

IN THE COURT OF APPEALS OF OHIO
TWELFTH APPELLATE DISTRICT
WARREN COUNTY

TINA A. DAVIS,	:	
	:	
Petitioner-Appellee,	:	CASE NO. CA2008-07-098
	:	
- vs -	:	<u>OPINION</u>
	:	6/15/2009
	:	
MICHAEL J. DAVIS,	:	
	:	
Petitioner-Appellant.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 06 DR 30265

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Petitioner-Appellant, pro se

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FAIN, J.

{¶1} Petitioner-appellant, Michael Davis, appeals from a judgment of the Warren County Court of Common Pleas, Domestic Relations Division, finding him in contempt for failing to pay the full amount of his child support each month and ordering a ten-day

sentence to be suspended on the condition that he make future child support payments in full and on time. Mr. Davis argues that the trial court erred in conditioning the suspension upon his future behavior. Mrs. Davis concedes error in this regard, and we agree. That part of the judgment of the trial court conditioning the suspension of Mr. Davis' jail sentence upon his making future child support payments is Reversed and Vacated.

I

{¶12} In the final Judgment and Decree of Dissolution of the marriage of Michael and Tina Davis filed in 2006, Mr. Davis was ordered to pay a total of \$509.98 each month for child support for the couple's three children, retroactive to October 1, 2006. Rather than pay the monthly amount, however, he made periodic lump-sum payments. By November 2007, Mr. Davis had an arrearage of \$1,728.42, and the Warren County Child Support Enforcement Agency filed a contempt motion. A hearing was held the following April, at which time Mr. Davis stipulated to a finding of contempt. The trial court found him in contempt and imposed a ten-day jail sentence, which it suspended on the condition that in the future he pay child support on time and in full. Mr. Davis appeals.

II

{¶13} Michael Davis' sole assignment of error is as follows:

{¶14} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY IMPROPERLY CONDITIONING THE SUSPENSION OF APPELLANT'S JAIL SENTENCE FOR CONTEMPT ON APPELLANT'S MAKING PAYMENTS ON CURRENT/FUTURE CHILD SUPPORT OBLIGATIONS."

{¶15} Mr. Davis points out that the trial court erred by failing to provide for an appropriate means by which to purge himself of the contempt finding. Mrs. Davis concedes error, and for the following reasons, we agree.

{¶16} There is no dispute that "this case involves civil contempt, defined as a

violation primarily 'against the party for whose benefit the order was made, and * * * the primary purpose of the punishment is remedial or coercive and for the benefit of the complainant.' *Tucker v. Tucker* (1983), 10 Ohio App.3d 251, 252. The sanction for a civil contempt must give the contemnor an opportunity to purge himself of the contempt. Id. * * * [A]n order suspending the punishment for the civil contempt on the condition that the contemnor comply with the child support order in the future [does] not properly allow for purging." *Wittbrot v. Wittbrot*, Clark App. No. 2002 CA 19, 2002-Ohio-6075, ¶35.

{¶7} Here the trial court suspended Mr. Davis' sentence on the condition that he pay future child support on time and in full, which is the same condition that was found to offer insufficient opportunity for purging in *Wittbrot* and in *Tucker*. Accordingly, to the extent that the order suspends Mr. Davis' sentence conditioned upon the future payment of child support, the order is erroneous. Mr. Davis' sole assignment of error is sustained.

III

{¶8} Mr. Davis' sole assignment of error having been sustained, that part of the judgment of the trial court conditioning the suspension of his ten-day jail sentence upon his making future payments of child support is Reversed and Vacated.

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DONOVAN and BROGAN, JJ., concur.

Hon. Mary E. Donovan, Hon. James A. Brogan and Hon. Mike Fain, Judges of the Second District Court of Appeals, sitting by assignment of the Chief Justice of Ohio, pursuant to Section 5(A)(3), Article IV, of the Ohio Constitution.