**Contempt Actions Podcast**

**HI FOLKS AND WELCOME TO ANOTHER EPISODE OF THE GOOD JUDGE-MENT PODCAST. I’m Wade Padgett**

***And I’m Tain Kell. Today we’re going to cover a topic that frequently comes up in both civil and criminal litigation.***

**That’s right, it’s the topic of civil and criminal contempt. And don’t worry, that terminology will get a lot more confusing as we go along.**

***Wade’s just joking. We hope that by the end of this podcast the traditional distinction of civil versus criminal contempt will make much more sense.***

* There are two types of contempt–*direct contempt* and *indirect contempt*
* Many people refer to the two types of contempt as “criminal” and “civil.”
* Even the cases use the terms “criminal” contempt and “civil” contempt.  *Bernard v. Bernard*, 347 Ga. App. 429 (2018); *Tate v. Tate*, 340 Ga. App. 361 (2017).
* But this nomenclature (fancy word) is really unnecessarily confusing.
* The phrases “civil contempt” and “criminal contempt” are really addressing the potential *punishment* for contempt and not what type of contempt has been committed.
* **Direct contempt** (aka “criminal”) involves disrespectful conduct toward the court (“within the sensory perception of court”)
  + - **EXAMPLE: “F\*\*K YOU, JUDGE PADGETT!”**
    - **The punishment for direct contempt is punitive**
    - **Limitations §15-6-8(5):**
      * **20 days in jail per offense**
      * **$1,000 per offense**

Criminal contempt imposes unconditional (and usually immediate) punishment for contumacy (another fancy, $2 word)

* **Indirect contempt** (aka “civil contempt”) is the willful refusal to follow a written court order or other conduct outside the presence of the court

**Civil contempt** imposes conditional punishment as a means to coerce future compliance with a prior court order

**Examples of punishment include but are not limited to:**

* + Incarceration until compliance
    - * Only limit of time incarcerated is “ability to pay”
  + Per diem fines until compliance
  + Frozen assets until compliance
  + Other creative but appropriate punishments
* Contempt in the context we are dealing with is (usually) civil contempt for willful failure to follow a court order such as:
  + - Failure to pay child support
    - Failure to allow visitation
    - Failure to turn over personal property (marital residence, engagement ring, Bubby the dog)
* The standard is whether the party’s conduct is *willful* contempt–there can be no “non-willful contempt”
* That is, the party’s conduct must exhibit a willful disobedience to the Court’s order - and you must make that specific finding- not just an inability to comply
  + - EXAMPLE:
      * Party loses job and has inability to pay full child support

VS.

* + - * Party fails to pay anything but continues to pay bills, vacations, buys girlfriend $10k engagement ring, drives Maserati to court, etc.
* **TIP:** If you find a party to be in arrears on child support but that the failure to pay is not willful (i.e., no contempt) make a finding of the current amount of the arrearage so next time you don’t have to recalculate the arrearage from the beginning
* Contempt requires an ability to do the act complained of and willfully failing to follow the mandate of the court

MUY IMPORTANTE!

YOU MAY NOT FIND SOMEONE IN CONTEMPT OF A VERBAL ORDER!

THE ORDER MUST BE WRITTEN!

ALSO MUY IMPORTANTE!

DON’T LOCK SOMEONE UP FOR CONTEMPT AND FORGET ABOUT THEM!

SET A HEARING DATE RIGHT THEN AND THERE!

***FLOYD* ORDERS**

*FLOYD v. FLOYD*, **247 Ga. 551 (1981)**

Where there has been a finding of contempt, the court can fashion an order forestalling incarceration in order to coerce compliance by payment of obligations.

In other words, you can make a defendant pay obligations to the sheriff or face immediate incarceration for failure to pay by a date certain.

EXAMPLE: Defendant owes $90,000 to spouse. Court can order him to pay $30k to sheriff on April 1, $30k to sheriff on June 1 and $30k to sheriff on August 1. Failure to make any of those payments will result in an automatic incarceration.

**Floyd orders should contain:**

* 1. Specific amounts to be paid;
  2. Specific date or dates on which payment must be made;
  3. Specific language directing the sheriff to arrest the defendant *in the event of a failure to pay* exactly as directed;
  4. Language directing the sheriff to whom to pay any money he/she receives from the defendant; and
  5. Total purge amount.
* Do not confuse this order with the prohibition against self-directed orders we will discuss in a minute, they are different.
* Also, use these sparingly and only if your sheriff will willingly assist- they’re kind of a pain for them…

**COUNTERCLAIMS TO A CONTEMPT ACTION (AND VICE VERSA)**

* SPOILER ALERT: there should be no counterclaims for contempt in a contempt action

**Jurisdiction/Venue:**

* A court which issues an order retains the power to enforce that order;
* §9-10-91(6) LONG-ARM STATUTE FOR CONTEMPT
  + - 1. provides the authority for Georgia courts to exercise jurisdiction over nonresidents in modification and contempt actions;
* A superior court that acquires jurisdiction to hear a modification of the decree also has authority to consider a claim/counterclaim for contempt even if that court was not the court which initially issued the order in question;
* While contempt and modification actions generally have to be filed as separate actions, the court has the authority to join the two cases for the purpose of trial.

**A counterclaim for contempt cannot be filed in response to a contempt action.**

* If both parties have a pending contempt action against one another, the two matters can be joined for trial.
* Failure to object to a counterclaim for contempt is a waiver.

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* **CANNOT MODIFY IN A CONTEMPT BUT…**
* Cannot “modify” in a contempt but you can “clarify” *Cason v. Cason*, 281 Ga. 296, 297 (2006).
* **CANNOT MODIFY PAST OR FUTURE OBLIGATIONS**
* In a contempt action, the court can set up a payment plan to allow the offender to purge himself of contempt but has no authority to modify future (or past) obligations (***FRIDAY v. FRIDAY****,* 294 Ga. 687 (2014)
* —“we have not allowed trial courts later to compel a party who was awarded a specific asset to sell or otherwise convert that asset in order to comply with some other provision of the decree”
* EXAMPLE-The court could not make a contempt finding and also change the amount that the defendant owed for past child support/alimony.  Also, cannot change the amount owed in the future—cannot write off arrears or reduce monthly payments (***GA. DEPT. HUMAN RESOURCES v. GAMBLE***, 297 Ga. App. 509, 510-511 (2009))
* EXAMPLE-where defendant did not list wife as beneficiary on retirement, court could require defendant to purchase annuity that provided for same benefit. (***GOOCH v. GOOCH***, 297 Ga. 189 (2015)
* While there is a rule that you cannot modify in a contempt, you can award *value* of personal property
* Where decree awarded wife personal property and the evidence shows that husband hid or disposed of the property, court may award value of the property in the contempt action—not an impermissible modification of decree.  (***SMITH V. SMITH*, 293 Ga. 563, 564 (2013))**
* —but wife has to provide proof of value (***SMITH v. SMITH***, 293 Ga. 563 (2013))
* Where there is no connected action for modification, the contempt citation must be heard by the court that entered the order initially **(*JACOBS v. KOSLOW*, 282 Ga. 51 (2007))** **BUT,**where a court has jurisdiction to hear a modification or other action, the court also has jurisdiction to hear a contempt count, either via counterclaim or otherwise **(*FORD v. HANNA*, 292 Ga. 500 (2013))**
* The court that rendered the order that is now subject to a contempt citation retains the power to enforce its order, even where the parties have moved from the territorial jurisdiction of the court **(*TAYLOR v. TAYOR*, 216 Ga. 767 (1961))**
* In a contempt action, the court can modify *visitation* as part of its authority under §19-9-3 but cannot change custody **(*MCCALL v. MCCALL*, 246 Ga. App. 770 (2000); *COKER v. MOEMEKA*, 311 Ga. App.105 (2011))**
* There is no requirement that 30 days pass between filing and the hearing in a contempt action **(*WOOD v. WOOD*, 283 Ga. 8 (2008))**
* Contempt not barred by statute of limitations–but may be subject to defense of laches (except relating to child support—no defenses)
* There is the possibility of an equitable defense **(*FULLER v. FULLER*, 279 Ga. 805 (2005))**–even when there is an informal change of custody without an order
* **AGAIN: IMPORTANT PRACTICE NOTES RE: CONTEMPT**
* If you incarcerate a party for contempt, set up a system of reminders!
* There will not be anyone to naturally remind you that the guy is in jail like there is in criminal cases with calendars, etc.
  + Inability to pay is a defense to contempt–and if a party is jailed for contempt, court has an obligation to *revisit* the case to determine if inability to pay has developed during incarceration
* Improper to allow future imprisonment upon the filing of non-compliance affidavit by a *party* (i.e., “giving the keys to the jail to the opposing party) —but it is permissible if affidavit from neutral and detached officer of court (not attorney for payee spouse) (***HALL v. DOYLE-HALL***, 284 Ga. 325 (2008); ***MOCCIA v. MOCCIA***, 277 Ga. 571 (2004)
  + - This is different from the *Floyd* order we discussed earlier

WELL, FOLKS, THAT IS OUR BRIEF BUT HOPEFULLY INFORMATIVE DISCUSSION OF THE TWO TYPES OF CONTEMPT HEARINGS WE ENCOUNTER MOST OFTEN IN SUPERIOR COURT.

*DON’T FORGET TO LOOK IN OUR NOTES ON* ***GOODJUDGEPOD.COM*** *WHERE YOU’LL FIND NOT ONLY AN OUTLINE OF OUR NOTES FOR THE PODCAST, BUT ALSO WADE’S OUTLINE FOR HOW TO TRY A CONTEMPT ACTION.*

**OF COURSE, THIS IS ONLY A SUGGESTION! THANKS FOR TUNING IN TODAY! I’M WADE PADGETT.**

***AND I’M TAIN KELL. HAPPY TRAILS TO YOU!***

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