

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-1263-MR

R.L.A.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE BRYAN D. GATEWOOD, JUDGE
ACTION NO. 23-J-501523

COMMONWEALTH OF KENTUCKY;
COMMONWEALTH OF KENTUCKY,
ATTORNEY GENERAL; AND J.D.F.

APPELLEES

AND

NO. 2025-CA-1264-MR

R.L.A.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE BRYAN D. GATEWOOD, JUDGE
ACTION NO. 23-J-501524

COMMONWEALTH OF KENTUCKY;
COMMONWEALTH OF KENTUCKY,
ATTORNEY GENERAL; AND J.D.F.

APPELLEES

AND

NO. 2025-CA-1266-MR

R.L.A.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE BRYAN D. GATEWOOD, JUDGE
ACTION NO. 23-J-501525

COMMONWEALTH OF KENTUCKY;
COMMONWEALTH OF KENTUCKY,
ATTORNEY GENERAL; AND J.D.F.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: EASTON, A. JONES, AND MOYNAHAN, JUDGES.

EASTON, JUDGE: Appellant (Father) challenges the Jefferson Family Court's order finding him in contempt for failure to pay child support. Father was later sentenced to 180 days to serve on home incarceration, with work and medical release. After a thorough review of the record and the applicable law, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Father and Appellee, J.D.F. (Mother), have never been married but have three young children together. Mother brought a paternity and child support action against Father in September 2023 when the younger two children, who are twins, were about six months old. In May 2024, the family court set Father's monthly child support payment at \$1,300, which included Father's ongoing obligation as well as a small amount to go toward an arrearage.

In April 2025, Mother brought a *pro se* motion for contempt, alleging Father had not paid child support since June 2024. At a hearing on April 8, 2025, the family court determined by looking at the County Attorney's payment records that Father had not made a payment since September 2024. Father conceded he had not made any payments since then.

Father told the family court that he had been injured at work, had surgery, and had not yet been medically cleared to return to work. He further stated he had been looking for new employment that would allow him to work while seated. He was unable to produce any documentation to the family court to support his statements. At this hearing, both Mother and Father were present without counsel.

The family court stated it was going to pass the motion for contempt to a hearing date and appoint a public defender for Father. The family court told Father:

I want you to come in here prepared at the next date to show me the effort you have been making to find a job because you are at risk of going to jail for not paying child support. So, I need you to come in to be able to show the efforts that you have made to look for a job because your children have not received support since September. Understand?^[1]

The family court reiterated to Father that he needed to bring proof that he was making a genuine effort to find a job, because “your kids need to eat.”

The family court entered an Appointment of Counsel Order on April 8, 2025. The bottom of this order reads:

The Public Defender will represent you in this case. Please take this copy immediately to the Public Defender’s Office at 200 Civil Plaza, 719 West Jefferson Street, to get your lawyer. (The original has been placed in the court file.) If you don’t contact the Public Defender within the next five days, you will not get a lawyer, and the Public Defender will report this to the Court.^[2]

¹ Hearing of April 8, 2025, Video Recorf (VR) at 12:11:35.

² Appointment of Counsel Order 23-J-501523, Trial Record (TR) at 104.

It appears a copy of this Order was served upon Father, as a signed certified mail receipt appears in the record.³ The return receipt was filed in the court record on April 14, 2025, well in advance of the May 6 hearing. A scan log is also in the court record, which shows a copy of the order was emailed to the Louisville DPA⁴ office, but it was not sent to DPA until May 6.⁵

On the May 6 hearing date, only Mother appeared. The County Attorney's Office had tendered a payment history, which showed that Father's last child support payment was in September 2024. Mother confirmed, under oath, that she had not received any additional payment since that date. Based on this evidence, the family court found Father in contempt. The family court stated it would pass the sentencing to a future court date and would issue an order for Father to appear. The court told Mother that if Father did not appear for sentencing, it would issue a bench warrant for his arrest.

Father did appear at the sentencing hearing, with counsel, on June 17, 2025. His counsel made a verbal motion, under CR⁶ 60.02, asking the family court to set aside the finding of contempt. Counsel did not specify which subsection of

³ *Id.* at 106.

⁴ Department of Public Advocacy.

⁵ TR at 105.

⁶ Kentucky Rules of Civil Procedure.

CR 60.02 was applicable to Father's case.⁷ Counsel stated she had not been appointed at the time of the contempt hearing, and she believed Father had valid defenses to the contempt charge. She further argued that Father was entitled to counsel at a contempt hearing. Counsel stated she has medical proof from Father regarding a knee surgery that occurred in September, which was when he stopped making his child support payments. She then acknowledged she did not yet have medical proof that Father was unable to work.

The family court stated it would not set aside the contempt finding, but it would continue sentencing to allow counsel to obtain medical documentation that Father was not able to work. The family court advised it would consider any medical information in setting Father's sentence. It then told Father he needed to get documentation to his attorney. The family court also noted that Father still had not made any additional child support payments. At the end of the hearing, Father's counsel informed the family court that Father had just started a new job the previous weekend, so they were hopeful he would be able to start making payments.

⁷ This is of little consequence because it was not proper for Appellant to rely on CR 60.02 which authorizes relief only from final judgments, orders, or proceedings. An order is final if it adjudicates all the rights of all the parties. *See* CR 54.01. The order finding Appellant in contempt was not final as it did not impose a punishment. *Armstrong v. Bryan*, 273 S.W.2d 835, 837 (Ky. 1954). When an order is not final, it remains "subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." CR 54.02(2).

A sentencing hearing was held on September 2, 2025. Since the June hearing, Father had made two payments, one for \$100 on June 30 and one for \$300 on August 18. The family court took the testimony of both Father and Mother. Father testified that his disability denial was on appeal. He was scheduled to have stomach surgery on September 16. He does not have health insurance and is having to pay out of pocket for his medical care. He was employed; he began working in July. Father makes \$30 an hour, and he works about 28 hours per week. He was on medical leave, and that began on August 13. In addition to his current medical issues, Father has diabetes and previously had knee surgery.

Mother testified that Father has paid \$400 since this process began. She stated that even when Father is working, he is not making payments. She further testified that he is not utilizing his parenting time with the children. Mother was visibly upset, and she told the court she was “overwhelmed” with caring for the children on her own.

The family court imposed a sentence of 180 days to serve, but due to Father’s medical conditions, it would allow home incarceration with medical and work release. The family court further advised Mother to file another motion for contempt if Father continued to fail to make payments. The family court told Father that if he continued to not pay his child support, it would revoke his home incarceration and order Father to serve his sentence in jail. While not stated on the

record at the hearing, the family court’s written order stated a purge amount of \$2,500. Father then timely filed this appeal.

STANDARD OF REVIEW

“When a court exercises its contempt powers, it has nearly unlimited discretion.” *Meyers v. Petrie*, 233 S.W.3d 212, 215 (Ky. App. 2007) (citing *Smith v. City of Loyall*, 702 S.W.2d 838, 839 (Ky. App. 1986)). Abuse of discretion is the standard of review for decisions regarding contempt. *Id.* A trial court abuses its discretion when its decision is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). The clear error standard applies to the findings of fact by the family court. *Cabinet for Health and Family Services v. Ivy*, 353 S.W.3d 324, 332 (Ky. 2011).

ANALYSIS

Father argues the family court abused its discretion by trying him for contempt *in absentia* and without the presence of counsel. He further argues it was error for the family court to set an unattainable purge amount despite his inability to pay.

Before we reach the merits of Father’s arguments, we will address the Commonwealth’s contention that the case is moot. Father was sentenced on September 2, 2025, to 180 days of home incarceration. That time period has expired. Any action of this Court will make no difference to Father at this point.

A case becomes moot when a rendered judgment cannot have any practical legal effect upon a *then* existing controversy. And [t]he general rule is, and has long been, that where, pending an appeal, an event occurs which makes a determination of the question unnecessary or which would render the judgment that might be pronounced ineffectual, the appeal should be dismissed.

Belt v. Commonwealth Cabinet for Fams. & Child., 520 S.W.3d 406, 408 (Ky. App. 2017) (citing *Norton Hosps., Inc. v. Willett*, 483 S.W.3d 842, 845 (Ky. 2016)).

Despite this, Father asks this Court to review the matter under the public interest exception. “There are two exceptions to the mootness doctrine: (1) for issues that are ‘capable of repetition, yet evading review’ and (2) matters of ‘public interest.’” *Commonwealth v. Ellery*, 713 S.W.3d 114, 118 (Ky. 2025). “The exception for cases ‘capable of repetition, yet evading review,’ has two elements: (1) the challenged action must be too short in duration to be fully litigated prior to its cessation or expiration, and (2) there must be a reasonable expectation that the same complaining party will be subjected to the same action again.” *Morgan v. Getter*, 441 S.W.3d 94, 100 (Ky. 2014). The “public interest” exception contains three elements: “(1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question.” *Id.* at 102.

Arguably, the exception for “capable of repetition, yet evading review” could apply, but Father did not argue this option. A sentence for contempt is a maximum of 180 days or six months. *Bloom v. Illinois*, 391 U.S. 194 (1968) (a penalty of more than six months is deemed a “serious” rather than “petty” punishment, which entitles a defendant to a finding of guilt beyond a reasonable doubt by a jury). Such sentences are not long enough for a typical appeal to be fully reviewed prior to the expiration of the sentence.

With Father’s history of non-payment of child support and failure to appear for court, it is not unreasonable to conclude that Father will be “subjected to the same action again.” The children Father is ordered to pay support for are very young, so Father will likely have many more years of child support payments. The United States Supreme Court has found this exception applied to similar facts in *Turner v. Rogers*, 564 U.S. 431, 439-440 (2011).

The “public interest” exception might apply. The matter of procedural due process regarding findings of contempt is a matter of public interest. Circuit and family courts are regularly called upon to determine if a party has acted in a contemptuous manner. While there is a wealth of case law on the procedural due process requirements regarding criminal contempt, there is not quite as much regarding civil contempt. Finally, contempt in the context of failing to pay required child support occurs sadly far too often, so it is likely this question

will arise again. This Court has the discretion to consider a moot case under the public interest exception when we determine a case involves “matters of the utmost public importance.” *Muhammad v. Kentucky Parole Bd.*, 468 S.W.3d 331, 338 (Ky. 2015). We will consider the merits of the appeal, despite the mootness argument.

Contempt is the willful disobedience toward, or open disrespect for, the rules or orders of a court. Contempts are either civil or criminal. Civil contempt consists of the failure of one to do something under order of court, generally for the benefit of a party litigant. Examples are the willful failure to pay child support as ordered, or to testify as ordered. While one may be sentenced to jail for civil contempt, it is said that the contemptuous one carries the keys to the jail in his pocket, because he is entitled to immediate release upon his obedience to the court’s order.

Commonwealth v. Burge, 947 S.W.2d 805, 808 (Ky. 1996) (internal quotation marks and citations omitted).

While not expressly stated, the contempt in this action was civil in nature, as Father was given the option to “purge” his contempt by paying \$2,500 toward his child support arrearage. “[S]anctions for civil contempt are meant to benefit an adverse party either by coercing compliance with the order or by compensating for losses the noncompliance occasioned. For the punishment to retain its civil character, the contemnor must, at the time the sanction is imposed,

have the ability to purge.” *Nienaber v. Commonwealth ex rel. Mercer*, 594 S.W.3d 232, 236 (Ky. App. 2020) (internal quotation marks and citations omitted).

In a civil contempt proceeding, the initial burden is on the party seeking sanctions to show by clear and convincing evidence that the alleged contemnor has violated a valid court order. Once the moving party makes out a prima facie case, a presumption of contempt arises, and the burden of production shifts to the alleged contemnor to show, clearly and convincingly, that he or she was unable to comply with the court’s order or was, for some other reason, justified in not complying.

Id.

Father first argues the family court abused its discretion in finding him in contempt *in absentia* without counsel present. Our case law is clear that due process requires notice and an *opportunity* to be heard, even in civil contempt cases. *Cabinet for Health & Fam. v. J.M.G.*, 475 S.W.3d 600, 615-16 (Ky. 2015) (emphasis added). Further, “an indigent person has a right to appointed counsel in civil contempt proceedings *prior to* the execution of an order of *incarceration*.” *Lewis v. Lewis*, 875 S.W.2d 862, 864 (Ky. 1993) (emphasis added). Father was entitled to the opportunity for a hearing before the family court could find him in contempt, and he was given this opportunity.

The initial contempt hearing was scheduled for May 6, 2025. Father had explicitly been told at the prior hearing that he needed to be present in court with proof that he had been making attempts to find employment. He had been

served notice via the appointment order. The Commonwealth argues that Father's absence was "intentional, knowing, and voluntary," as explained in *McKinney v. Commonwealth*, 474 S.W.2d 384, 386 (Ky. 1971), and he therefore waived his right to a hearing. Given the record of subsequent proceedings prior to incarceration being ordered, we find no due process violation in the family court's actions here.

There are constitutional protections in place that prohibit a party from being tried in his absence "unless that absence is voluntary and therefore a waiver of his right to be present." *Burns v. Commonwealth*, 655 S.W.2d 497, 498 (Ky. App. 1983) (citing KY. CONST. Art. XIII, § 12 (1891); U.S. CONST. Amend. XIV).

This rule is qualified in cases where the Commonwealth proves the defendant knew of the trial date, as here, and did not appear. An inference then may be indulged that the absence was intentional, knowing and voluntary and consequently waived. Then the defendant not only has the right but also the burden of going forward with proof that his absence was not intentional, knowing and voluntary, and was consequently not waived.

Id.

In this instance, Father was aware of the contempt hearing. And while DPA was only made aware of their appointment on the day of the scheduled court date, it was Father's responsibility to meet with DPA. After Father was served with an order to appear, both Father and his DPA attorney appeared at the scheduled sentencing hearing on June 17. At this later date, Father's counsel

moved to set aside the finding of contempt, as she believed he had a valid defense and was entitled to counsel prior to the finding of contempt.

It is notable that the family court did not issue a sanction for Father's contempt at the initial contempt hearing; instead, it scheduled a further hearing. At the June 17 hearing, both Father and his counsel were present, and Father's only explanation of why he missed the May 6 court date was that he had "a couple different court dates." The family court determined this was insufficient cause for Father's failure to appear, and it declined to set aside the contempt finding. Yet the family court again set a future hearing date, and Father and his counsel were instructed to gather information regarding his disability appeal and medical information that would show the family court that Father was unable to work.

Despite Father and his counsel insisting to the family court that Father was unable to work at the time due to medical issues, it was stated at the end of the June 17 hearing that Father had just started a new job, and he was hopeful he would be able to start making payments. The family court stated it would take any information Father provided into account when setting his sentence.

At the next hearing, which occurred on September 2, 2025, both Father and his counsel were again present. Father testified to some of his medical conditions, and he did provide some medical records in support. Father provided a Medically Excused Absence form from a physician that stated Father was under

medical care from August 13, 2025, to September 15, 2025, and could return to work on September 16, 2025. Father then stated he was scheduled for stomach surgery on September 16, but he provided no documentation of this. This report of a serious surgery also seems inconsistent with the date range provided in the medical excuse provided which was to end on September 16. Father did provide some medical records that outlined some of his medical diagnoses, including diabetes and hypertensive chronic kidney disease.

Only after all this information was considered did the family court impose its sentence, which was 180 days to serve on home incarceration, with medical and work release. In *Lewis*, 875 S.W.2d at 864, the Kentucky Supreme Court held that “the statutes of the Commonwealth require that an indigent person has a right to appointed counsel in civil contempt proceedings *prior to the execution of an order of incarceration.*” (Emphasis added.) While Father did not have counsel present at the hearing in which the contempt finding was made, he had the assistance of counsel at the multiple subsequent hearings, including the one where his sentence was imposed. It should also be noted that the family court granted Father’s counsel’s request for Father to have home incarceration with medical and work release. Counsel did not request a specific purge amount but simply requested “a purge amount within his ability to pay.”

We have upheld findings of contempt under similar circumstances:

The issue then becomes whether James was given a fair opportunity to be heard since he was not present at the contempt hearing. Significantly, James had notice, and then sent another attorney to request a continuance, which the court denied. James had an opportunity to present a defense at the hearing which he did not attend or have counsel appear on his behalf. He had the opportunity to be heard but ignored it. He had the obligation to pay child support and did not.

James v. Brewer, No. 2009-CA-001776-ME, 2011 WL 474813, at *4 (Ky. App. Feb. 11, 2011).⁸ *See also Terry v. Terry*, No. 2020-CA-0938-MR, 2022 WL 4587680, at *4 (Ky. App. Sep. 30, 2022) (“Careful review of the record before us shows Norma had notice of the contempt proceedings against her and multiple opportunities to be heard.”). While these cases are non-binding, they illustrate that this Court has determined that it is not inherently a due process violation to hold an initial civil contempt hearing *in absentia*.

Despite the contempt finding being made in Father’s absence, no sentence or consequences were imposed until both Father and his counsel were present in front of the family court. In fact, Father and his counsel were given several additional hearings in which to show Father was unable to work. He was

⁸ Unpublished and non-binding, cited pursuant to Kentucky Rules of Appellate Procedure (RAP) 41.

unable to do so, and the family court made the finding that “you are willfully, willfully, not paying your child support.”⁹

“In a civil contempt proceeding, the initial burden is on the party seeking sanctions to show by clear and convincing evidence that the alleged contemnor has violated a valid court order.” *Ivy*, 353 S.W.3d at 332. In this instance, Mother had the initial burden, which she met by showing that Father had failed to pay his ordered child support payments. At the May 6 hearing, Mother testified she had not received a child support payment since September 2024, which was confirmed by the County Attorney’s payment history.

Once the moving party makes out a prima facie case, a presumption of contempt arises, and the burden of production shifts to the alleged contemnor to show, clearly and convincingly, that he or she was unable to comply with the court’s order or was, for some other reason, justified in not complying. This burden is a heavy one and is not satisfied by mere assertions of inability. The alleged contemnor must offer evidence tending to show clearly that he or she made all reasonable efforts to comply.

Id. (citations omitted).

In civil contempt situations involving non-payment of child support, circuit and family courts must be allowed to proceed with the initial step of determining contempt for non-payment when a party has been properly notified and

⁹ Hearing of September 2, 2025, VR at 11:07:51.

fails to appear. If contempt proceedings could be delayed simply by choosing not to appear, the collection of needed child support would be seriously impaired. Again, whether through a hearing after a bench warrant for failure to appear has been served or another hearing after an initial contempt finding has been made, what occurred here was a hearing before incarceration occurred for contempt. That was sufficient.

Despite having already made a finding of contempt, the family court gave Father several additional opportunities to show that he was unable to make the required payments. While Father made some general assertions about “medical issues,” he only provided proof that he was unable to work from August 13, 2025, to September 15, 2025. As the family court noted, the contempt finding was made in May 2025, and Father had not made a payment since September 2024. And despite Father’s assertions that he was unable to work, he also testified that he was working in July 2025 to August 2025, making \$30 an hour. The family court determined Father had not met the shifted burden that he was unable to comply with the court order, and we will not set that finding aside as it was not clearly erroneous.

Father next argues that the family court erred by setting an unattainable purge amount. In her remarks to the family court, Father’s counsel said “I would also ask for a purge amount to be set, I believe, well, my client,

[R.L.A.], is entitled to a purge amount that he can afford, that takes into account his current ability to pay, which currently he's not able to work with his medical conditions.”¹⁰ She also stated she does not believe he is currently able to afford his current support obligation. A contemnor must have the ability to purge the contempt and cannot be required to perform an impossible act. *Ivy*, 353 S.W.3d at 334-35.

Father argues that he has extensive medical issues. And during the September 2 hearing, he stated that he has always had medical conditions. But the only medical proof Father submitted to the family court covered a one-month period from August to September 2025. Father claimed he had surgery in September 2024, which was why he stopped making his child support payments, but there is no documentation in the record to support this claim. “[J]udging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). A family court is not required to simply take a litigant's word in the absence of other admissible evidence.

Despite all the medical contentions he asserted, Father testified that he had been working. He had obtained a job in July 2025 making \$30 per hour. He testified he made \$17 per hour at his previous job. Father's counsel did not request

¹⁰ Hearing of September 2, 2025, VR at 11:15:16.

any specific purge amount, or even a range of what they believed Father would be able to afford. Setting Father's purge amount at \$2,500 was not an abuse of discretion in these circumstances.

CONCLUSION

The family court did not abuse its discretion in finding Father in contempt, nor in setting the purge amount. The order of the Jefferson Family Court is AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Aaron Reed Baker
Frankfort, Kentucky

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY:

Matthew F. Kuhn
Solicitor General

John H. Heyburn
Principal Deputy Solicitor General

Caleb B. Childers
Assistant Solicitor General
Frankfort, Kentucky