

DOCKET NO. DBD-19-6034702-S : SUPERIOR COURT  
 KATHLEEN M. CUOMO : J.D. OF DANBURY OFFICE OF THE CLERK  
 v. : AT DANBURY SUPERIOR COURT GA 3  
 CHRISTOPHER J. CUOMO : MAY 29, 2024 2024 MAY 29 A 8:08  
 JUDICIAL DISTRICT  
 DANBURY  
 STATE OF CONNECTICUT

**MEMORANDUM OF DECISION**

On January 31, 2024, the Court held an evidentiary hearing on Defendant, Christopher Cuomo's three motions for contempt, postjudgment (Entry #186; Entry # 187; and Entry #188). Defendant appeared with counsel and Plaintiff, Kathleen Cuomo, appeared representing herself. The Court considered the exhibits and testimonies of plaintiff and defendant.

The Court finds that the plaintiff was served with defendant's postjudgment motions for contempt on December 9, 2023 (Entry #190 and #191).

Due process requires a trial-like hearing be held, in which an opportunity is provided to present evidence and to cross-examine adverse witnesses. *Cologne v. Westfarms Associates*, 197 Conn. 141, 151-53 (1985). "The contempt remedy is particularly harsh and may be founded solely upon some clear and express direction of the court. One cannot be placed in contempt for failure to read the court's mind." *Eldridge v. Eldridge*, 244 Conn. 523, 529 (1998). A person may not be held in contempt of an order of which that person could not have been aware. *Calway v. Calway*, 26 Conn. App. 737, 747 (1992).

The court may not hold a party in contempt on a basis not alleged in the opposing party's motion for contempt. *Chang v. Chang*, 197 Conn. App. 733, 748 (2020). "[T]he purpose of the [motion] is to put the [party alleged to be in contempt] on notice of the claims made, to limit the issues to be decided, and to prevent surprise." *Id.*, 751.

The court must find that the defendant violated the order by clear and convincing evidence. *Brody v. Brody*, 315 Conn. 300, 316 (2015). "This heightened standard of proof adequately characterizes the level of certainty appropriate to justify civil contempt sanctions, especially when those sanctions may include incarceration. . . . Moreover, within our state's existing legal framework for indirect civil contempt proceedings, a clear and convincing standard of proof is consistent with the threshold substantive requirement that the directives of the underlying court order be 'clear and unambiguous.' . . . Our rigorous due process requirements for indirect civil contempt proceedings likewise demand a heightened evidentiary standard. . . . In sum, a civil contempt finding should not attach to an individual just because it is more likely than not that an injunction was disobeyed beyond the eyes of a court." *Id.*, 319.

"Noncompliance alone will not support a judgment of contempt." *Prial v. Prial*, 67 Conn. App. 7 (2001). "[A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful." *Wilson v. Wilson*, 38 Conn. App. 263, 275-76 (1995); *Niles v. Niles*, 9 Conn. App. 240, 253-54 (1986).

197.00

"A good faith dispute or legitimate misunderstanding of the terms of an alimony or support obligation may prevent a finding that the payor's nonpayment was wilful." *Eldridge v. Eldridge*, 244 Conn. 523, 529 (1998) (finding of contempt upheld, even though plaintiff was correct that he had overpaid under the terms of the judgment); *Jenks v. Jenks*, 39 Conn. App. 139, 142-43 (1995) (plaintiff willing to make up payments he did not understand he was liable for, and should not have been found in contempt).

Ambiguity is a factor for the trial court to consider when making a finding of willfulness, but does not require such a finding. *Sablosky v. Sablosky*, 258 Conn. 713, 720-21 (2001). "There may be circumstances in which an ambiguity in an order may preclude a finding of contempt . . . when there is an adequate factual basis to explain the failure to honor the court's order." *Berglass v. Berglass*, 71 Conn. App. 771, 777 (2002); see also *Giordano v. Giordano*, 200 Conn. App. 130, 148 (court improperly held defendant in contempt for violating alimony agreement after first finding agreement to be ambiguous), cert. denied, 335 Conn. 970 (2020).

If the court finds the respondent in contempt, § 46b-87 permits the court to award attorney's fees to the petitioner. "[T]hat sanction may be imposed without balancing the parties' respective financial abilities." *Eldridge v. Eldridge*, 244 Conn. 523, 534 (1998). "[B]ecause the award of attorney's fees pursuant to § 46b-87 is punitive, rather than compensatory, the court properly may consider the [party's] behavior as an additional factor in determining both the necessity of awarding attorney's fees and the proper amount of any award." *Esposito v. Esposito*, 71 Conn. App. 744, 750 (2002).

If no contempt is found, § 46b-87 allows the court to award attorney's fees to the respondent to cover the cost of defending against the contempt motion. The court should consider the merit of the contempt claim before doing so. *Champagne v. Champagne*, 43 Conn. App. 844, 850 (1996).

Even in the absence of a contempt finding, the court may order attorney's fees pursuant to its authority under § 46b-62, but must first determine that the party requesting the fees lacks sufficient funds to cover them. *Dobozy v. Dobozy*, 241 Conn. 490, 499 (1997).

### **Motion for Contempt (#186.00)**

The parties were divorced on October 7, 2021. The Separation Agreement ("Agreement") was approved and incorporated into the Court's judgement (Entry #162). Article XIX of the Agreement addressed the parties responsibilities as to the college education expenses of the children. Article XIX of the Agreement provides, "The parties will be responsible for 2/3<sup>rd</sup> of the college education costs of each child as defined in 46b-56c(f) including books. The HUSBAND will be responsible for 2/3<sup>rd</sup> of the parent's obligation and the WIFE shall be responsible for 1/3<sup>rd</sup>. Notwithstanding the above, the WIFE shall not be legally obligated to pay more than \$6,000.00 per child per school year for college expenses."

The defendant claims that the plaintiff has failed and neglected to fulfill her financial obligation regarding the college education expenses of the children and that she owes at least \$8,911.00.

The Court finds that the Agreement clearly and unambiguously outlines the parents' responsibilities as to the college expenses of the children.

The defendant testified at the trial that as to the parental responsibilities towards college expenses the parties began with the premise as outlined in the Agreement; however, this structure was later changed by verbal agreement between the parties. *See* Transcript, 2:40:45 p.m. According to the defendant, pursuant to the verbal agreement the defendant was now responsible for 2/3<sup>rd</sup> of the total expenses and the plaintiff was responsible for the remaining 1/3<sup>rd</sup> of the total expenses. In sum, the parties would pay their parts before the children had any obligation. Throughout defendant's Exhibit B are included emails asking the plaintiff to reimburse 1/3<sup>rd</sup> of the total amounts due for rent. This is contrary to the Court approved Stipulation where the plaintiff is responsible for 1/3<sup>rd</sup> of 2/3<sup>rd</sup> of the total amount with a max amount each year of \$6,000.00. There was no modification of the Agreement sought or approved by the Court. As such, this new agreement between the parties was not made an order of the Court.

The plaintiff testified to believing that she owes some money but is not entirely certain as to the specific amount. Additionally, the plaintiff testified to not making all the necessary payments in a timely manner. The Court finds that there are discrepancies in the amount outstanding and the manner by which these amounts are calculated and claimed due. The Court does not find that the plaintiff willfully violated the Court's order. The Court believes there to be a legitimate misunderstanding of the terms of obligations and Court orders.

Even in the absence of a finding of contempt, the Court has inherent authority to enter orders to carry into effect the Court's earlier orders.

Within thirty (30) days of this order, the defendant shall provide the plaintiff a document/spreadsheet specifically listing the amounts owed and paid with the percentage allocations ordered by the Court per the Agreement (Entry #162) and including the yearly cap assigned to the plaintiff of \$6,000.00 per child per school year. The plaintiff shall pay the defendant the amount due within thirty (30) days of receiving the document and proof of payment.

#### **Motion for Contempt (#187.00)**

The parties were divorced on October 7, 2021. The Separation Agreement ("Agreement") was approved and incorporated into the Court's judgement (Entry #162). Article XXIV of the Agreement addressed liabilities of the parties and specifically required the plaintiff to be responsible for and continue to pay certain liabilities including debts borrowed from the children. The defendant claims that the plaintiff has failed and neglected to repay the particular debts borrowed from the children.

The Agreement does not provide a timeframe within which the specific debts are to be paid and/or addressed. As such, the Court is not able to dictate that the funds are beyond due. The Court notes that the Agreement is dated from October 2021 and the defendant testified to the children needing the funds for their current schooling.

The plaintiff claims to have made payments as to the debt borrowed from the children and provided what she claimed to have been proof of payments. *See* Exhibit K, Exhibit L, and Exhibit M. The plaintiff did not provide any copies of checks or bank statements substantiating payments. Exhibit K is a vague, non-notarized letter claimed to be between the plaintiff and her daughter McKenna. Exhibit L claims to be a car insurance payment which the plaintiff testified that she made to her child, Macey, as part of the repayment of debt. In addition, the plaintiff testified to making payments to Macey in the amount of \$3500/year for two years. Exhibit M is another non-specific statement claiming to show a series of deposits to or transactions with the plaintiff's son, CJ.

The documentary evidence provided by the plaintiff as to payments made is not necessarily credible and appears rather vague and not specific. The Court does not believe that this rises to the level of contempt; however, even in the absence of a finding of contempt, the Court has inherent authority to enter orders to carry into effect the Court's earlier orders.

The Court will require the plaintiff to show more detailed and substantive compliance with the debts being paid off in accordance with the Agreement so as to effectuate the current Court order. This documentary compliance to the extent as testified by the plaintiff is to be provided to the defendant within thirty (30) days of this order.

### **Motion for Contempt (#188.00)**

The parties were divorced on October 7, 2021. The Separation Agreement ("Agreement") was approved and incorporated into the Court's judgement (Entry #162). Article XVI of the Agreement addressed child support. Specifically, Article 16.2 provides that the parties split extracurricular activities of the minor children with the defendant paying 70% and the plaintiff paying 30%. The expenses are to include sports and current activities as well as any agreed to activities. The defendant claims that the plaintiff has failed and neglected to repay expenses in the amount of \$126.65 for football equipment for the minor son.

This motion for contempt is denied. There was testimony that the reimbursement is for items other than registration fees and/or necessary equipment.


### **ORDER**

- 1) Motion for Contempt, #186:
  - a. Denied;
  - b. Within thirty (30) days of this order, the defendant shall provide the plaintiff a document/spreadsheet specifically listing the amounts owed and paid with the

percentage allocations ordered by the Court per the Agreement (Entry #162) and including the yearly cap assigned to the plaintiff of \$6,000.00 per child per school year. The plaintiff shall pay the defendant the amount due within thirty (30) days of receiving the document and proof of payment;

- c. Attorney fees denied.
- 2) Motion for Contempt, #187:
  - a. Denied;
  - b. The plaintiff is to show specific and more detailed and substantive proof of compliance with the debts being paid off in accordance with the Agreement so as to effectuate the current Court order. This documentary compliance to the extent as testified by the plaintiff is to be provided to the defendant within thirty (30) days of this order;
  - c. Attorney fees denied.
- 3) Motion for Contempt, #188:
  - a. Denied.
  - b. Attorney fees denied.

BY THE COURT

  
\_\_\_\_\_  
Fox, J.

*Decision entered in  
accordance with the  
foregoing on May 29<sup>th</sup>, 2024.  
Parker, attorney of record and  
reporter of judicial decisions  
notified on 5/29/24  
Patricia Perez  
Assistant Clerk  
5/29/24*