
State of Minnesota
In Court of Appeals

In Re the Marriage of:

BLANCA MARGARITA ZALDIVAR (n/k/a Parada),
Petitioner/Respondent,

vs.

LUIS ROBERTO RODRIGUEZ ZALDIVAR (a/k/a Ramiro Lazo),
Respondent/Appellant,

And

COUNTY OF WATONWAN,
Intervenor/Respondent.

RESPONDENT WATONWAN COUNTY'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES PRESENTED

- I. Does the District Court have the authority to enforce a child support order if the obligor is an unauthorized immigrant, illegally present in the United States?

Holding Below: The District Court found the Appellant physically and mentally capable of complying with the child support order, that the Appellant had failed to make any attempt to comply with the child support order and that the Appellant's immigration status was not a dispositive factor in his ability to pay child support. The District Court found the Appellant in contempt, sentenced the Appellant to serve 90 days in jail and set both purge conditions for the contempt and conditions of the stayed jail sentence.

Most Apposite Cases and Statutes:

Hopp v. Hopp, 156 N.W.2d 212, 216-217 (Minn. 1968)

In re Marriage of Crockarell, 631 N.W.2d 829 (Minn. Ct. App. 2001), *review denied*

Mahady v. Mahady, 448 N.W.2d 888, 898 (Minn. Ct. App. 1989)

Murphy v. Murphy, 574 N.W.2d 77, 82 (Minn. Ct. App. 1998)

Minn. Stat. § 518A.71

Minn. Stat. § 588.02

Minn. Stat. § 609.375

- II. Where a child support obligor has been found in contempt for failure to pay child support and has been given a stayed jail sentence with both purge conditions and conditions of the stay, may the District Court revoke the stay upon a showing that the obligor has failed to comply with the conditions of the stayed jail sentence?

Holding Below: The District Court held the Appellant had failed to comply with the conditions of the stayed jail sentence, revoked the stay and ordered the Appellant to report to the Watonwan County Jail to begin serving the 90-day sentence previously ordered.

Most Apposite Cases and Statutes:

In re Marriage of Crockarell, 631 N.W.2d 829 (Minn. Ct. App. 2001), *review denied*

Hopp v. Hopp, 156 N.W.2d 212, 216-217 (Minn. 1968)

Minn. Stat. § 588.02

Minn. Stat. § 588.10

III. When the District Court makes a finding of contempt, provides a stayed jail sentence and sets purge conditions of the contempt as well as conditions of the stay, must the District Court expressly restate the purge conditions in an order revoking the stay of the jail sentence?

Holding Below: The District Court expressly stated the purge conditions in the original order finding the Appellant in Contempt. The District Court incorporated those same purge conditions in the revocation order by reference. The purge conditions were not revoked and both expressly and implicitly remain available to the Appellant.

Most Apposite Cases and Statutes:

Hopp v. Hopp, 156 N.W.2d 212, 216-217 (Minn. 1968)

Mahady v. Mahady, 448 N.W.2d 888, 898 (Minn. Ct. App. 1989)

Mower County Human Services on Behalf of Swancutt v. Swancutt, 551 N.W.2d 219 (Minn. 1996)

Minn. Stat. § 588.02

Minn. Stat. § 588.10

Minn. Stat. § 588.12

STANDARD OF REVIEW

This case involves a finding of contempt. On an appeal from a decision holding a party in contempt, the appellate court may only reverse the district court's findings of fact if they are clearly erroneous. *Mower Cnty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). An appellate court may only reverse the district court's decision to invoke its contempt powers upon a showing that the district court abused its discretion.

Id.

STATEMENT OF THE CASE AND FACTS

STATEMENT OF THE CASE

The Honorable Stephen R. Rolfsrud, Child Support Magistrate presided during the expedited process and established the child support obligation. The Honorable Gregory J. Anderson, Judge of District Court of Watonwan County, Minnesota presided over this matter at the district court level.

On August 20, 2007, Appellant was ordered to pay basic child support in the amount of \$320.00 per month. In the same order, judgment was entered against Respondent for past support in the amount of \$3,840.00. On October 12, 2010, Appellant's child support was modified and basic child support was set in the amount of \$313.00 per month and \$62.00 per month for medical support reimbursement. In the same order, judgment was entered against Respondent in the full amount of his then current child support arrears, \$12,393.06.

On February 25, 2011, the district court found the Appellant in contempt of court for failure to pay his child support obligation. The court sentenced the Appellant to serve 90 days in the Watonwan County Jail but stayed the jail sentence on various conditions, including Appellant providing proof of at least two job searches per week, including copies of all applications and rejection letters from employers, and contacting the child support office at least once per week.

On July 14, 2011, the district court found that Appellant had violated the conditions of the stayed jail sentence and ordered the Appellant to report to the Watonwan County Jail to begin serving the 90-day jail sentence. The district court specifically found that Appellant had failed to provide proof of at least two job searches per week and had failed to

contact the child support office at least weekly, as required. The district court incorporated, by reference, the purge conditions set in the February 25, 2011 order, specifically that Appellant pay his child support arrears in full or continue to make his monthly child support payments. Final judgment was entered on July 14, 2011 and this appeal follows.

STATEMENT OF THE FACTS

Background

On August 20, 2007, a child support obligation was established in Watonwan County District Court requiring Appellant, Luis Roberto Rodriguez Zaldivar, to pay child support to Blanca Zaldivar in the amount of \$320.00 per month and ordering Appellant to pay \$3,840.00 for past child support.¹ Appellant appealed this order and on August 5, 2008 this Court, in an unpublished opinion, affirmed both the order for ongoing child support payments and the order for past child support.²

Through subsequent modifications and adjustments, Appellant's current child support obligation is in the amount of \$313.00 per month and \$62.00 per month for medical support reimbursement.³ Appellant is currently in arrears in the amount of \$21,094.29.⁴

The Contempt Proceeding

Watonwan County filed a Motion and Affidavit on July 30, 2010, to hold

¹ August 20, 2007 Court Order, Appellant's Addendum, pg. ADD. 29.

² *Zaldivar v. Zaldivar*, WL 3290537 No. A07-2057 (Minn. Ct. App. August 5, 2008), Appellant's Index, pg. AA-5.

³ July 14, 2011 Court Order, Appellant's Addendum, pg. ADD. 2.

⁴ *Id.*, at Appellant's Addendum, pg. Add.4.

Appellant in contempt for failure to pay his child support obligation.⁵ The County filed an updated affidavit on November 12, 2010.⁶ A hearing was held on November 15, 2010, pursuant to the Order to Show Cause.⁷ During the hearing, the Court admitted two exhibits pursuant to stipulation by the parties: Exhibit 1 – Order dated August 20, 2007, the original child support establishment order, and Exhibit 2 – Order dated October 12, 2010, the modification order.⁸ The parties also stipulated to the facts contained in the updated Affidavit of Marcia Flohrs, filed on November 12, 2010, and the fact that Appellant is an unauthorized/illegal immigrant and does not have legal status to work in the United States.⁹

On February 25, 2011, the district court found the Appellant in contempt of court for failure to pay his child support obligation.¹⁰ The court sentenced the Appellant to serve 90 days in the Watonwan County Jail but stayed the jail sentence on various conditions, including Appellant providing proof of at least two job searches per week, including copies of all applications and rejection letters from employers, and contacting the child support office at least once per week.¹¹

The district court also set purge conditions that the Appellant pay his child support obligation in full or continue to make payments until the child covered by the support order reaches the age of 18, or 20 if still in secondary school; or until the child becomes

⁵ Notice of Motion and Motion, Appellant's Index, pg. AA-2.

⁶ Affidavit, Appellant's Addendum, pg. ADD. 16.

⁷ February 25, 2011 Court Order, Appellant's Addendum, pg. ADD.7.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*, at Appellant's Addendum, pg. ADD. 8.

¹¹ *Id.*

emancipated or dies; or until further order.¹² In its memorandum the district court stated “... as one of the purge conditions, the Court is requiring Respondent to remain current on his payments”¹³ The district court further correctly noted that “the existence of a child support order constitutes prima facie evidence that the obligor has the ability to pay the award.”¹⁴ The court found the Appellant has the ability to pay the award and thus the ability to comply with the order.¹⁵ Based upon this order, the Appellant was made aware of the conditions he needed to meet to not only continue receiving a stay of his jail sentence, but conditions to purge himself completely of the contempt finding.

The Revocation Proceeding

At a review hearing on May 18, 2011 the County alleged the Appellant had violated the conditions of the stayed jail sentence by failing to provide proof of at least two job searches per week to the Watonwan County Child Support Office or to contact the child support office at least once per week. Appellant disputed this allegation and the matter was set for a contested hearing.

On July 11, 2011, the district court held a contested hearing, at which several witnesses, including the child support officer and the Appellant, testified.¹⁶ Based upon this testimony the district court found that since the last hearing the Appellant had only submitted 23 out of the 38 required job applications during that time and had submitted

¹² *Id.*

¹³ *Id.*, at Appellant’s Addendum, pg. ADD. 13.

¹⁴ *Id.*, at Appellant’s Addendum, pg. ADD. 14.

¹⁵ *Id.*

¹⁶ Transcript of July 11, 2011 hearing.

no job applications for over one month.¹⁷ The district court further found that the Appellant had failed to contact the child support officer weekly as required.¹⁸ The district court found that there was no credible evidence that the Appellant had even attempted to contact the child support officer since March 7, 2011.¹⁹

In its order, dated July 14, 2011, the district court found the Appellant was physically and mentally capable of complying with the order, had failed to offer any justification for non-compliance and remained in contempt of court.²⁰ The district court found that Appellant was in violation of the conditions of the stayed jail sentence.²¹ Finally, the district court found that Appellant had not shown that his inability to pay anything for child support was in good faith.²² Based upon its findings, the district court concluded that Appellant had violated the conditions of the stayed jail sentence and ordered Appellant to report to the Watonwan County jail to begin serving the 90-day jail sentence at 7:00 p.m. on July 29, 2011.^{23,24} The district court incorporated its February 25, 2011 memorandum by reference.²⁵ The February 25, 2011 memorandum clearly outlined the purge conditions for the contempt.²⁶

¹⁷ July 14, 2011 Court Order, Appellant's Addendum, pg. ADD. 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*, at Appellant's Addendum, pg. ADD. 5.

²³ *Id.*

²⁴ It should be noted that as of the date of Respondent County's Responsive Brief, Appellant has failed to report to jail as ordered by the district court and is currently evading apprehension under the warrant that has been issued for his arrest.

²⁵ July 14, 2011 Court Order, Appellant's Addendum, pg. ADD. 5.

²⁶ February 24, 2011 Court Order, Appellant's Addendum, pg. ADD. 8.

ARGUMENT

I. THE DISTRICT COURT HAS THE AUTHORITY TO ENFORCE A CHILD SUPPORT ORDER NOTWITHSTANDING THE OBLIGOR IS AN UNAUTHORIZED IMMIGRANT ILLEGALLY PRESENT IN THE UNITED STATES.

To find a person in civil contempt for failure to pay a child support obligation, a court must make a finding that the person had the ability to pay the obligation when it came due. *In re Marriage of Crockarell*, 631 N.W.2d 829 (Minn. Ct. App. 2001), *review denied*; *Hopp v. Hopp*, 156 N.W.2d 212, 217-218 (Minn. 1968). The existence of a child support order constitutes prima facie evidence that the obligor has the ability to pay the award. Minn. Stat. § 518A.71. In a civil contempt proceeding, the obligor has the burden of proving his inability to pay is in good faith. *Hopp* at 217-18. Finally, the Minnesota Supreme Court has recognized that the trial court may refuse to accept a defendant's inability to perform excuse for failure to comply if it is satisfied that the party directed to pay has not made a reasonable effort by means of his own election to conform to an order within his inherent, but unexercised, capacities. *Id.* at 217.

Appellant's primary argument appears to be that he cannot be held in contempt because he cannot obtain legal employment and therefore, does not have the ability to comply with the child support order. Appellant essentially argues that due to his immigration status, he cannot be held in contempt for failure to pay his child support obligation. This issue would be more appropriately, and was previously, argued by this same Appellant before this Court in an appeal of the establishment of child support. At its core, the question is whether a court can even establish a child support obligation

against an unauthorized immigrant. That issue was already decided by this Court and determined that the child-support magistrate and thus the district court did not abuse its discretion when ordering Appellant to pay ongoing child support. Notwithstanding, the issue before the Court is whether Appellant is in contempt for failure to comply with the child support order and subsequently whether Appellant has violated the conditions of his stayed jail sentence.

At the outset, it is important to note that Appellant is physically and mentally able to work full-time, has in fact worked at various jobs earning income in the recent past and testified under oath that he has no physical or mental impairments that would make it impossible or even difficult to work. But for his immigration status, there would be no question that Appellant could be held in contempt for failure to pay his child support. There does not appear to be any direct case law on the first specific issue. The Respondent County's argument on this issue will focus on both policy and law with regard to this issue.

A. Policy.

In *Mund v. Mund*, the Minnesota Supreme Court recognized that, “the obligation of parents to support their children derives from the legal and natural duty as members of society to take care of them until they are old enough to take care of themselves.” *Mund v. Mund*, 90 N.W. 2d 309, 312 (Minn. 1958). The state has a compelling interest in making sure that parents support their children. *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. Ct. App. 1998). Minnesota has a “strong state policy of assuring that children have the adequate and timely support of their parents. *Schaefer v. Weber*, 567 N.W.2d

29, 33 (Minn. 1997). In cases involving child support obligations, the court plays a unique role in that it sits as a third party, representing all of the citizens of the state of Minnesota to see that children benefit from the income of their parents. *Gully v. Gully*, 599 N.W.2d 814, 823 (Minn. 1999).

Clearly the purpose of the child support laws is to have both parents support their children, rather than the burden falling all on one parent or on the state and its taxpayers. Enforcement of these child support obligations prevents obligors from avoiding their financial responsibility. The ability of the state to enforce these obligations is crucial to furthering these policies. Such a policy minimizes the burden on the state and public funds, and reduces the likelihood that a child will grow up in poverty. The policy is so strong that the legislature provides for criminal punishment against non-paying obligors in certain circumstances.

There can be no argument that the strong policy interest in parents supporting their children applies to all children, including children of illegal immigrants. The law does not provide for unauthorized immigrants to escape their basic obligation to support their children simply because of their immigration status. There are thousands of unauthorized immigrants living and working in Minnesota, many the parents of children. It would be incomprehensible to interpret the laws enforcing support obligations as excluding these parents and these children. Such an interpretation would effectively place the burden of support on only one parent, and in many situations, the taxpayers of Minnesota, while allowing the non-paying parent to procreate with financial impunity. This is an absurd result that does not further the intent of the child support statutes, nor does it advance the

policies of this state.

The reality of the situation should not be ignored. An order enforcing a child support obligation against an unauthorized immigrant merely recognizes the reality that the person is present in this country by choice and is supporting him or herself in some fashion. He or she has a roof over his or her head, food to eat, and in most situations, the ability to find work. Such an order does not require the unauthorized immigrant to do anything beyond what he or she is doing already. Appellant's situation is exactly that. By enforcing the child support obligation, the district court was assuring that Appellant's child has the support of both parents. This furthers the interests of the state and serves the purpose of family court.

The district court ordered the Appellant to pay his child support and found him in contempt for not doing so. The district court allowed the Appellant to purge himself of the contempt by paying his child support. The district court sentenced the Appellant to serve 90 days in jail, but stayed the jail sentence so long as Appellant provided proof that he was looking for a means by which to pay his child support and thus purge himself of the contempt. The district court never ordered the Appellant to engage in criminal activity. As will be discussed below, working in the United States, let alone merely searching for work, as an illegal immigrant is not explicitly prohibited by state or federal law. Therefore, Appellant's argument that the district court somehow ordered him to engage in criminal activity is completely without merit and is no basis for this Court to overturn the district court's order.

B. Law.

Nothing in the child support statutes exclude unauthorized immigrants from the responsibility to pay child support. Minnesota Statute 518A.32 addresses the concept of “potential income:”

“If a parent is voluntarily unemployed, underemployed, or employed on less than a full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income. For purposes of this determination, it is rebuttably presumed that a parent can be gainfully employed on a full-time basis.”

Minn. Stat. § 518A.32, Subd. 1. The statute goes on to specifically exempt certain categories of parents from being considered voluntarily unemployed or underemployed. The statutory exclusions include physical or mental incapacitation, incarceration, receipt of TANF, a parent whose unemployment or underemployment is temporary and will ultimately lead to an increase in income, and a parent whose unemployment “represents a bona fide career change that outweighs the adverse effect of that parent’s diminished income on the child.” *Id.*

Most importantly, the statute does not include immigration status in its list of exemptions. Had the legislature intended to make such an exemption, it could easily have done so. It is a well-known rule of statutory construction that “[e]xemptions expressed in a law shall be construed to exclude all others.” Minn. Stat. § 645.19. “Where a statute enumerates the persons or things to be affected by its provisions, there is an implied exclusion of others.” *Brandt v. Hallwood Management Co.*, 560 N.W.2d 396, 400 (Minn. Ct. App. 1997).

The legislature clearly did not intend for immigration status to be a reason for exemption from the computation of potential income in child support cases. This of course makes perfect sense. No one will argue that unauthorized immigrants do not indeed work in the United States. In fact, the majority of persons entering the United States illegally do so for the sole purpose of employment. Appellant has worked in this country, at one time under an alias, and is fully capable of finding employment again.

Further, finding that unauthorized immigrants do not have the ability to comply with child support orders would produce an unjust result. Without the ability of the County to enforce child support orders through civil contempt proceedings, unauthorized immigrants would be immune from prosecution in criminal proceedings. Minnesota Statute 609.375, Subd. 1 makes it a crime for a person to knowingly neglect their child support obligation. However, the statute also states:

“A person may not be charged with violating this section unless there has been an attempt to obtain a court order holding the person in contempt for failing to pay support or maintenance under chapter 518 or 518A.”

Minn. Stat. § 609.375, Subd. 2b.

This provision makes efforts to obtain a civil contempt order a prerequisite to the filing of criminal charges. If this Court determines that unauthorized immigrants are immune from civil contempt procedures, then this Court would effectively shield unauthorized immigrants from prosecution under the criminal statutes. The criminal law applies to everyone. Nowhere in the criminal statutes are persons excluded from prosecution based solely upon their immigration status. Certainly, the legislature did not

intend to exempt illegal immigrants from prosecution under Minnesota Statute 609.375.

Although Minnesota case law has not addressed the issue directly, there are cases from other jurisdictions that speak to the issue of child support as it relates to unauthorized immigrants. One of these cases is *In re Marriage of Paruk v. Paruk; Orange County Department of Child Support Services*, 2005 WL 995541 (Cal.App. 4 Dist. 2005)(Unpublished, attached). *Paruk* involved a motion to modify child support brought by an unauthorized immigrant from South Africa after support had already been established by stipulation in a dissolution order. *Id.* at 1. The obligor in *Paruk* claimed that, as an illegal immigrant, he was unable to work, even though he had previously worked “under the table.” *Id.* at 3. The obligor sought to modify his child support obligation to zero based upon his inability to find legal employment. *Id.*

The *Paruk* court denied the obligor’s argument, stating, “[i]t was undisputed that Nassim [the obligor] has never been able to legally work in the United States. Yet his income and expense declarations indicate that he was able to find some employment.” *Id.* at 7. As to the obligor’s immigration status, the court noted:

“We are unimpressed with Nassim’s mantra that he should not be forced by the court to work illegally. It certainly would be improper for any court to compel an illegal immigrant to commit a federal crime. But we find nothing in this record to suggest the trial court expressly or impliedly ordered Nassim to break the law. The court’s refusal to modify child support was not based on the notion that Nassim must work illegally, but rather was based on the commissioner’s finding Nassim’s financial circumstances had not changed.”

Id. at n.6.

The *Paruk* court implied that it would not order an unauthorized immigrant to do something illegal, but recognized the reality that illegal immigrants do work and have the ability to find work.

This appears to be the central issue of Appellant's argument. However, enforcing a child support order against an unauthorized immigrant does not equate to ordering that person to break the law. As argued previously, nothing in the federal law explicitly prevents an illegal immigrant from employment. "Aside from the prohibition on tendering fraudulent documents, the [Immigration Reform and Control Act of 1986] does not prohibit unauthorized aliens from seeking or accepting employment in the United States." *Correa v. Weymouth Farms*, 664 N.W.2d 324, 329 (Minn. 2003); *See also*, 8 U.S.C. § 1324.

Appellant asks this Court to ignore the realities of the immigration situation. The child support statutes are not meant to solve the immigration issues facing our nation. They are meant to recognize the reality that children will have parents who do not reside in the same household, and those children deserve support from both parents, regardless of immigration status. Appellant made the choice to reside in the United States, near his child, obviously knowing when he made that choice that he will be able to survive, to eat and find a place to live, all while also knowing that he is unauthorized to be in the United States. He cannot now use this choice to escape responsibility for supporting his child. Appellant's argument is wholly devoid of any basis in law or equity. There has been no showing that the district court's findings were clearly erroneous or that the district court abused its discretion. Therefore, this Court should affirm the district court.

II. SUBSEQUENT TO A FINDING OF CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT, THE DISTRICT COURT HAS THE AUTHORITY TO REVOKE THE STAY OF THE JAIL SENTENCE UPON A SHOWING THAT THE OBLIGOR HAS FAILED TO COMPLY WITH THE STAY CONDITIONS.

During the hearing on the County's motion to revoke the stay, the district court heard credible testimony from the child support officer that the Appellant had only submitted 23 out of the 38 job applications that the Appellant had been ordered to submit in the district court's original contempt order. Further, the district court heard credible testimony that at the time of the revocation hearing the Appellant had submitted no job applications for over one month. The child support officer testified that the Appellant had failed to contact the child support officer weekly as required. The Appellant tried to provide an excuse for this failure by blaming the child support officer for not being able to understand him. However, the child support officer testified that an interpreter was available and that she expected the Appellant to call her weekly and that he did not. In fact, there was no credible evidence presented that the Appellant had even attempted to contact the child support officer for approximately four months.

During the revocation hearing, the district court heard testimony from several witnesses, including the Appellant, that Appellant had in his possession at least \$14,000.00 over the past two years. It is undisputed that Appellant did not use any portion of this money to pay his child support obligation, in any amount.

The obligor in a contempt proceeding has the burden to demonstrate an inability to pay the child support award. *In re Marriage of Crockarell*, 631 N.W.2d 829 (Minn. Ct. App. 2001), *review denied*; *Hopp*, 156 N.W.2d at 217-18. Additionally, the obligor has

the burden of showing the inability to pay is in good faith. *Hopp*, at 217-18. Finally, child support obligors in contempt proceedings should not be held to have met their burden of proof when they have failed to make a good faith effort to conform. *Mahady v Mahady*, 448 N.W.2d 888, 898 (Minn. Ct. App. 1989).

It is undisputable that Appellant failed to comply with the conditions of the stayed jail sentence. He did not submit the required number of job applications and did not contact the child support officer weekly. It is further undisputable that the Appellant had, at a very minimum, \$14,000.00 in his possession over the past two years and failed to make any attempt whatsoever to make even a minimal payment of \$20.00 towards his child support obligation.

The district court found that Appellant had not made a reasonable effort within his capacities to conform to the order. Further, the district court held that Appellant is physically and mentally capable of complying with the order, had failed to offer any justification for non-compliance and remained in contempt of court and in violation of the conditions of the stay. Finally, the district court found that the Appellant had sufficient opportunity to, at a minimum, partially comply with the order and failed to do so.

Here, there has been absolutely no showing that the district court's findings were clearly erroneous. Further, there has been no showing that the district court abused its discretion by either finding the Appellant in contempt or by revoking the stay of the jail sentence. The district court was well within its province to find that the Appellant had failed to comply with the stay conditions and, thereafter, revoke the stay.

III. THE DISTRICT COURT NEED NOT REPEAT THE PURGE CONDITIONS IN A REVOCATION OF STAY ORDER WHEN THOSE CONDITIONS ARE EXPRESSLY STATED IN THE ORIGINAL CONTEMPT ORDER AND INCORPORATED IN THE STAY REVOCATION ORDER.

The district court's February 25, 2011 order and memorandum clearly specified the conditions Appellant must meet to purge the finding of contempt. The district court set very specific purge conditions. Specifically, the district court ordered that the Appellant must either pay his child support obligation in full, or the Appellant must continue to make payments until the child covered by the Order reaches the age of 18, or age 20 if still in secondary school; or until the child becomes emancipated or dies; or until further order.

The purpose of imposing confinement for civil contempt for the failure to pay child support is to coerce payment, not punish the obligor. *Mahady*, 448 N.W.2d at 888. To accomplish this goal, the contemnor must be given the keys to the jail which allow him to purge himself and end his confinement. *Id.* The district court must specify purge conditions and find that the contemnor presently has the ability to meet those conditions. *Id.* A trial court may order a delinquent parent to continue to make court ordered child support payments as a purging condition of a stayed contempt sentence. *Mower County Human Services v. Swancutt*, 551 N.W.2d 219 (Minn. 1996).

It is beyond argument that the district court set purge conditions in its February 25, 2011 order and memorandum. In fact, the district court specifically wrote, “[t]he Court has set specific purge conditions.” The district court clearly found the Appellant had the present ability to meet the purge conditions. In fact, the district court wrote, “..., the

Court finds prima facie evidence that [Appellant] (the obligor) has the ability to pay the award.” Further, in its July 14, 2011 order, the district court stated that even considering the Appellant’s argument regarding his present inability to pay child support “... [h]e has not shown that his inability to pay anything for child support is in good faith.”

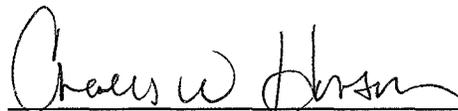
The only remaining issue then is whether the district court must explicitly restate the purge conditions in the order revoking the stay. In its July 14, 2011 order, the district court wrote, “[t]he February 25, 2011 Memorandum is incorporated herein by reference to explain the Court’s legal reasoning.” The February 25, 2011 Memorandum clearly contained the purge conditions, which were then also incorporated in the July 14, 2011 order. Therefore, this Court should affirm the district court. In the alternative, this Court should remand to the district court for the sole purpose of setting purge conditions.

CONCLUSION

For all of the reasons set forth above, Respondent Watonwan County respectfully requests that this Court affirm the judgment of the district court. Alternatively, this Court should remand for entry of purge conditions on the finding of contempt only.

Dated this 26th day of November, 2011.

Respectfully submitted,

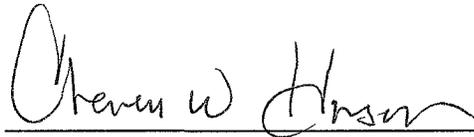


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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitations of Minn. R. App. Pro. 132.01, subs. 1 and 3, contains 5,756 words and was prepared using Microsoft Word 2010.

Dated this 28th day of November, 2011.



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