

MEMORANDUM OF LAW

ISSUE PRESENTED

What is the proper process and procedure for issuance of a writ of bodily attachment in Florida, and when is such a writ issued?

BRIEF ANSWER

In Florida, a writ of bodily attachment is most typically issued to arrest a person who has failed to appear at a contempt hearing within the context of a support matter. An alleged contemnor is brought before the court for a hearing to determine whether he or she has the present ability to pay the support in question. If the court orders incarceration or a coercive fine, and the contemnor thereafter fails to appear or to pay the purge amount set by the court, the court may issue a writ of bodily attachment for the contemnor's arrest.

DISCUSSION

1. Florida Statutes

Title Six of the Florida Statutes, Civil Practice and Procedure, addresses the procedure for a writ of bodily attachment at some length in Chapter 61, which concerns Dissolution of Marriage, Support, and Custody matters, as follows:

§ 61.11(2)(a) When the court issues a **writ of bodily attachment** in connection with a **court-ordered support obligation**¹, the writ or attachment to the writ must include, at a minimum, such information on the respondent's physical description and location as is required for entry of the writ into the Florida Crime Information Center telecommunications system and authorization for the assessment and collection of the actual costs associated with the service of the writ and transportation of the respondent in compliance thereof. The writ shall direct that service and execution of the writ may be made on any day of the week and any time of the day or night.

(b) The clerk of the court shall forward a copy of the writ for service to the sheriff of the county in which the writ is issued.

(c) Upon receipt of a writ from the clerk of the court, the sheriff shall enter the information on any unserved writ into the Florida Crime Information Center telecommunications system to make the information available to other law enforcement agencies within the state. The writ shall be enforceable in all counties of the state.

(d) Upon receipt of the purge payment, the receiving agency shall provide the subject with a written receipt acknowledging such payment, which must be carried on the person of the respondent for a period of at least 30 days from the date of payment as proof of such payment. A sheriff receiving such payment shall forward the funds to the sheriff who entered the information about the writ into the Florida Crime Information Center telecommunications system and who shall

¹ “**Support**” is defined in Fla.Stat. § 61.046(20):

"Support," unless otherwise specified, means:

(a) Child support and, when the child support obligation is being enforced by the Department of Revenue, spousal support or alimony for the spouse or former spouse of the obligor with whom the child is living.

(b) Child support only in cases not being enforced by the Department of Revenue.

A “**support order**” is defined in Fla.Stat. § 61.046(19):

"Support order" means a judgment, decree, or order, whether temporary or final, issued by a court of competent jurisdiction for the support and maintenance of a child which provides for monetary support, health care, arrearages, or past support. When the child support obligation is being enforced by the Department of Revenue, the term "support order" also means a judgment, decree, or order, whether temporary or final, issued by a court of competent jurisdiction for the support and maintenance of a child and the spouse or former spouse of the obligor with whom the child is living which provides for monetary support, health care, arrearages, or past support.

forward the funds to the appropriate clerk of court.

(e) After a writ is modified, purged, recalled, terminated, or otherwise rendered ineffective by ruling of the court, the clerk of the court shall notify the sheriff receiving the original writ. That agency shall modify or cancel the entry in the Florida Crime Information Center telecommunications system in accordance with such notification.

Fla.Stat. § 61.11(2)(a)-(e)

2. Florida Family Law Rules of Procedure

The writ of bodily attachment is addressed most extensively in the laws of Florida under the Family Law Rules of Procedure. Fla. R. Fam. Law. R. Proc. 12.615(c) (attached) states that a court may issue a writ of bodily attachment for an alleged contemnor who fails to appear for any civil contempt hearing, as long as the alleged contemnor has had notice. The rule reads as follows:²

(c) Hearing. In any civil contempt hearing, after the court makes an express finding that the alleged contemnor had notice of the motion and hearing:

(1) the court shall determine whether the movant has established that a prior order directing payment of support was entered and that the alleged contemnor has failed to pay all or part of the support set forth in the prior order; and

(2) if the court finds the movant has established all of the requirements in subdivision 12.615(c)(1) of this rule, the court shall,

(A) if the alleged contemnor is present, determine whether the alleged contemnor had the present ability to pay support and willfully failed to pay such support;

(B) if the alleged contemnor fails to appear, set a reasonable purge amount based on the individual circumstances of the parties. The court may issue a **writ of bodily attachment** and direct that, upon execution of the **writ of bodily attachment**, the alleged contemnor be brought before the court within 48 hours for a hearing on whether the alleged contemnor has the present ability to pay support and, if so, whether the failure to pay such support is willful.

Fla. R. Fam. Law. R. Proc. 12.615(c)

² This text reflects the rule as amended by the Florida Supreme Court in its Amendments to Fla. Family Rules of Procedure, 2003 Fla. LEXIS 1163 (Fla. 2003) issued July 10, 2003.

This rule also addresses writs of bodily attachment in subsection (e):

(e) Purge. If the court orders incarceration, a coercive fine, or any other coercive sanction for failure to comply with a prior support order, the court shall set conditions for purge of the contempt, based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for that finding. The court may grant the contemnor a reasonable time to comply with the purge conditions. If the court orders incarceration but defers incarceration for more than 48 hours to allow the contemnor a reasonable time to comply with the purge conditions, and the contemnor fails to comply within the time provided, the movant shall file an affidavit of noncompliance with the court. If payment is being made through the Central Governmental Depository, a certificate from the depository shall be attached to the affidavit. **The court then may issue a writ of bodily attachment.** Upon incarceration, the contemnor must be brought before the court within 48 hours for a determination of whether the contemnor continues to have the present ability to pay the purge.
Fla. R. Fam. Law. R. Proc. 12.615(e)

It may be noteworthy that Fla. R. Fam. Law. R. Proc. 12.615(c)(2)(B), unlike the contempt provisions in the Florida Rules of Juvenile Procedure, requires that, when a writ of bodily attachment is issued, the court find at the subsequent hearing both that the contemnor has the present ability to comply *and* that failure to pay the support was willful.

3. Case law

A review of the case law reveals that Florida courts issue writs of bodily attachment almost exclusively in child support cases where an obligor has failed to appear at a contempt hearing. *See Dep't of Revenue ex rel. King v. Blocker*, 806 So. 2d 607 (Fla. 4th DCA 2002); *MacDougall v. Kutina*, 798 So. 2d 30 (Fla. 4th DCA 2001); *Reynolds v. State*, 792 So. 2d 524 (Fla. 4th DCA 2001). In some instances, a court will issue a writ of bodily attachment for a witness who fails to appear at a criminal proceeding. *See Kelley v. Rice*, 800 So. 2d 247 (Fla. 2nd DCA 2001). At least one Florida court believes the terms “writ of bodily attachment” and “bench warrant” are

synonymous. See Tape v. State, 661 So. 2d 1287 (Fla. 4th DCA 1995) (Dissent by Warner, J.)

There are few Florida cases that address writs of bodily attachment in depth, but there are at least two recent instances in which courts have discussed the issuance of such writs.

In Dep't of Revenue v. Meade, 827 So. 2d 1093 (Fla. 2nd DCA 2002) (attached), the Second DCA ruled that a trial court did not err when that court directed a child support obligor to appear at a separate contempt hearing before issuance of a writ of bodily attachment. Id. at 1094. This “second hearing” allowed the trial court to ascertain whether or not the alleged contemnor truly had the ability to comply with the court’s payment order, and thus was not an abuse of the trial court’s discretion. Id.

In Goldstein v. Harris, 768 So. 2d 1146 (Fla. 4th DCA 2000) (attached), a trial court did not err when it concluded that a bankruptcy proceeding stay which was not in effect at the time of a civil contempt order did not stay the enforcement of that order. Id. at 1149.

CONCLUSION

The Florida courts regard a writ of bodily attachment to be appropriate when an alleged contemnor has failed to appear at a contempt hearing after having received notice. The statutory and case law suggest that a writ of bodily attachment is used almost exclusively as a means to arrest a parent who is in arrears with support payments and thus may be in contempt of court. At the hearing that is held subsequent to the issuance of a writ of bodily attachment, the court must find both present ability to comply and willful failure to make support payments.