Court of Appeals, State of Michigan

ORDER

Adam Scott Thomas v Bianca Ellen Ormsby

Docket No. 317662

LC No. 09-001741-DC

Jane E. Markey
Presiding Judge

Jane M. Beckering

Mark T. Boonstra
Judges

The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court REMANDS this matter to the trial court. The trial court shall reduce the bond amount by the amount of the child support arrearages. The judge may not order a party to pay a financial obligation that does not result directly from the contempt, *Plumbers & Pipefitters Local Union No. 190 v Wolff*, 141 Mich App 815, 819; 369 NW2d 237 (1985), and the child support arrearages are the direct consequence of the trial court issuing a support order after the contemptuous acts occurred. To the extent the trial court may deem contemptuous a failure to comply with the court's child support order, a finding of such contempt must be made before the imposition of a sanction, and a resulting sanction may be imposed only "after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend," MCL 600.1711(2), rather than solely based on the trial court having been "advised by the Friend of the Court" of the failure to comply. The trial court shall also conduct an evidentiary hearing to determine whether defendant has the present ability to pay the reduced amount of the bond ordered. If a person is confined and does not have the present ability to pay any sums ordered by the judge, then that person does not have the keys to the jail and the proceedings become criminal contempt proceedings. *Mead v Batchlor*, 435 Mich 480, 495 n 15; 460 NW2d 493 (1990), abrogated in part on other grounds, *Turner v Rogers*, ___ US ___; 131 S Ct 2507; 180 L Ed 2d 452 (2011). If the court determines that defendant lacks the ability to pay the amount of the reduced bond, then the trial court shall set bond in an amount within defendant's ability to pay or identify an alternative act or duty that defendant can perform in order to purge the contempt. This order has immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 19 2013
Date

Jerome W. Zimmer Jr.
Chief Clerk