

IN THE OHIO SUPREME COURT

Michael Liming, :
Plaintiff-Appellant, : Case Nos. 2011-1170
vs. : 2011-1985
Denday Damos, :
Defendant-Appellee. :

MERIT BRIEF OF APPELLEE ATHENS COUNTY CSEA

OFFICE OF THE OHIO PUBLIC DEFENDER

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STATEMENT OF THE CASE AND FACTS

Denday Damos and Michael Liming were married in 1993. Two children were born as issue of the marriage. Both children are still minors and live with Denday Damos. In 2001 Mr. Liming filed for divorce. Initially, the parties worked out a temporary shared parenting of the children, and no child support was ordered. Court Order January 11, 2002, and Entry and Order, filed July 1, 2002. Pursuant to Magistrate's Modified Temporary Orders, Journal Entry filed September 8, 2003, Denday Damos was named temporary legal custodian of the two children. Pursuant to Decree of Divorce, filed January 19, 2005, Denday Damos was named legal custodian and residential parent of the two children. The Decree of Divorce found that guideline support was \$374.96 per month but ordered support be deviated to \$0 because Mr. Liming was at that time ordered to pay the chapter 13 bankruptcy trustee \$1,225.00 per month toward marital debts. However, Mr. Liming did not make these payments to the bankruptcy trustee. Magistrate's Decision file October 29, 2007, Finding of Fact #4.

The source and amount of Mr. Liming's income was a mystery to the trial court during a long and protracted divorce proceeding. Mr. Liming testified at his divorce hearing that he was a buyer and seller of distressed real estate, but none of his financial documents indicate actual earnings from buying or selling real estate. At one point, he claimed to spend two (2) hours per day on the internet, managing his stock portfolio, but his bankruptcy confirmation plan included no stocks, bonds or annuities. In 2003 and 2004, Mr. Liming claimed to be employed as a part time lay pastor with an income of \$6,700 per year, but his bankruptcy confirmation plan did not include this income. He

claimed to be physically unable to work but did not apply for disability and did not supply the court with any medical documentation of his alleged physical limitations. Mr. Liming's confirmation plan filed with the bankruptcy court indicated an annual income of \$18,000.00. Mr. Liming submitted a financial affidavit with the court on January 18, 2002 indicating his income was \$15,648.00. The Guardian ad Litem was led to believe by Mr. Liming that his income was \$24,000 per year and the psychologist was led to believe his income was \$40,000 per year. Magistrate's Proposed Decision, Findings of Fact #8, 9 & 10, filed September 27, 2004.

In February, 2007, Mr. Liming's case was dismissed. On April 30, 2007 Athens County Child Support Enforcement Agency (ACCSEA) filed a Motion for Modification of child support. In May, 2007, Mr. Liming filed another bankruptcy petition but Ms. Damos sought a relief from stay in bankruptcy court in order to obtain a child support order. This relief was granted by the bankruptcy court on June 5, 2007. A hearing on the CSEA's Motion for Modification was held on October 12, 2007. Mr. Liming was present with counsel. On October 29, 2007, a Magistrate's Decision was filed, recommending that Mr. Liming pay child support in the amount of \$376.99 per month, effective June 5, 2007. The Magistrate noted that Mr. Liming provided a 2006 tax return showing an annual income of \$11,295.00 and had testified that he worked approximately twenty hours per week as a self employed rental property manager. The Magistrate found that Mr. Liming was capable of working full time and imputed minimum wage at \$6.85 per hour, for an annual income of \$14,248.00. Mr. Liming did not object to this finding of fact and did not file objections to the Magistrate's Decision, which was then adopted by the Court on January 17, 2008. The court also ordered Mr. Liming to pay \$75.40 per

month toward his child support arrears and to participate in the Seek Employment Program at the ACCSEA.

Mr. Liming has never filed a motion requesting modification of the January 17, 2008 child support order and has not submitted a written request to the Athens County Child Support Enforcement Agency for an administrative modification of said order.

On July 11, 2008, ACCSEA filed a Proof of Claim with the bankruptcy court claiming a child support debt of \$2,961.18 for the period of time from June 5, 2007 until March 1, 2008. No child support was ever paid from the bankruptcy trustee to the child support agency for this case.

Mr. Liming failed to pay anything toward his child support obligation and, on June 22, 2008, ACCSEA filed a Motion for Contempt, a Summons and Magistrate's Order, ordering Mr. Liming to appear and show cause as to why he should not be held in contempt, advising him of his right to counsel, directing him to apply for a Public Defender, if indigent, and advising him of potential penalties if found in contempt of court. On September 3, 2008, the Motion for Contempt came on for hearing. Mr. Liming appeared with his private counsel, Thomas McGuire, who requested a continuance. Said request was granted and the hearing was continued to October 15, 2008. On September 11, 2008, ACCSEA filed another Motion for Contempt, alleging that Mr. Liming had failed to comply with the Seek Employment Program.

Both Motions for Contempt came on for hearing on October 15, 2008. Mr. Liming was present with Attorney Thomas McGuire, Denday Damos was present with her Attorney Richard Hedges, and ACCSEA was represented by Attorney Keith Wiens. On October 15, 2008, a Magistrate's Decision was filed, recommending that Mr. Liming

be found in contempt of court and sentenced to thirty (30) days in jail, all of which was to be suspended provided Mr. Liming meet certain purge conditions, which required the payment of \$75.40 per month toward his arrears every month, in addition to his current support of \$376.99 per month. No objections were filed to the magistrate's recommendations, and on November 12, 2008, the court filed an Entry Adopting the Magistrate's Decision. No appeal to the November 12, 2008 Judgment Entry was filed.

Mr. Liming made his first ever child support payment on November 17, 2008. He paid his full monthly obligation, plus his ordered payment on arrears for November and December, 2008, and for January, 2009, then began missing payments. On September 15, 2009, ACCSEA filed a Motion to Impose Sentence and Notice of Hearing. The Motion came for hearing on November 16, 2009. Mr. Liming appeared, without counsel, alleged that he could not afford to pay the current support order and ordered repayment of arrears and told the court that an administrative modification was in process but incomplete. The November 16, 2009 Motion to Impose hearing was continued until the administrative review could be completed.

On December 14, 2009, the case came on for administrative review. Both parties submitted personal information forms, tax returns, and other documentation of their income. The agency found that Mr. Liming had an annual income of \$13,000 as a self employed courier and \$480 per year from oil and gas leases. The agency found that Ms. Damos had an annual income of \$21,896 and credited her with providing dental and vision insurance at an annual cost of \$396 per year. On January 14, 2010, the Athens County CSEA issued an administrative modification recommendation wherein the agency recommended that Mr. Liming's child support obligation be modified to \$280.64,

plus 2% processing fee. Ms. Damos timely objected and a Notice of Hearing was filed February 23, 2010. Both parties appeared for hearing before Magistrate Bradford on April 26, 2010. Neither party was represented by counsel. ACCSEA was represented by Attorney Keith Wiens. The court heard testimony from both parties and, on May 18, 2010, filed a Magistrate's Decision, recommending that Mr. Liming's child support obligation be modified to \$280.60, effective January 1, 2010. The Magistrate agreed with the agency's finding that Mr. Liming's annual income was \$13,480.00 and used said income in the child support worksheet attached to her decision. Neither party filed objections to this Magistrate's Decision, which was then adopted by Judgment Entry filed June 3, 2010. Said Judgment Entry also ordered Mr. Liming to pay \$56.13 per month toward his child support arrears. Due to a typographical mistake in the May 18, 2010 Magistrate's Decision (which recommended that Defendant, rather than Plaintiff pay \$56.13 toward child support arrears), a second Magistrate's Decision was filed May 27, 2010 and a second Judgment Entry was filed June 17, 2010, adopting the Magistrate's Decision. The June 3, 2010 Judgment Entry did not contain the typographical mistake from the first Magistrate's Decision, and was identical to the June 17, 2010 Judgment Entry.

On April 26, 2010, after the hearing on Denday Damos' objections to the administrative modification recommendation, Mr. Liming told counsel for ACCSEA that he was having a hard time meeting his child support obligations due to other personal expenses. Later, counsel for ACCSEA mailed Mr. Liming a letter asking him to bring documentation of his personal expenses, bank records and anything else to document his personal financial situation, to the June 14 hearing. See appendix A. This letter was not

made part of the official record, but in light of the new holding in *Turner*, seems particularly relevant if Mr. Liming wants this Court to apply the *Turner* Court's newly announced substitute procedural safeguards to this case. In particular, this letter demonstrates that Mr. Liming was on notice that his ability to pay was relevant at the June 14, 2010 hearing and that he would have an opportunity to submit that information to the court. Prior to hearing on June 14, 2010, Mr. Liming told counsel for ACCSEA that he had no bank accounts in his name and he had not financial documents to present to the court.

The previously continued Motion to Impose hearing was heard on June 14, 2010. Mr. Liming was present, without counsel. Denday Damos was not present and was not represented by counsel. ACCSEA was present and was represented by Attorney Keith Wiens. The State of Ohio was not owed any of the underlying child support payments and the State of Ohio was not at the hearing to represent the State's financial interest. ACCSEA's role at the June 14, 2010 hearing was to provide the trial court with evidence and documentation of the failure by Mr. Liming to comply with the trial court's orders.

At hearing, Mr. Liming testified that he was willing and able to pay \$280.64 per month for current support plus \$56.13 per month for arrears. June 14, 2010 Hearing Tr. 9, 47. The court found that Mr. Liming had been paying exactly \$280.64 for child support every month, but had made no payments toward his arrears since January, 2010. On July 28, 2010, the trial court issued a Judgment Entry on Motion to Impose which ordered Mr. Liming to serve ten days, on weekends, of the previously suspended thirty days. Said Entry is the subject of this appeal.

ARGUMENT

I. Is a purge hearing to impose a suspended sentence for failing to pay child support a civil or criminal proceeding?

The Fourth District Court of Appeals properly found that the June 14, 2010 purge hearing, where Mr. Liming was ordered to serve ten days of his 30 day sentence, was a civil proceeding. *Liming v Damos*, 4th Dist. No. 10CA39, 2011-Ohio-2726, p. 2.

Appellant relies heavily on *Samantha N. v Lee A.R.* (Feb. 16, 2001), Erie App. Nos. E-00-036 & E-00-037, 2001 WL 127343 for his proposition that a civil contempt proceeding is converted to a criminal purge hearing when the court imposes a previously suspended jail sentence. The Fourth District Court disagreed with the Sixth District Court's characterization of a purge hearing as an exercise of criminal contempt powers and accurately held that a purge hearing retains the civil character of the original contempt proceeding and therefore, the Sixth Amendment to the United States Constitution does not apply. *Liming* at p. 6.

A much better reasoned analysis than *Samantha R.*, is *Segovia v Likens*, 179 Ohio App.3d 256. In *Segovia*, the obligor appeared with counsel at the hearing on contempt. *Id.* 260. At a subsequent hearing on a motion to enforce, the obligor appeared without counsel, and asked for a continuance to seek legal counsel. The trial court denied this request and, after hearing the evidence in the case, ordered the obligor to serve six days of his 15 day sentence.

The Tenth District held that the failure of a party to purge his contempt does not convert a civil contempt into an action for criminal contempt based solely upon the court's imposition of the previously suspended sentence because the contemnor is not facing a

new risk of imprisonment. *Segovia* at 266. The contemnor's liberty interest at the purge hearing is already diminished because he has already been sentenced. *Id.* 267. The court analyzed the Due Process Clause of the Fourteenth Amendment by applying the balancing test from *Mathews v Eldridge* 424 U.S. 319, 96 S.Ct. 893, 47 L.E.2d 18 and comparing (1) the private interests at stake; (2) the government's interest; and (3) the risk that the procedures used will lead to erroneous decisions. *Id.* 266-267. The *Segovia* court determined that the balancing of interests does not include the right to counsel because the contemnor's liberty interest is already diminished and the risk of erroneous decision is low, due to the reliability of the original finding of contempt when a contemnor is represented by counsel. *Segovia* concluded that the government's interest in allowing a trial court the flexibility to ensure prompt compliance with its orders outweighed a contemnor's right to counsel at a purge hearing. *Id.*

The United States Supreme Court held last year, in *Turner v Rogers*, 564 U.S. ___, 131 S.Ct. 2507, 180 L.Ed.2d 252 (2011), that the Sixth Amendment does not govern civil contempt cases, even when a contemnor is incarcerated. Further, civil contempt differs from criminal contempt in that civil contempt seeks only to coerce an individual to do what a court has previously ordered him to do. *Id.* at 2516. In *Turner*, the Court thoroughly analyzed a contempt of court proceeding from South Carolina wherein the obligor appeared without counsel and was found in contempt and sentenced to twelve months in jail. Throughout the entire discussion in *Turner*, child support contempt of court cases are classified as civil proceedings. The case at bar in *Turner* clearly involved an imposed sentence, not a suspended sentence, and yet no where did the Court find that the civil contempt case had been converted to a criminal contempt proceeding. The

Turner decision clearly holds that there is no Sixth Amendment right to counsel at a child support contempt proceeding. *Id.*

This Court has consistently held that civil and criminal contempt proceedings are distinguished by the character and purpose of the punishment. The purpose of civil contempt is to compel the contemnor to comply with the lawful orders of a court. *Pugh v. Pugh*, 15 Ohio St.3d 136, 139. Punishment is remedial or coercive and for the benefit of the complainant in civil contempt. *Brown v Executive 200, Inc.* (1980), 64 Ohio St.2d 250, 253. If the contempt is civil the sanction is primarily coercive in nature and must allow for purging. *State v Kilbane* (1980), 61 Ohio St.2d 201, 206, 400 N.E.2d 386 (Ohio 1980).

On November 12, 2008, Mr. Liming was found in contempt of court by the Athens County Court of Common Pleas. He was sentenced to 30 days, all of which was suspended for one year provided that he comply with specified purge conditions, which included paying \$75.40 every month to his child support arrears, paying timely every month, and cooperating with the seek work program if unemployed. Clearly, this was a civil contempt, and appellant has stipulated as much. Appellant, however, asserts that if a court ever imposes any part of the suspended sentence, then the civil contempt becomes a criminal contempt.

Appellant argues that when the Athens County Court of Common Pleas imposed ten days of the thirty day sentence by Judgment Entry filed July 28, 2010, the proceeding was then converted from a civil to a criminal contempt proceeding, because the court was then punishing, not coercing, Mr. Liming. This argument has several logical, as well as legal flaws.

The purpose of a suspended jail sentence in a civil contempt case is to coerce an obligor to pay his or her child support obligation. For some contemnors, a finding of contempt and a suspended jail sentence is sufficient motivation to comply with a court's orders. Some obligors however, will continue to defy a court order. If a court fails to impose a previously suspended sentence, despite the failure to comply with the ordered purge conditions, an obligor will quickly learn that the suspended sentence has no teeth. Then, the suspended sentence is no longer coercive. Thus, where there is an ongoing support order and an ongoing order to repay arrears, the decision of a court to impose part or all of a previously suspended jail sentence continues the coercive purpose of encouraging that obligor to comply with the ongoing orders of the court. The imposition of a suspended jail sentence is thus not intended to punish, but to coerce future compliance with the court's support orders.

Appellant's contention that a proceeding is converted from civil to criminal upon the actual imposition of the previously suspended sentence requires a prescient judiciary. On June 14, 2010, when the CSEA's Motion to Impose was heard, the case was civil. At the onset of the hearing, Mr. Liming asked for counsel, which was denied. And why should Mr. Liming be afforded the rights of a criminal defendant, when the matter was, at that time, civil? How was the Judge to know, at the outset what his decision would be, when the evidence had not yet been presented to the court? How can a court determine whether a civil contemnor is entitled to the constitutional rights of a criminal defendant, under Appellant's theory, prior to a hearing on a Motion to Impose a previously suspended sentence, when there is yet no actual order for incarceration? Appellant's argument is illogical.

II. **Due process entitles an indigent contemnor to be represented by court-appointed counsel at a “purge” hearing, if, at the conclusion of that hearing, the trial court imposes a term of incarceration.**

The Fourth District Court of Appeals held that a civil contemnor has a diminished liberty interest at a purge hearing, that requiring the government to provide counsel at all purge hearings would impose fiscal and administrative burdens on the state and that there was little risk of an erroneous decision and declined to create a categorical rule that civil contemnors have a due process right to counsel at purge hearings. *Liming v Damos*, 4th Dist. No. 10CA39, 2011-Ohio-2726, at 2.

In *Turner v Rogers*, the United State Supreme Court similarly concluded that the Fourteenth Amendment’s Due Process Clause does not require the state to appoint counsel for an indigent person facing *incarceration* for non-payment of support. *Turner v Rogers*. The Turner court held that the Due Process Clause does not automatically require the provision of counsel in civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to one year). *Turner*, 131 S.Ct. at 2518, 180 L.Ed.2d 252.

The *Turner* Court held that where civil contempt is at issue, the Fourteenth Amendment’s Due Process Clause allows a State to provide fewer procedural protections than in a criminal case. *Turner* at 2516. Instead of a per se right to counsel, the *Turner* court held that the proper analysis of what due process rights must be provided is the balancing test from *Mathews v Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed 18 (1976). First, the private interest that will be affected; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and third, the Government’s interest, including the

function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.* at 335.

In the present case, the Government interest involved is in the swift enforcement of child support orders on behalf of the best interest of the children. The Motion to Impose hearing held June 14, 2010 had already been continued for seven months so that the modification process could be concluded. Then, on June 14, 2010, Appellant appears and requests counsel be appointed by the court. Said action would have necessitated an additional delay in the proceedings.

In *Turner*, the United States Supreme Court clarified that previous cases discussing the right to counsel had found the right to counsel “only” in cases involving incarceration, not that a right to counsel exists in all such cases. *Turner* at 2517. Appellant seems to be arguing that this Court interpret United States Supreme Court cases in a manner contra to *Turner*.

Appellant attempts to distinguish *Turner* from the present case stating that the trial court entry in *Turner* had a purge condition, therefore it was civil. Appellant ignores the fact that the father in *Turner* was sentenced directly to twelve months of incarceration, his purge condition being, if he paid his arrears in full, while incarcerated, he would be released. Under Appellant’s argument before this Court, when any court orders actual incarceration, then the proceeding is criminal. The father in *Turner* actually served twelve months of incarceration, yet the U. S. Supreme Court in *Turner* repeatedly described the proceedings as civil. Instead of incarceration as the dividing line between civil and criminal contempt, the *Turner* court held that the ability to pay marked the dividing line between civil and criminal contempt. *Id.* at 2518.

Appellant erroneously claims that the trial court never determined if Mr. Liming had the ability to pay. Ohio law has long been well settled, that once a movant has demonstrated a failure to pay support as ordered, the burden is on the obligor to prove an inability to pay. *Rinehart v Rinehart*, 87 Ohio App.3d 325, 328; 622 N.E.2d 359 (Ohio App. 3 Dist. 1993); *Pugh v Pugh*, 15 Ohio St.3d 136, 472 N.E.2d 1085 (Ohio 1984). The court's decree imports a finding of the court of the ability to pay. *Pugh* at 140.

In the present case, the trial court continued the Motion to Impose hearing until the administrative modification proceeding, and subsequent objections, were finalized by the court. On June 3, 2010, the trial court adopted the Magistrate's Decision and modified Appellant's child support obligation and ordered him to pay an additional \$56.13 toward his arrears. This is a clear finding by the trial court that Appellant had the ability to pay his child support obligation, as modified only 11 days prior to the Motion to Impose hearing held June 14, 2010. Furthermore, Mr. Liming testified that he had the ability to pay the modified amount of \$280.64 per month plus \$56.13 per month toward arrears. *June 14, 2010 Hearing Tr.* 9, 47. Additionally, Mr. Liming confirmed that he was still self employed as a courier and that he worked full time. *Id.* at 26. Mr. Liming testified that he lived with his mother and paid no rent and paid nothing for health insurance for the children. *Id.* at 33. Mr. Liming testified that the modified child support order, including repayment of arrears was fair. *Id.* at 39. Mr. Liming's entire legal argument seemed to be that he was not given a modified repayment on arrears until June 3, 2010. *Id.* at 8, 38.

The central holding in *Turner* was that the State need not provide counsel to a noncustodial parent faced with incarceration if the State has in place alternative

procedures that assure a fundamentally fair determination of the question of the obligor's ability to comply with the support order. *Turner* at 2510. In *Turner*, the Court concluded that South Carolina did not have such procedures in place and reversed the ruling of the trial court. Ohio, however, already provides alleged contemnor's with a statutory right to counsel when faced with a Motion for Contempt. R.C. 2705.031(C) requires that an accused party in any contempt action shall receive notice that a failure to appear could result in the issuance of an arrest warrant, that they have the right to counsel, and they must be provided with notice of the potential penalties, if found guilty of contempt.

If found in contempt, a contemnor must be provided the opportunity to purge their contempt. *State v Kilbane*, 61 Ohio St.2d 201, 206-207, 400 N.E.2d 386 (Ohio 1980). A second hearing is held prior to the imposition of the suspended sentence, to determine if the contemnor has complied with the courts purge conditions.

In the present case, Appellant appeared for hearing November 16, 2009 and alleged that he could not afford to pay the current support order. The matter was continued for more than six months, while the modification proceeding was concluded administratively and judicially. Appellant had a hearing on April 26, 2010, where both parties presented their income information and the trial court made a determination as to how much support Appellant could afford to pay. Only when this process was complete, did the trial court conclude the hearing on the Motion to Impose and file its decision.

Appellant's statement that there is no evidence that the Athens County Court of Common Pleas had any procedure in place to determine if Mr. Liming was capable of complying with the court's support order is clearly inaccurate. An inability to pay, however, has always been a defense to contempt of court. *Courtney v Courtney*, 16 Ohio

App.3d 329, 334; 475 N.E.3d 1284 (Ohio App. 3 Dist. 1984). Mr. Liming is well aware of that defense and he asserted this defense when the Motion to Impose first came on for hearing on November 16, 2009. On November 16, 2009, Mr. Liming argued that he could not pay the child support obligation, as then ordered, and accurately advised the court that an administrative modification was in process. The court continued the Motion to Impose hearing until that modification process was complete. June 14, 2010 Hearing T. 3. Thus the trial court had both parties' income in the court file at the time of the June 14 hearing.

In *Turner*, the United States Supreme Court ruled that the due process clause does not require the appointment of counsel so long as the State provides substitute procedural safeguards, such as: (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial information; and (4) an express finding by the court that the defendant has the ability to pay. *Turner*, 2518-2519. The *Turner* Court did not require a State provide these exact procedures, just the equivalent to those specified. *Id.* at 2520.

In the present case, Appellant was afforded all of these rights, which are substantially more than was afforded by South Carolina law in *Turner*. Appellant was provided a continuance of seven months in order to allow the administrative and legal modification proceeding to conclude. Appellant was sent a letter by counsel for ACCSEA advising him to bring documentation of his personal expenses, six months bank records and anything else verifying his personal financial situation. Appellant was called as a

witness by CSEA and allowed the opportunity to testify. Appellant twice testified that the amount he was ordered to pay was fair and reasonable and he was willing to pay. June 14, 2010 Hearing T. 9, 47.

Appellee urges this Court to deny Appellant's apparent contention that, per *Turner*, the burden of proving an ability to pay must lie with the trial court. As the dissent documents in *Turner*, the interests of children and mothers who depend on child support are notoriously difficult to protect. Many fathers, who are subject to support orders report little to no income and shield their income by switching jobs, working in the underground economy, or becoming self employed in order to avoid garnishment. Civil contempt proceedings with the threat of detention are highly effective, when nothing else works. *Turner at 2525* (Thomas, J. dissenting). When fathers fail in their duty to pay child support, children suffer. *Id.*

Mr. Liming's argument that he did not know how much to pay toward his arrears while the administrative modification was in progress is not credible. Mr. Liming was represented by a well respected, experienced attorney at his contempt hearing. This attorney had represented Mr. Liming throughout years of divorce and post divorce proceedings. It is simply not credible for Mr. Liming to claim, on June 14, 2010, that he did not know that one of his purge conditions was to repay his arrears at \$75.40 per month and that this amount was 20% of his then current monthly order. Mr. Liming could easily have determined that his modified repayment on arrears would be 20% of his modified monthly obligation. Instead, Mr. Liming chose to pay exactly the amount recommended by administrative procedure as his new monthly obligation, and he chose to pay \$0 toward his arrears. The trial court did not believe Mr. Liming's claim of

ignorance, as to his obligation to pay something toward his arrears, and this Court should similarly reject this argument.

Appellant would have this Court apply the new Turner “alternative procedural safeguards” to this case when said safeguards had not been announced at the time of the June 14, 2010 hearing and June 28, 2010 Judgment Entry. Mr. Liming did have notice, however, that his ability to pay was relevant and he was encouraged by the CSEA to provide the court with documentation of his income, his bank records, and his personal expenses.

Appellant’s brief inaccurately states that Appellant was in bankruptcy throughout the entire support proceedings. In fact, Mr. Liming testified that his bankruptcy proceedings were discharged in August, 2008. June 14, 2010, Tr. 40. On June 14, 2010, the case was no longer complicated by Mr. Liming’s numerous bankruptcy filings. Mr. Liming admitted that almost \$5,000.00 of his arrears accumulated after he was discharged from bankruptcy.

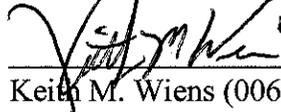
The case on June 14, 2010 was simple and straightforward. The trial court was not faced with complicated facts or evidentiary issues. The bankruptcy proceedings had been discharged nearly two years earlier. It was undisputed that Mr. Liming had an arrears of \$7,759.67. Mr. Liming’s payment history was not at issue. While Mr. Liming had made some payments, he had failed to make any payments toward his arrears. Judgment Entry, July 28, 2010, p. 3. Mr. Liming’s primary defense was that he was unaware of how much he was ordered to repay his arrears, due to an administrative, and then court ordered modification of his current support. *Id.* p. 4. Said argument is not credible, especially given the fact that Mr. Liming was represented by counsel at the

hearing on contempt. Said argument is not the type of argument that would likely have prevailed had Mr. Liming been represented by counsel at the motion to impose hearing.

CONCLUSION

This Court should uphold the judgment of the court of appeals and reject Plaintiff-Appellant's propositions of law.

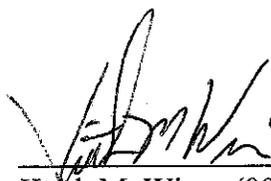
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing brief of Appellee Athens County CSEA was served, by regular U.S. Mail, upon E. Kelly Mihocik, Asst. State Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215 this 4th day of March, 2012.



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June 9, 2010

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Chauncey, Ohio 45719

Dear Mr. Liming:

After hearing on April 26, you told me that you were unable to pay anything toward your child support arrears due to other personal expenses. If this is going to be your defense at the Motion to Impose hearing on June 14, please bring documentation of these personal expenses. Please bring your most recent six months bank records for all bank accounts in your name and anything else which can verify your personal financial situation.

Sincerely,

Keith Wiens
Attorney for ACCSEA