IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

J.L.W.,	:
Plaintiff	:
	:
v.	:
	:
D.A.W.,	:
Defendant	:

O P I N I O N

Issued Pursuant to Pa. R.A.P. 1925(a)

The plaintiff has appealed this court's order of September 16, 2005, which found him in contempt for failing to provide proof and certification of life insurance coverage and beneficiaries, for failing to provide information regarding statements and status of the children's accounts, and for failing to pay child support.

The purpose of a civil contempt order is to coerce the contemnor to comply with a court order. Contempt is governed by 23 Pa.C.S. §4345, which states that a person who "willfully fails to comply with any order under this chapter" may be found in contempt of court. Punishment is also governed under §4345, which states contempt is punishable by imprisonment for six months or less, a fine of $1000 or less, or probation for one year or less.

In the recent case of Hyle v. Hyle, 868 A.2d 601 (Pa. Super. 2005), the Superior Court explained the analysis a court must apply in imposing a punishment under 23 Pa.C.S. §4345. Once the complaining party shows, by a preponderance of the evidence, hat a party is in contempt of a court order, the alleged contemnor may then present evidence that he has the present inability to comply and make up the arrears. When the alleged contemnor presents evidence that he is presently unable to comply the court, in

imposing coercive imprisonment for civil contempt, should set purge conditions with which it is convinced beyond a reasonable doubt the contemnor has the present ability to comply.

This court found Father in contempt of the order entered by the Circuit Court of the City of Chesapeake, Virginia in February 1997 and registered in Lycoming County in June 1999. Specifically, this court found Father failed to pay child support of $1,150 per month, for a total arrears of over $26,000. In addition, the court found that Father failed to provide proof and certification of life insurance coverage and beneficiaries, and failed to provide information regarding the statements and status of the children's accounts.

The evidence clearly established that Father failed to provide Mother with proof of life insurance coverage and beneficiaries, and failed to provide statements of the children's accounts. Furthermore, there was no evidence as to why Father was unable to provide this information to Mother in the past, nor was there any evidence as to why Father is currently unable to provide this information to Mother. Therefore, the court imposed a sanction of $300 in attorney fees, and suspended the sanction upon the condition that Father provide such statements and documentation on or before September 30, 2005. The court cannot understand why Father has appealed this ruling, as it seems perfectly reasonable and if anything, overly generous to Father.

As to Father's failure to pay child support, the evidence established that Father worked for the Navy for sixteen years as a mechanical engineer, a marine engineer, a dry docking engineer, and a diving and salvage engineer. He left the Navy in December 1994, when he took a job as a senior engineer at Technology Management and Analysis

Corporation in Arlington, Virginia. After two and one-half years, he accepted a job with Merck and Company in Danville, Pennsylvania, as a project engineer, earning $87,000 per year. He was fired from that position in September of 2003, due to "irregularities" in two of his accounts. He has a Bachelor of Science degree in geosciences and a Master's degree in mechanical engineering. Father testified he has been unable to find a job since September 2003, although he has made extensive efforts to obtain employment. He opined his lack of success was due to his age (50), his 25 years of experience, and the poor economy. He seemed to believe he was overqualified for many of the positions advertised. Father further testified that he has applied to temporary agencies as well as advertised positions, and has sent out numerous resumes to potential employers.

However, upon cross-examination Father testified that he did not apply at some of this area's largest employers. Although those employers might not have engineering jobs available, they are nonetheless obvious sources of local employment that were untapped. Acknowledging Father's unfortunate termination from his position, the court finds that as an able-bodied individual with a solid work history, Father had the ability and obligation to obtain some type of employment in the last two and one-half years, and to pay some support. Instead, he appears to have sat back and waited to be hired for an "appropriate" position, paying zero support during those years. Certainly the court does not fault him for wanting to obtain an engineering job commensurate with his experience; however, his obligation to support his two children did not terminate with his job, and he certainly could have worked while continuing his job search. Moreover, the court notes Father never petitioned for a modification of support until July 2005.

And finally, the evidence established that Mother is currently receiving 45% of Father's military pension, or $839 per month. Father therefore is receiving the remaining 55% per month.

For these reasons, the court found Father in contempt for failing to pay child support in over two years, and sentenced him to seven days incarceration. However, recognizing his difficulty in finding an engineering job commensurate with his last position, the court set an extremely low purge payment. Specifically, Father was given six weeks to pay $500, and ten weeks to pay $1000. This court is convinced beyond a reasonable doubt that Father has the present ability to comply with this purge payment. Even working at a minimum wage job would generate these funds, leaving him his military pension to meet his personal living expenses.

BY THE COURT,

Date: _____   _____
                               Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
       Hon. Richard A. Gray
       Joy McCoy, Esq.
       Matthew Zeigler, Esq.
       Gary Weber, Esq.