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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GINA KOULOGEORGE,)	Appeal from the
)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	No. 99 D3 79012
v.)	
DWAYNE RONCZKOWSKI,)	Honorable
)	James Paul Pieczonka,
)	Judge, presiding.
Respondent-Appellant.)	
)	

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err when it entered a civil contempt order with a \$50,000 purge provision where it determined that respondent had the means to pay that amount.

¶ 2 Respondent, Dwayne Ronczkowski, appeals the trial court's June 9, 2017 order which found him in indirect civil contempt and ordered his commitment to Cook County jail unless he paid the purge amount of \$50,000. On appeal, he argues the trial court erred when it imposed the \$50,000 purge provision in his indirect civil contempt order. We affirm.

¶ 3

I. BACKGROUND¹

¶ 4

Respondent and petitioner, Gina Koulogeorge, had a child in common born on September 8, 1998. On April 5, 1999, petitioner sought to establish parentage judicially and in the original proceeding in this case, named respondent as the father. The trial court entered an agreed order finding that respondent was the father of the child. Between 1999 and 2003, respondent failed to pay child support and past due child support arrears in violation of the trial court's orders on six separate occasions.²

¶ 5

On February 2, 2017, petitioner filed her petition for rule to show cause alleging that respondent failed to pay child support. The trial court set the hearing on the petition for March 22, 2017, and ordered respondent to complete and tender a financial affidavit. Respondent failed to comply. In March, a new hearing date was set for May 17, 2017, and respondent was again ordered to complete his financial affidavit. By May, he had still failed to comply. He sought and was granted a continuance until June 9, 2017, with the court ordering him to complete his affidavit within the next 10 days. Respondent once again failed to comply.

¶ 6

At the June 9, 2017 evidentiary hearing, respondent testified that he painted a garage and purchased a vehicle, a \$400 Olds Cutlass, and he owned a towing business that eventually dissolved in 2007 or 2008. He also testified that he was the sole proprietor of a scrap metal cash business which grossed \$400,000 in 2014, and \$650,000 in 2015. However, respondent

¹Our factual summary is based solely on the transcript of the September 8, 2017 motion to reconsider hearing. The record on appeal did not include the transcript from the June 9, 2017 hearing. However, this does not affect our ability to review the case.

²The record indicates that respondent failed to pay child support and any other child related expenses as ordered by the trial court on the dates of July 22, 1999, December 2, 1999, December 6, 2001, September 25, 2003, November 6, 2003, and December 18, 2003.

testified that he did not make a profit from his scrap metal cash business. Following the hearing, the trial court held respondent in indirect civil contempt for failure to pay \$139,468.87 in child support arrearages, and committed him to the Cook County jail. The order provided that respondent could purge his contempt by paying \$50,000 on or about July 13, 2017.

¶ 7 On September 8, 2017, respondent's counsel filed a motion to reconsider alleging, *inter alia*, that respondent was in bankruptcy, had no car or other assets, had a house that was in foreclosure, had no job and no personal savings, and the purge amount set by the court was excessive. Respondent's counsel argued that in his present state respondent would not be able to meet the purge requirement. The trial court was unpersuaded. The trial court commented that it found it "hard to believe that [respondent] grossed those kind of figures in those two years and had no net income." The trial court determined that the purge amount of \$50,000 would remain based upon respondent's testimony at the June 9, 2017 hearing. Accordingly, the trial court denied the motion to reconsider and entered a body attachment order. This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, respondent argues that the trial court erred when it required him to pay \$50,000 to purge himself of indirect civil contempt. Respondent maintains that the purge amount was unrealistic and should be based on his ability to pay.

¶ 10 To obtain a finding of indirect civil contempt, the petitioner initially has the burden of proving by a preponderance of the evidence, that the respondent has violated a court order. *Cetera v. DiFilippo*, 404 Ill. App. 3d 20, 41 (2010). The burden then shifts to the alleged contemnor to prove that he did not willfully or contumaciously fail to comply with the court

order, and that he has a valid excuse. *Id.* A trial court's finding of contempt is a question of fact, and a reviewing court will not disturb the trial court's finding unless it is against the manifest weight of the evidence or the record reveals an abuse of discretion. *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1030 (2005). Here, respondent is not challenging the trial court's contempt finding. His challenge on appeal is solely on the purge amount imposed by the court's order.

¶ 11 The purpose of a civil contempt order is to bring about compliance with the court's order. *City of Mattoon v. Mentzer*, 282 Ill. App. 3d 628, 636 (1996). Thus, the contemnor must be provided with the proverbial keys to his cell, meaning the contemnor must be able to purge the civil contempt by doing what the court has ordered him to do. *Felzak v. Hruby*, 226 Ill. 2d 382, 391 (2007); *In re Marriage Logston*, 103 Ill. 2d 266, 289 (1984). Respondent argues that he is unable to pay the purge amount thus the order has lost its coercive effect and is solely punitive. "The purging provision in any civil contempt sanction for nonpayment must be based on the contemnor's ability to pay." *In re Marriage of Dunseth*, 260 Ill. App. 3d 816, 828 (1994). A contemnor "bears the burden of proving that failure to comply with the court order was not willful." *In re Estate of Hayden*, 361 Ill. App. 3d 1021, 1029 (2005). "To prove that a failure to pay was not willful, a defendant must show that he does not have the money and that he did not wrongfully dispose of money or assets by which he could have made payment." *Id.*

¶ 12 Respondent contends that he does not have any major assets to liquidate, such as a house, a car or an IRA account. He argues that, given his age, medical condition, and financial profile, there is no evidence that he could acquire the purge amount. Respondent further contends that the trial court should have decided an appropriate purge amount given

respondent's present financial circumstances rather than focusing on the fact that respondent's business grossed \$400,000 and \$650,000 in 2014 and 2015.

¶ 13 We find respondent's argument that he does not have the ability to pay the \$50,000 purge unpersuasive. The record contradicts respondent's assertion that his current financial profile prevents him from acquiring the purge amount. Based on our review, respondent is not physically incapable of employment based on his age and medical condition. In fact, the record reveals that respondent was recently employed painting a garage and he frequently travels.

¶ 14 Further, the record shows that respondent was the sole owner of a scrap metal business and that in 2014 and 2015 he earned a gross income of \$400,000 and \$650,000 respectively. However, respondent failed to show the trial court that his inability to pay was in good faith. See *In re Marriage of Dall*, 212 Ill. App. 3d 85, 98 (1991) ("[F]inancial inability to comply with an order must be shown by definite and explicit evidence [citation]. That burden is not met by testimony of a general nature with regard to financial status."). Despite respondent's arguments that he was in bankruptcy, the transcripts indicate that the trial court was not presented with any evidence from the bankruptcy proceedings, his tax returns or any disclosure of assets and liabilities. Because respondent presented no evidence to support his claim of financial inability to pay the purge amount the court concluded that respondent's assertion lacked credibility.

¶ 15 Based on the evidence presented, we conclude respondent is employable and he has the means to satisfy the purge amount. As such, respondent has the proverbial keys to his cell. See *Felzak*, 226 Ill. 2d at 391. Accordingly, the trial court's findings were not against the

manifest weight of the evidence nor did the trial court abuse its discretion when it imposed the \$50,000 purge order.

¶ 16

III. CONCLUSION

¶ 17

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 18

Affirmed.