

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

BRENDA SUE BRANDENBURG,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2004-L-085
KIT BRANDENBURG,	:	
Defendant-Appellant.	:	

Civil appeal from the Court of Common Pleas, Juvenile Division, Case No. 95 DR 000402.

Judgment: Affirmed.

James P. Koerner, 8383 Mentor Avenue, Suite 101, Mentor, OH 44060 (For Plaintiff-Appellee).

R. Paul LaPlante, Lake County Public Defender, and *Vanessa R. Clapp*, Assistant Public Defender, 125 East Erie Street, Painesville, OH 44077 (For Defendant-Appellant).

WILLIAM M. O'NEILL, J.

{¶1} This is an appeal of a decision of the Lake County Court of Common Pleas, Juvenile Division, finding appellant, Kit Brandenburg, in contempt of court for not paying attorney fees and sentencing him to serve thirty days in jail.

{¶2} On April 26, 2002, appellant was found to be in contempt of court for failing to pay his child support order and for failing to provide health insurance for his daughter. Appellant was sentenced to thirty days in jail but was given the opportunity to

purge his contempt by eliminating his arrearage within ninety days, and paying attorney fees of \$2,266.25.

{¶3} On September 25, 2002, appellee, Brenda Sue Brandenburg, filed a motion to impose sentence because, while appellant has paid the arrearage in full, he had not paid the attorney fees as ordered by the trial court. Subsequently, appellee filed two additional motions for attorney fees totaling \$778.75, which brought the total amount to \$3,045.00.

{¶4} On April 28, 2004, the trial court granted appellee's motion to increase the award of attorney fees, upheld the finding of contempt, but reduced appellant's sentence to ten days in jail. It further ordered that sentence be imposed, but granted a stay pending an appeal.

{¶5} Appellant timely filed a notice of appeal and has now set forth a single assignment of error.

{¶6} In his sole assignment of error, appellant contends that the trial court erred by holding him in contempt and sentencing him to jail for failure to pay attorney fees. Specifically, appellant contends that it is illegal to imprison a person for a civil debt.

{¶7} Appellant relies on Section 15, Article 1, of the Ohio Constitution which states that "[n]o person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud."

{¶8} However, there are exceptions to this general prohibition against imprisonment for a civil debt. The Supreme Court of Ohio permits imprisonment for

failure to pay child support;¹ failure to pay spousal support;² and failure to comply with property settlement provisions.³

{¶9} In the aforementioned cases, the court reasoned that these situations were distinguishable from the routine case because the money owed did not constitute a “debt” as that term is used in the Constitution. Rather, items such as child support, spousal support, and enforcement of property settlement provisions are orders of the court and enforceable through contempt proceedings.⁴ In other words, the Supreme Court of Ohio has determined that they constitute more than just a debt.

{¶10} Additionally, Ohio courts have permitted imprisonment for contempt of court when a defendant fails to pay both attorney fees and spousal support.⁵ Thus, the imposition of attorney fees as a condition of purging contempt is well settled.

{¶11} In the present case, appellant paid his child support arrearage but failed to pay the attorney fees that was also a condition of purging his contempt. We believe it would be unjust for a deadbeat parent to be able to avoid jail by simply picking and choosing which aspect of the contempt order he or she decides to obey. If it is permissible to make the payment of attorney fees a condition of the purge, then it logically follows that failure to pay the attorney fees must result in imposition of the contempt penalty, even if that includes a jail sentence.

1. *Cramer v. Petrie* (1994), 70 Ohio St.3d 131, 136.

2. *State ex rel. Cook v. Cook* (1902), 66 Ohio St. 566, paragraph two of the syllabus.

3. *Harris v. Harris* (1979), 58 Ohio St.2d 303, 311.

4. *Harris v. Harris*, *supra*, at 310-311.

5. *Lash v. Lash* (Feb. 22, 1990), 8th Dist. Nos. 56155, 56837, and 57816, 1990 Ohio App. LEXIS 642, at *10-11. See, also, *Shroyer v. Shroyer* (Dec. 5, 2001), 5th Dist. No. 01-CA-011, 2001 Ohio App. LEXIS 5572, at *16.

{¶12} Accordingly, the trial court did not err by holding appellant in contempt for failure to pay attorney fees, and sentencing him to ten days in jail.

{¶13} The judgment of the trial court is hereby affirmed.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.