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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2105**

Diane M. McGowan, petitioner,
Respondent,

vs.

Markus John McGowan,
Appellant.

**Filed September 24, 2012
Affirmed
Wright, Judge**

Olmsted County District Court
File No. 55-FO-95-003135

Diane M. McGowan, Rochester, Minnesota (pro se respondent)

David J. Jones, Jones Law Firm, Rochester, Minnesota (for appellant)

Mark A. Ostrem, Olmsted County Attorney, Thomas P. Kelly, Assistant Olmsted County Attorney, Rochester, Minnesota (for Olmsted County)

Considered and decided by Wright, Presiding Judge; Connolly, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges both the district court's decision that he is in constructive civil contempt of court and the order directing appellant's confinement. Under the facts and circumstances presented, the district court did not err when it confined appellant after a single civil-contempt hearing. And the district court's determination that appellant has the ability to satisfy the purge condition is factually sound. We, therefore, affirm.

FACTS

In 1995, respondent-mother Diane M. McGowan petitioned the district court to dissolve her marriage to appellant-father Markus John McGowan. While the dissolution was pending, the district court awarded mother temporary legal and physical custody of the parties' 14-year-old daughter and ordered father to pay temporary monthly child support of \$600. The district court also ordered father to make certain housing payments "in lieu of [spousal] maintenance."

Father failed to comply with these aspects of the district court's order; and in early 1997, an administrative law judge sanctioned father by suspending his driver's license. Father continued to disregard the district court's order to make the housing and child-support payments. On June 13, 1997, the district court ordered father to appear on July 21 to show cause on eight grounds, including why father is "not in constructive civil contempt of court for failure to comply with the provisions" of the temporary order, why he "should not be jailed until [he] purge[s] [himself] of such contempt by paying all

arrearages,” and why father “should not be determined to be voluntarily unemployed or underemployed.” The order notified father that his failure to appear would result in a warrant for his arrest. Four days later, on June 17, the district court dissolved the parties’ marriage and ordered father to pay \$936 in monthly child support and \$300 in monthly spousal maintenance.¹

Rather than appear on July 21 as ordered, father fled to Florida. The district court issued a bench warrant following father’s failure to appear. The record is vague as to father’s activities over the next 14 years. But it demonstrates that father evaded arrest, defied the district court’s order to pay child support and spousal maintenance, never sought a modification of his court-ordered obligations, and had access to real property and cash.² The record also establishes that, in 2007, father advised the county attorney that mother had been awarded “100 percent of . . . everything” and he would rather “sit in jail” than pay his court-ordered obligations.

In August 2011, two Olmsted County sheriff’s deputies arrested father when he was visiting his mother and staying at her home in Rochester. Father told the deputies “that he had stayed too long this time.” Father also claimed that he was legally “running guns” for the Nicaraguan government.

¹ After 1997, these obligations were adjusted routinely for cost-of-living increases.

² In 2008, the district court attempted to extradite father from Florida to Minnesota with a “supplemental” warrant. But the warrant was not executed because there is no statutory authority for extradition in civil proceedings, only criminal. *See* Minn. Stat. § 629.22 (2006).

At the contempt hearing, during which father was represented by court-appointed counsel, father's counsel and the county's counsel addressed the need for a second hearing before sanctioning father with confinement. The district court found father in constructive civil contempt and concluded that "[n]ormal procedure might require us to give a contemnor an opportunity to show that he'll make good on his obligations," but giving father another chance would be "absurd" based on the facts and circumstances. The district court found that indefinite incarceration, with father's immediate release conditioned on his payment of all child support and spousal maintenance arrears, would motivate father "to at last live up to his obligation," as it is "the only thing that'll get the job done under these circumstances." The district court issued its written order for judgment on September 19, and judgment was entered on September 21. This appeal followed.

D E C I S I O N

I.

Father argues that the district court erred procedurally by confining him after a single civil-contempt hearing. We review procedural issues arising in a civil-contempt proceeding de novo. *See In re Welfare of E.J.B.*, 466 N.W.2d 768, 769-70 (Minn. App. 1991).

The district court may enforce spousal-maintenance and child-support obligations using civil-contempt proceedings. *In re Marriage of Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). When certain conditions are

satisfied, the district court may confine the contemnor until the contemnor performs the act underlying the contempt. Minn. Stat. § 588.12 (2010). Due process guarantees under the United States Constitution require notice to the obligor and an opportunity for the obligor to be heard. *Mower Cnty. Human Servs. v. Swancutt*, 551 N.W.2d 219, 223 (Minn. 1996).

Civil-contempt proceedings also must satisfy eight common-law requirements. *Id.* (citing *Hopp v. Hopp*, 279 Minn. 170, 174-75, 156 N.W.2d 212, 216-17 (1968)). The first four requirements are that (1) a court with both subject-matter and personal jurisdiction must have imposed the underlying obligation; (2) the court order clearly must define the underlying obligation; (3) the contemnor must have notice of the underlying obligation and a reasonable time within which to comply; and (4) a party that was adversely affected must request enforcement of the order and give specific grounds for complaint. *Id.* If the first four requirements are satisfied, the district court must (5) conduct a duly noticed hearing to give the nonperforming party an opportunity to show compliance with the order. *Id.* At this hearing, the district shall determine whether the contemnor (6) failed to comply with the order and whether conditional confinement is reasonably likely to induce compliance, in full or in part; (7) is excused by the inability to comply despite a good-faith effort; and (8) has the ability to gain release either through compliance or through a good-faith effort to comply. *Id.* Because a civil-contempt order must enable the contemnor to obtain release by compliance, the district court may not order a fixed sentence. *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989).

Typically, before an obligor is confined pursuant to civil-contempt proceedings, the obligor has two hearings: a hearing to find contempt and set purge conditions, and a hearing to determine that the obligor failed, without excuse, to comply with the purge conditions. *See Swancutt*, 551 N.W.2d at 223-24; *Mahady*, 448 N.W.2d at 891. In civil-contempt proceedings, however, the district court is granted “a measure of authority and discretion . . . far in excess of that which exists in criminal cases” because enforcement of court-ordered payments “should not be frustrated by delay and formalism.” *Hopp*, 279 Minn. at 174, 156 N.W.2d at 216. To remedy an obligor’s history of noncompliance, the district court may employ “methods that are speedy, efficient, and sufficiently flexible to meet the problem at hand.” *Id.*; *see also Swancutt*, 551 N.W.2d at 222-23.

The district court provided father with notice and an opportunity to be heard. Thus, the due process requirements of the United States Constitution are satisfied. *See Swancutt*, 551 N.W.2d at 223-24. The district court also satisfied the eight *Hopp* requirements. *See Hopp*, 279 Minn. at 174-75, 156 N.W.2d at 216-17. What we must determine is whether the district court employed an improper enforcement mechanism by denying father the opportunity to satisfy the purge condition outside of confinement.

Under the extraordinary circumstances present here, we conclude that the district court properly exercised its discretion. There is not even a scintilla of evidence from which we can glean that, if released, father would comply with the district court’s purge condition. To the contrary, the evidence demonstrates that father successfully evaded both his court-ordered obligations and arrest for more than 14 years. He was brought

before the district court only because of a chink in his otherwise successful efforts to elude arrest. Consequently, the record supports the district court's inference that father is a serious flight risk. Under the unique circumstances of father's lengthy history of evasion and complete noncompliance with the district court's orders, we conclude that the district court did not err by confining father after a single, constitutionally sufficient, civil-contempt hearing.³

II.

Father challenges the district court's finding that he can satisfy the purge conditions. We review the factual findings of a contempt order for clear error. *Swancutt*, 551 N.W.2d at 222.

When invoking its civil-contempt powers, the district court must determine whether the obligor has the ability to meet the purge conditions. *Crockarell*, 631 N.W.2d at 837. But the district court need not "determine how an obligor [can] access the money necessary to meet the purge conditions." *Id.* It is the obligor's burden to prove that he or she is unable to meet the purge conditions. *Mahady*, 448 N.W.2d at 890-91. When determining whether an obligor is able to meet the purge conditions, the district court may consider the obligor's earning capacity and history. *Hopp*, 279 Minn. at 176-77, 156 N.W.2d at 217-18. In addition, an obligor's access to the assets of another bolsters an

³ We observe that nothing precludes father from petitioning the district court for a determination regarding his continued confinement. Because confinement of a contemnor must be reasonably likely to produce compliance, after more than one year of confinement, father now may be able to establish that his release is warranted. *See Hopp*, 279 Minn. at 175, 156 N.W.2d at 217.

inference of voluntary underemployment. *See Crockarell*, 631 N.W.2d at 836-37 (finding obligor manipulated finances to divert income and avoid support obligation while making no attempt to seek employment). The district court also may “disregard any inability to pay that is voluntary on the part of the obligor.” *Crockarell*, 631 N.W.2d at 837.

In a dissolution proceeding, the parties “must make a full and accurate disclosure of their assets and liabilities.” *Id.* at 833-34 (quotation omitted). The district court may draw adverse inferences against a party who conceals assets or evades this disclosure requirement. *Id.* The district court also may reject uncontradicted testimony if the surrounding facts and circumstances provide reasonable grounds for doubting its credibility. *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987). Because the district court is better able to assess witness credibility, a district court’s credibility determination will not be disturbed on appeal. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (applying Minn. R. Civ. P. 52.01).

Father testified that he has “no money whatsoever” and he survives on food stamps, “short term jobs,” and the assistance of his family. The district court found that father’s testimony lacks both “clarity and credibility.” Consistent with the district court’s determination, the record establishes that, before the dissolution, father studied aeronautical engineering at the University of Wyoming, attended the International Flight Safety Academy in Florida, obtained a pilot’s license, worked as both a firefighter and an air traffic controller, and had a gross annual income of \$63,656. Since the dissolution,

father has not had any illness, injury, or disability that would prevent him from working full-time. Father has occupied his time by assisting his mother with her financial assets and maintaining her real property, including the house where father lives in Florida. His lifestyle includes international and domestic travel and elegant dining. It is evident from our careful review of the record that the district court's determination that father has the ability to meet the purge condition is legally sound.

Affirmed.