MEMORANDUM OF LAW

RE:

LEGAL STANDARDS FOR

FINDING A PARTY TO BE IN CONTEMPT

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ISSUE PRESENTED

Under Florida law, what are the correct legal standards for finding a party to be in indirect civil contempt for failure to obey a court order to show cause?

BRIEF ANSWER

If a court makes an affirmative finding that a party has the ability to comply with a court's underlying order yet has not done so, then that party can properly be held in contempt of court. If compensatory damages are to be awarded to a party, the court must find that the party to be compensated suffered actual damages, and the amount of the award must be rationally related to the injury suffered. "Willfulness" of refusal may also be a standard that the court will apply, but the term "willful" need not appear in the court order.

DISCUSSION

I. Contempts: Statutory Definitions

Fla. Stat. § 38.23 states that "a refusal to obey any legal order, mandate or decree, made or given by any judge…, after due notice thereof, shall be considered a contempt, and punished accordingly." Fla. Stat. § 38.23. Further, "[e]very court may punish contempts against it whether such contempts be direct, indirect, or constructive, and in any such proceeding the court shall proceed to hear and determine all questions of law and fact." Fla. Stat. § 38.22.

II. Indirect vs. Direct Contempt: Common Law Definitions and Procedure

"Where an act constituting contempt is committed in the immediate presence of the court, this contempt is defined as 'direct contempt,' and where an act is committed out of the presence of the court, the proceeding to punish is for "indirect contempt." Pugliese v. Pugliese, 347 So.2d 422 (Fla. 1977). In the case of an indirect contempt proceeding, the court must first issue an order to show cause "requiring the accused to appear before the court to show cause why he or she should not be held in contempt of court." Fla. R. Juv. P. Rule 8.285 (b)(1).

III. Judicial Use of the Contempt Power: The U.S. Supreme Court

The leading case, never overruled, concerning a court's discretion in issuing contempt orders is Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911). "Without authority to act promptly and independently, the courts could not administer public justice or enforce the rights of private litigants." 221 U.S. at 450. Further,

> while [the contempt power] is sparingly to be used, yet the power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration, whose judgments and decrees would be only advisory. Id.

And perhaps most famously, "[i]f a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." Id.

Another U.S. Supreme Court case, United States v. United Mine Workers, 330 U.S. 258 (1947), more specifically distinguishes civil and criminal contempt. "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for **either or**

both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." 330 U.S. at 304, 305 (emphasis added). This distinction is noteworthy because the Initial Brief of Appellant makes the claim that "the trial court clearly intended the civil penalty to be compensatory, rather than coercive in nature." [Appellant's Brief at 17] (this point is discussed further *infra*, p. 8). United Mine Workers has never been overruled.

IV. Judicial Use of the Contempt Power: The Florida Supreme Court

Gompers and United Mine Workers were quoted extensively with approval by the Florida Supreme Court in Johnson v. Bednar, 573 So. 2d 822 (Fla. 1991) and in Parisi v. Broward County, 769 So. 2d 359 (Fla. 2000). Parisi partially overruled Johnson on other grounds (these cases are discussed further *infra*, p. 6), but the passages quoted from Gompers and United Mine Workers remain good law in Florida and in the rest of the United States.

In other cases, the Florida Supreme Court has ruled that "the power to punish for contempt should be sparingly exercised; however, a court of competent jurisdiction necessarily is endowed with this power in order to enforce its judgments and decrees." State ex rel. Hill v. Hearn, 99 So.2d 231 (Fla. 1957). Further, "[d]espite the admonition that the power to punish for contempt should be cautiously and sparingly exercised, the power to punish for violation of a valid subsisting order of court of competent jurisdiction inheres in the judicial system; this authority may be exercised without referring issues to another tribunal or to a jury in the same tribunal." Demetree v. State ex rel. Marsh, 89 So.2d 498 (Fla. 1956). Finally, "[c]ourts and judges have inherent power by due course of law to punish by appropriate fine or imprisonment or otherwise any conduct that in

law [that] constitutes an offense against the authority and dignity of a court or a judicial officer in the performance of judicial functions." Wilson v. Sandstrom, 317 So.2d 732 (Fla. 1975). None of these three cases has been overruled.

V. Standards Applied by the Florida Courts

A. Ability to Comply

In a case that has proved seminal, the Florida Supreme Court ruled in State ex rel Trezevant v. McLeod, 170 So. 735, that "a 'process' contempt commitment for refusing to obey an order of court must be based on an affirmative finding that it is within the power of the defendant to obey the order and such finding must be made to appear on the face of the order of Commitment, else it is void." Id. at 230. Further, "[t]he contempt order issued in [that] case appears to be predicated solely on a finding of past noncompliance with the court's order, **and not on any present failure to comply therewith, although able to do so**." Id. at 231 (emphasis added). It may be noteworthy that this ruling concerned a contemnor facing incarceration. Nevertheless, these words have been interpreted to require that all contemnors should be affirmatively found by the court to have the ability to comply with the underlying order before the court imposes sanctions. Department of Health & Rehabilitative Services v. Bills, 661 So. 2d 69, 70 (Fla. 2d DCA 1995) (holding that "[b]efore a trial court can hold a party in civil contempt, it must make a finding that the party has the present ability to comply with the order."); Florida Coast Bank of Pompano Beach v. Mayes, 433 So. 2d 1033, 1036 (Fla. 4th DCA 1983) (holding that "[t]rial courts should make an express finding of ability to comply before imposing sanctions.")

Appellant's brief particularly cites Department of Health and Rehabilitative Services v. Maxwell, 667 So. 2d 980 (Fla. 4th DCA 1996) for the proposition that the finding of the contemnor's ability to comply must be expressly stated in the court's order. In Maxwell, the Department of Health and Rehabilitative Services (HRS) had been held in contempt for failing to move an incompetent defendant from the county jail to a state licensed facility within a 15 day period, as required by Fla. Stat. § 916.107(1)(a). The District Court of Appeal found that the order was "technically deficient because the trial court failed to make an express finding that HRS had the ability to comply with the court's directives." Id. at 980.

It may be worth noting that the Maxwell court based this particular sentence of its ruling on Florida Coast Bank of Pompano Beach v. Mayes, 433 So.2d 1033 (Fla. 4th DCA 1983), where the court had considered expanding the requirement of express findings of ability to comply from not only criminal contempt cases but to civil contempt cases as well, but the Mayes court in the end declined to rule on this issue because the appellant was raising it for the first time in a reply brief on appeal. Nevertheless, because Maxwell has not been overruled, it is most likely that the Fourth DCA will apply this "express" standard in the instant case. (The September 9 order, of course, can be argued to contain an express finding of the Department's ability to comply with the January 8 and May 25 orders.)

Most recently, the Fourth DCA has addressed this issue in Facyson v. Jenne, 821 So. 2d 1169, where the court stated, "Although we continue to acknowledge that before the department can be held in contempt, the trial court must be able to make an express finding that the department had the ability to comply ***or*** that its refusal to comply was

willful, contempt is not an issue here." 821 So. 2d at 1171 (emphasis added). Thus, although the court was not ruling on a contempt issue in Facyson, the language chosen by the court makes clear that the Fourth DCA believes that a finding by the court that, if the department has that ability to comply with the court's order and does not do so, then the department can be held in contempt.

Facyson was cited in a Fourth DCA opinion, Department of Children and Families v. Anderson, (2002 Fla. App. Lexis 15508) that was subsequently withdrawn by Department of Children and Families v. Anderson, 840 So. 2d 452 (Fla 4th DCA 2003). In Anderson (filed March 26, 2003), the Fourth DCA remanded the case to the trial court to "make specific findings of fact and conclusions of law as to the issue of DCF's ability to comply with the immediate placement orders." 840 So. 2d at 453. The overwhelming concern expressed by the court in Anderson was that the department be found able to comply with the underlying court order prior to the court's imposing sanctions. No additional standards, such as willfulness or "falling short of a 'refusal to obey,'" were discussed by the Anderson court.

B. Damages

In Parisi v. Broward County, 769 So. 2d 359 (Fla. 2000), the Florida Supreme court held that "[w]hile courts have the unquestioned authority to order a civil contempt fine to compensate for losses sustained, 'if compensation is intended, the fine must be based on evidence of the injured party's actual loss.'" 769 So. 2d at 366, quoting Johnson v Bednar, 573 So. 2d 822, 824 (Fla. 1991). Parisi also partially overrules Johnson, stating that, contrary to the holding in Johnson, the amount of damages awarded to an injured party in a contempt proceeding must bear a rational relationship to the injury

suffered by the party to be compensated. 769 So. 2d at 366. This brings the Johnson opinion into accord with the U.S. Supreme Court's opinion in International Union, United Mine Workers v. Bagwell, 512 U.S. 821 (1994) (discussed *infra*, p. 9).

VI. Notes on Contempt Standards from Cases Cited in Appellant's Brief

Initial Brief of Appellant contends that the reasoning of Department of Children and Families v. R.H. is applicable to the facts of the instant case. Appellant's brief also contends that, in addition to the affirmative finding of present ability to comply, the court must also find that the contemnor's actions "establish a 'refusal to obey,'" that a contempt sanction must be either compensatory or coercive in purpose, and that the contemnor's failure to comply was willful. None of these contentions bears up well under scrutiny.

A. *R.H.* and Impossibility of Compliance

The Florida courts have directly addressed the question of holding the Department in contempt for failure to comply with a court order to show cause. In Department of Children and Families v. R.H., 819 So.2d 858 (Fla. 5th DCA 2002), the Circuit Court had found the Department to be in contempt of that court's order to place an adjudicated juvenile with an out-of-state relative. 819 So. 2d at 860. The Fifth District Court of Appeal reversed the contempt order, finding that the Department had presented sufficient evidence at the contempt hearing to demonstrate that placing the child with an out-of-state relative would have violated Fla. Admin. Code R. 65C-24.010(5), which required that beneficiaries of the Relative Caregiver Program reside in the state of Florida. Id. Violation of this administrative rule would have precluded the Department from providing financial assistance for the out-of-state placement. Id. Thus, although the

Department in R.H. had refused to comply with the court's order to place the child out of state, the evidence presented by the Department in R.H. showed that the Department did not have the ability to comply with the trial court's order, and thus the Department's refusal to comply did not constitute contempt of court.

The facts in the instant case are vastly different from those of R.H. in all salient respects. Here, the testimony of the witnesses at the May 30, 2002 hearing demonstrate that … [this portion redacted in its entirety]

B. *C.S.* and "Refusal to Obey"

Appellant's brief cites In the Interest of C.S., 424 So.2d 130 (Fla. 1st DCA 1982) for the proposition that a finding of contempt should be reversed where the evidence "falls short of proving a 'refusal to obey.'" 424 So. 2d at 131. In C.S., the appellant was an intake worker for the Department of Health and Rehabilitative Services who had been found in contempt and fined $50 for failing to execute an order from the circuit court commanding that a juvenile be taken into custody. Id. at 131. However, the intake worker in C.S. had never received a copy of the order, had no notice of what disposition it required him to make of the child, and "did everything he reasonably could to see that the court's order was carried out." Id. These facts do indeed show that the evidence in C.S. fell "short of proving a 'refusal to obey.'" Id.

The facts of the present case, however, differ in every respect from those facts on which C.S. was decided: here, … [this portion redacted in its entirety]

C. *Bagwell* and Compensatory vs. Coercive Sanctions

Initial Brief of Appellant makes the claim that "the trial court clearly intended the civil penalty to be compensatory, rather than coercive in nature." [Appellant's Brief at

17]. United States v. United Mine Workers, 330 U.S. 258 (1947), which has never been overruled, specifically distinguishes civil and criminal contempt. "Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for **either or both** of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." 330 U.S. at 304, 305. (emphasis added). Further, in International Union, United Mine Workers v. Bagwell, 512 U.S. 821 (1994), which the Florida Supreme Court quoted with approval in Parisi v. Broward County, 769 So. 2d 359 (Fla. 2000), the U.S. Supreme Court held that most contempt sanctions "to some extent punish a prior offense as well as coerce an offender's future obedience." 512 U.S. at 828. Thus, Appellant has no basis for contending that contempt sanctions must be either compensatory or coercive in nature.

D. *Strauser, Maxwell* and Willfulness

(Please see separate memo)

CONCLUSION

The correct legal standards to be applied by the trial court in a contempt proceeding are (1) an affirmative finding by the court that the party facing the contempt is able to comply with the court's underlying order, and (2) where compensatory damages are to be awarded to a party, the court must find that the party to be compensated suffered actual damages, and the amount of the award must be rationally related to the injury suffered. While it is possible that the contemnor's refusal to comply with the court order must be "willful," the case law does not suggest that the trial court's order must contain the term "willful" in order for the contemnor's refusal to be characterized as such.