch to \$40,473.67 plus attorney's fees. Regarding Claunch's punishment for the its finding of civil contempt, the trial court ordered

that Respondent, CAMERON SHANE CLAUNCH, shall be confined in the county jail of Brazoria County, Texas, until Respondent has complied with the following orders [to pay \$40,473.67 in child support arrearage and \$2,583.00 as costs and attorney's fees].

The trial court denied Claunch's petition for writ of habeas corpus, and he then filed a petition for habeas relief in this Court. On April 29, 2011, we issued an order granting him temporary relief.

Analysis

Texas courts of appeals have very limited jurisdiction over habeas corpus proceedings. *See* TEX. GOV'T CODE ANN. § 22.221(d) (Vernon 2004). The purpose of a habeas corpus proceeding is not to determine the ultimate guilt or innocence of the relator, but only to ascertain whether the relator has been unlawfully restrained. *Ex parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979). The presumption is that the contempt order is valid. *In re Turner*, 177 S.W.3d 284, 288 (Tex. App.—Houston [1st Dist.] 2005, orig. proceeding). A writ of habeas corpus issues if a trial court's contempt order is beyond the court's power or if the court did not afford the relator due process of law. *Id.* (citing *In re Henry*, 154 S.W.3d 594, 596 (Tex. 2005)). The relator bears the burden of showing that he is entitled to relief. *Id.* On review, we do not weigh the proof and determine whether it

preponderates for or against the relator; we determine only whether the contempt order is void. *Ex parte Chambers*, 898 S.W.2d 257, 259–60 (Tex. 1995).

In his second issue, Claunch argues in part that the trial court issued a commitment order that holds him in contempt for acts that were not complained of in the motion for contempt. Essentially, Claunch argues that the trial court’s April 7, 2011 order is void because it lists two violations for failure to make child support payments that occurred after Trevino filed her motion to revoke, violating his due process rights. We agree.

In her February 23, 2011 motion to revoke, which sought enforcement of the trial court’s prior child support orders, Trevino alleged that Claunch failed to pay the ordered child support payments for the months of June 2010 through February 2011. The trial court’s April 7, 2011 order found that Claunch violated its previous support order by failing to make certain payments from November 2010 through April 2011. By virtue of Trevino’s motion to revoke, Claunch was on notice that Trevino was charging him with having missed payments through February 2011. The trial court’s contempt findings included two alleged violations—failure to pay in March 2011 and in April 2011—of which the motion to revoke did not put him on notice.

A motion for contempt is comparable to an indictment or information and complaint charging several different misdemeanors. *Ex parte Chunn*, 933 S.W.2d

534, 535 (Tex. App.—Houston [1st Dist.] 1995, orig. proceeding) (citing *Ex parte Oliver*, 736 S.W.2d 277, 278 (Tex. App.—Fort Worth 1987, orig. proceeding)). A criminal defendant in a misdemeanor case may not be convicted of an offense which occurs after the date of filing of the information. *Oliver*, 736 S.W.2d at 278. A trial court finding that an alleged contemnor is guilty of an offense occurring after the filing of a motion for enforcement is void. *Chunn*, 933 S.W.2d at 535. Here, because the trial court found Claunch guilty of contempt for not making the March 2011 and April 2011 child support payments, offenses that occurred after Trevino filed her motion to revoke the suspension and to enforce the child support orders, those findings are void. Because the payments for March and April 2011 constitute a portion of the child support arrearage on which the trial court based its civil-coercive confinement, we hold that the trial court’s April 7, 2011 commitment order is void. *See id.*

Trevino argues that she sufficiently pled future violations to provide Claunch with notice by including in her first amended motion for enforcement a statement that “[Trevino] believes, based on the conduct of [Claunch], that [he] will continue to fail to comply with the order” and a request that Claunch “be held in contempt and fined for each failure to comply with the order of the Court from the date of this filing to the date of hearing on this petition.” In *Ex parte Occhipenti*, this Court held that when a motion for contempt pled that the relator

had repeatedly violated a trial court's order and that future violations of a similar nature might arise between the filing of the motion and the date of the contempt hearing, the relator had sufficient notice that the real party in interest intended to have him held in contempt for his contemptuous acts occurring after the filing of the motion. 796 S.W.2d 805, 810 (Tex. App.—Houston [1st Dist.] 1990, orig. proceeding).

However, the present case is distinguishable from *Occhipenti*. Trevino's motion to revoke—the motion upon which the trial court ordered Claunch confined for contempt—did not include any language regarding future violations of a similar nature. Her first amended motion for enforcement stated that she was seeking that Claunch be held in contempt for violations occurring between the filing of the motion and the hearing on that motion. That motion was filed on April 20, 2010, and the trial court held a hearing on that motion on June 22, 2010. The parties subsequently entered into an agreed order modifying the amount of Claunch's child support payments. Thus, any notice provided by the first amended motion to enforce regarding violations occurring between April and June 2010 was not sufficient to put Claunch on notice regarding violations occurring after Trevino's February 23, 2011 motion to revoke.

We sustain Claunch's second issue. Because of our holding on this issue, we do not address his remaining issues.

Conclusion

We grant Claunch's petition for writ of habeas corpus and vacate the trial court's order holding him in contempt and ordering that he be incarcerated. We further order that the bond for his appearance before this Court be dismissed.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Higley, and Massengale.