IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

FAMILY DIVISION - DOMESTIC RELATIONS SECTION

BRANDI L. GUILLIAMS,	:	**NO. 2017-5-0303**
Plaintiff	:	**PACSES NO. 414116450**
	:	
v.	:	
	:	
KYLE C. SMITH,	:	
Defendant	:	
	:	

ORDER OF COURT

AND NOW, this 9th day of September, 2025, in accordance with the attached Opinion, the Defendant's Motion for Reconsideration is GRANTED in part and DENIED in part as follows:

1. The finding of Contempt issued by this Court on April 29, 2025 is AFFIRMED.
2. Based upon the arguments of counsel, we will modify our sentence imposed for Contempt as a result of the Defendant's failure to pay support. When the Defendant completes serving his sentence for failure to appear, he shall be required to be incarcerated for a period of fourteen (14) days as a result of his DRS Probation Violation related to his failure to pay support.
3. Except as may be inconsistent with this Order, all other provisions of our initial Contempt and Sentencing Order dated April 29, 2025 are to remain in full force and effect. The Defendant is reminded that he

will remain on DRS Probation subject to all terms of our June 18, 2024 Order for a period of nine (9) months from today's date.

BY THE COURT:

_____ J.
BRADFORD H. CHARLES

BHC/pmd

cc: John Gragson, Esquire
Megan Tidwell, Esquire
Brandi Guilliams
Kyle Smith
Domestic Relations

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v.	:	
KYLE C. SMITH, Defendant	:	

APPEARANCES

John Gragson, Esq. — **For Plaintiff**

Megan Tidwell, Esq. — **For Defendant**

OPINION BY CHARLES, J., September 9, 2025

This Court has struggled to navigate the stormy seas created by our Superior Court with its decision of ***Bredbenner v. Hall***, 304 A.3d 756 (2023 WL 5237495) (Pa. Super. 2023). Relying upon the Superior Court's decision, the Lebanon County Public Defender has taken the position that no trial court can impose a sentence of contempt for failure to pay child support unless the defendant admits that he/she possesses liquid assets sufficient to pay a purge amount imposed by the Court. Effectively, the Public Defender asserts that when a defendant claims to be impecunious, he/she cannot be sanctioned for contempt. Even if his/her non-payment of support is habitual. Even if his/her decision not to work is unreasonable.

Even if he/she obviously spends money on self-indulgent expenses rather than child support.

We cannot believe that Pennsylvania's Superior Court intended its ***Bredbenner*** decision to effectively neuter a trial court's ability to enforce Child Support Orders. Still, it is obvious that ***Bredbenner*** requires that we change our approach to child support contempt. Therefore, we have crafted a child support enforcement process that is dramatically different than our traditional approach that was rejected by ***Bredbenner***. Our revised process is still adamantly opposed by the Lebanon County Public Defender. We have created this unusually detailed Opinion to defend our current process in hopes that it will pass muster with Pennsylvania's Superior Court.

I. FACTS and PROCEDURAL BACKGROUND

Brandi L. Guilliams (hereafter MOTHER) and Kyle C. Smith (hereafter FATHER) are the parents of one minor child. A Child Support Order was initially entered in June of 2017 requiring FATHER to pay $530/month. This Order commenced an odyssey of child support litigation that has continued since 2017. Much of this litigation involved FATHER's refusal to pay child support as he was directed.

Since December of 2017, eleven (11) Petitions for Child Support Contempt were filed against FATHER. On five (5) occasions, FATHER failed to appear and a Bench Warrant was issued. On three (3) additional occasions, he was found in contempt. He paid settlement or purge amounts

to avoid incarceration on February 20, 2018, November 27, 2018, April 2, 2019, August 31, 2021, January 12, 2022, December 13, 2022, February 7, 2023, August 8, 2023 and June 18, 2024. Despite these payments, FATHER still accumulated an arrearage balance owed on this docket that is in excess of $11,000.

On December 13, 2022, FATHER appeared before this Court as a result of his habitual failure to pay support. At the time, FATHER had paid nothing toward his support obligation in more than eight (8) months. However, FATHER appeared in Court with an employer who supported him and described FATHER as "a key part of our company's work." We therefore continued FATHER's case without a finding of contempt based upon his promise that he would pay from his employment income. He did not do so.

FATHER was again brought to Court on June 18, 2024. At the time, he had failed to pay anything at all for fourteen (14) months. He proffered a multitude of excuses that we characterized as "inadequate." We stated: "We conclude based upon the totality of the record before us that the Defendant has consciously chosen to be lazy." We also quoted statistics from Pennsylvania's Department of Labor and Industry revealing that 11,800 jobs were available within twenty-five (25) miles of Lebanon and we stated: "There is absolutely no excuse for the Defendant to fail to work." We reluctantly agreed to eschew incarceration and afford him with the opportunity to be placed on DRS Probation. We warned FATHER: "The Defendant is warned that our patience has expired and that he **WILL** face

incarceration if he does not take advantage of the unprecedented opportunity we will be affording him today." FATHER was thereafter placed on DRS Probation for a period of six (6) months. As part of that probation, we directed FATHER to obtain employment and to report periodically to his DRS Probation Officer. We also specifically advised FATHER that if he violated the terms of his DRS Probation, he could be incarcerated.

FATHER failed to obtain a job, failed to pay anything in support and failed to report to his DRS Probation Officer as required.[1] A hearing to determine a violation of probation was therefore scheduled for September 17, 2024. FATHER failed to appear for this hearing and a Bench Warrant was issued. FATHER remained a fugitive on this warrant until April of 2025. When he was apprehended, we immediately appointed the Lebanon County Public Defender to represent him via a Court Order on April 25, 2025.

On April 29, 2025, this Court found FATHER in violation of his DRS Probation and we sentenced him to three (3) months of incarceration as a result.[2]

Thirty (30) days after our sentence, FATHER filed a Motion for Reconsideration. We granted that motion on June 3, 2024 and directed both parties to file briefs in support of their positions. We issue this Opinion to support the propriety of the process we used to evaluate FATHER's contemptuous behavior.

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[1] Despite all of these failures, the Defendant was only charged with a violation for failure to report.

[2] We also sentenced FATHER to five (5) months of incarceration as a result of his failure to appear as directed. FATHER has not challenged the sentence we imposed as a result of his failure to appear.

II. DISCUSSION

A. The Purpose of and General Principles Regarding Child Support

The purpose of child support is to ensure that the financial needs of children are met by both parents. "[W]e note that the duty to support one's child is absolute, and the purpose of child support is to promote the child's best interest." ***T.M.W. v. N.J.W.***, 227 A.3d 940, 944 (Pa. Super. 2020).

Support in Pennsylvania is determined through an income-based model. The preamble to Pennsylvania's Support Rules states:

> "The Guidelines make the support of a child a primary obligation...after the basic needs of the parents have been met, the child's needs shall receive priority. A party will not be rewarded for making unnecessary expenditures for his or her own benefit by having his or her support obligation reduced."
>
> (Pa.R.C.P. 1910-16.1, explanatory comment (emphasis supplied.)

Human nature teaches that if child support is to be anything other than a futile gesture, the support ordered by a Court must be enforceable. Trial judges charged with the responsibility of enforcing Child Support Orders intuitively recognize the following logical syllogism:

- *To be viable, a Child Support Order must be both reasonable and enforceable;*
- *To be reasonable, a child support amount cannot be confiscatory and must leave sufficient resources for the parent to support himself/herself;*

- *To be enforceable, meaningful consequences must attach when an Order is ignored;*
- *For many child support obligors, the only meaningful consequence is the threat of incarceration;*
- *If incarceration is an empty threat, many obligors will have no incentive to comply with their Support Order.*

As much as we would like to believe that all parents want to financially support their children, the sad reality is that many will do everything in their power to avoid paying support. Some obligors are so angry with their ex-paramour that the thought of paying money to that paramour is repugnant. Some obligors question whether money they are ordered to pay is actually being used for the benefit of their child. Still others are simply selfish and want to retain as much money as possible. Regardless of the motivation, the reality that plagues Child Support Court is that many obligors will not pay unless they feel compelled to do so.

B. <u>Traditional Approach</u>

For years, Lebanon County employed a child support contempt process that progressed in the following manner:

(1) When an obligor failed to pay for several months, he/she was asked to appear at a Support Contempt Conference conducted at the Lebanon County Domestic Relations Office (DRO). DRO officers listened to explanations for non-payment and had

authority to generally continue cases to provide obligors with more time to get back on track.

(2) Cases that were not resolved at the Contempt Conference were listed for Domestic Relations Contempt Court before a judge.

(3) Judges were afforded written information summarizing the history of the case and the extent of an obligor's non-payment.

(4) At the Contempt Hearing, both the plaintiff and the defendant were given an opportunity to speak. The judge then considered what was said in conjunction with the written documentation that was presented by DRO. In a majority of cases, the defendant's contempt charge was continued with conditions imposed that would eliminate the necessity for re-listing the case.

(5) When appropriate, a judge would immediately find the obligor in contempt of court. A purge amount would be established. The purge was almost always less than the amount of the arrearage balance. It was assessed based upon a totality of circumstances evaluation that included an assessment of what the defendant was able to earn and whether he/she spent money on extraneous expenses that could have been used to pay child support. Judges did not focus upon how much money a defendant possessed in a liquid account. Candidly, the pertinent question was: "How much should the defendant have available had he/she acted reasonably?"

Until 2022, no litigant questioned the process by which support contempt was handled in Lebanon County. While many plaintiffs were unhappy that the purge amount was less than the amount of the arrearage balance, defendants were by and large satisfied with the fairness of the process that was employed. Then came the case of ***Bredbenner v. Hall***.

C. ***BREDBENNER v. HALL***

The case of ***Bredbenner v. Hall*** came before this Court when Michael C. Hall (hereafter HALL) consistently failed to pay $340/month to support his three children. He had a lengthy history of appearances in Support Contempt Court. By 2022, his arrearage balance was $3,053.44.

HALL appeared in Contempt Court on September 27, 2022. We continued his case without a finding of Contempt because he reported that he was scheduled to begin employment the very next week. On November 15, 2022, HALL appeared in Court again without employment. He claimed that he was hired at Henry Molded Corporation "under false pretenses"; he stated he was promised a job as a forklift operator but was given another job instead. We had suspicions about HALL's claims, so we appointed a Public Defender to represent him and scheduled a Factual Hearing to determine why HALL was no longer employed at Henry Molded Corporation. We also reminded HALL that he could avoid contempt by providing medical documentation to corroborate a claim of disability.

Another hearing was conducted on November 29, 2022. A supervisor at Henry Molded Corporation testified that HALL appeared for work on October 1, 2022 at 9:30am. At approximately 11:30am, HALL wanted to take a smoking break. When he was advised that he could not do so, HALL walked off the job and never returned. The supervisor also confirmed that HALL was never hired as a forklift operator. Based upon the totality of circumstances, we found HALL in contempt and sentenced him to serve 100 days in the Lebanon County Prison. We also established a purge amount of $2,000.

HALL appealed our finding of contempt. On January 26, 2023, we issued an Opinion in support of our contempt sentence. We stated in our Opinion:

> "At one point, members of the Lebanon County Bar Association referred to child support contempt proceedings as "Liar's Court." While we do not necessarily adopt this cynical description, we nevertheless acknowledge that child support obligors will often employ deceit in order to avoid having to pay support. Time and time again, we have encountered obligors who state "I am disabled and unable to work" only to see those same obligors magically recover and begin working when faced with consequences for failing to do so. Time and time again, we have witnessed support obligors say "I cannot afford that amount of support" only to see those same obligors pay as directed when threated with contempt. Time and time again, we have witnessed support obligors state "I cannot find a job" only to see those same obligors find employment when given a meaningful deadline enforced with sanctions.
>
> Most pertinent to the dispute now before this Court, time and time again we have heard defendants proclaim: "I do not have that much to pay as a purge" only to watch them come up with the entire purge amount within hours in

> order to avoid incarceration. In fact, the most common means of collecting overdue support from intransigent obligors is via the purge process...and almost always the obligors pay amounts that they disavow having the ability to pay.
>
> The job of a judge in Child Support Contempt Court is nearly impossible. In every case, we must view incarceration as a "last resort", but we cannot acknowledge that fact in front of recalcitrant obligors. In every case, we must try to ascertain whether the obligor could or should have paid the amount required under the Court Order, and if we perceive that the amount ordered is too high, we must find a way to eschew enforcement of the Order. In every case, we are confronted with obligors who have every incentive to be dishonest, and we must work hard to discern fact from fiction. In nearly every case, it is impossible for us to have corroborating evidence that could either conclusively prove or disprove what an obligor says in open Court. And, perhaps most important, in each and every case we must weigh the interests of children who are not present in Court but who have an acute need for the financial support that the obligor is ordered to pay.
>
> A sad reality is that many obligors – most who appear frequently in Contempt Court – feel no moral imperative to financially support their children. For many, if not most, of these obligors, the possibility of meaningful consequence represents the only reason why support will be paid. And for nearly every obligor who appears in Contempt Court, the possibility of incarceration represents the only consequence they fear."

On August 15, 2023, Pennsylvania's Superior Court reversed our finding of contempt. The Superior Court objected to the $2,000 purge amount that we assessed. The Superior Court stated:

> "Following our review of the record, we understand trial court's frustration in dealing with Appellant, however, we are constrained to conclude that the trial court abused its discretion when it set a purge amount of $2,000. ***See Childress***, 12 A.3d at 465. We observe that the record does not contain any information regarding the amount of funds that were available to Appellant, nor does the record

> reflect whether Appellant possessed any assets. Accordingly, we are constrained to conclude that there was insufficient evidence that Appellant had the present ability to pay the $2,000 purge amount at the time of the contempt hearing. ***See Barrett***, 368 A.2d at 620-21.
>
> For these reasons, we must vacate the trial court's order and remand for further proceedings. On remand, the trial court may receive additional evidence to assist it in determining the appropriate coercive conditions. However, the conditions must be such that the court is "convinced beyond a reasonable doubt, from the totality of evidence before it, the contemnor has the present ability to comply." ***Wetzel***, 541 A.2d at 764 (citations omitted.)"

Bredbenner has been appealed to Pennsylvania's Supreme Court, which accepted allocatur to hear the case. As we author this Opinion, the Supreme Court has yet to render a decision regarding the case. However, another Superior Court panel referenced ***Bredbenner*** by stating:

> "Most recently, this Court, in an unreported decision, concluded that 'before a trial court may impose a purge condition in a Civil Contempt case, it must determine, beyond a reasonable doubt, that the contemnor has the ability to comply. ***Bredbenner v. Hall***, WL5237495 at page 3 (Pa. Super. August 15, 2023) (unreported memorandum) (citations omitted). The implication of ***Bredbenner*** is that the onus is on the trial court to ascertain, beyond a reasonable doubt, a contemnor's ability to pay a purge condition. However, other unreported decisions have yielded converse outcomes regarding the interplay between a contemnor's burden of proof in demonstrating a present inability to pay and the court's consideration thereof. *See,* ***R.S. v. R.E.W.***, 2017 WL657743 (Pa. Super., Feb. 17, 2017) (unreported memorandum)."

Randi Kopp v. Sean McCarthy, Superior Court No. 502 MDA 2023 (July 19, 2024).

Notwithstanding the Superior Court's observation in ***Kopp***, supra, ***Bredbenner*** remains the law governing child support contempt within Lebanon County.

D. **Aftermath of *BREDBENNER***

Bredbenner created a tectonic shift in child support contempt practice within Lebanon County.[3]

Following publication of the ***Bredbenner*** decision, both this jurist and the Lebanon County Domestic Relations Office reached out to other counties in order to ascertain how child support contempt could be enforced given how the Superior Court interpreted "immediate ability to pay." Everyone recognized the reality that no contemnor would ever admit having the ability to pay more than a nominal purge amount. Therefore, the defendant's word alone could not determine a purge amount. Further impacting our search for a viable process was the reality that courts cannot impose purge conditions predicated upon expected future behavior. *See, e.g.*, ***Godfrey v. Godfrey***, 894 A.2d 776 (Pa. Super. 2006).

Our investigation revealed that Lebanon County was not alone in its struggle to navigate child support contempt procedural requirements. We learned that some other counties created an intermediate step in the contempt process that focused upon probation. Effectively, these other

[3] It could be argued that because ***Bredbenner*** was a non-precedential decision, it should not affect any case in Lebanon County other than the ***Bredbenner*** litigation. However, ***Bredbenner*** specifically rejected the analytical approach used by this Court in child support contempt cases for decades. It would be wrong for this Court to ignore ***Bredbenner*** and blithely proceed based upon past practice.

counties created a system of probation and employed it as a "first response" to contempt for failure to pay. If the contemnor then failed to take advantage of the rules of probation, he/she was then subject to incarceration as a sanction.

After much work[4], Lebanon County created DRS Probation as a direct response to the Superior Court's edict in ***Bredbenner***. We created a process by which DRS Probation became the initial response to child support contempt for failure to pay. To be sure, the process has evolved somewhat since it was created. The current DRS Probation practice will be described below.

E. **A New Approach - DRS Probation**

A Pennsylvania Statute specifically authorizes probation as a remedy for non-payment of child support. *See,* 23 Pa.C.S.A. §4345(a)(3). Moreover, our Supreme Court has recognized that probation is an "authorized" remedy within Pennsylvania's child support enforcement milieu. ***Thompson v. Thompson***, 223 A.3d 1272 (Pa. 2020). Unfortunately, neither the Statute nor any Rule of Court provides details about how a DRS Probation system should work.

[4] We say "much work" because creating a system of probation separate from the Lebanon Adult Probation Department was tricky given that Lebanon's Juvenile and Adult Probation Officers are unionized and given that the County's insurance company has imposed significant requirements in terms of training and experience. Ultimately, a system of DRS Probation was established that was designed to be different in scope and application from the hands-on supervision provided by Adult and Juvenile Probation Officers. Of most significant note is the fact that DRS Probation Officers do not have the authority to conduct any "field work."

Lebanon County's DRS Probation process was thoughtfully and carefully crafted after consultation with a wide variety of child support stakeholders. This is what was developed:

(1) Lebanon County has retained the Child Support Contempt Conference procedure by which DRO can informally address non-payment of support.

(2) As with prior practice, DRO prepares a detailed summary of an obligor's history and provides that summary in writing to the Court.

(3) If a Court hearing is required, a judge listens to what is said by both a plaintiff and a defendant. As with prior practice, the Court retains the authority to generally continue a contempt proceeding without a finding of contempt and/or with conditions the Court would deem applicable.

(4) When an obligor is found in contempt of court for failure to pay, we will establish a purge amount based upon a totality of circumstances analysis. If the purge is not paid, we will place the contemnor on DRS Probation.[5] Terms of the DRS Probation generally include a requirement to search diligently for employment, maintain employment, report on a periodic basis to a DRS Probation Officer, keep DRO advised of a residence and

[5] There are cases, albeit few and far between, where obligors are so stubborn that they will admit possessing resources that they then overtly refuse to contribute toward child support. Somewhat more frequently, some obligors will bring money to Court hoping that it will be enough to constitute a purge of contempt. In these circumstances, we have immediately imposed incarceration as a sanction knowing that the obligor possesses funds readily at hand to pay the purge. These situations are rare. We hope they will not become even more rare once our DRS Probation process becomes widely known in the community.

report any significant life events such as change of custody, change of address, loss of employment or injury. All of these requirements are communicated verbally in Court and in writing.

(5) If an obligor violates the terms of DRS Probation, DRO retains the ability to respond with a warning or some other requirement short of a Court appearance.

(6) If an appearance before the Court is required for a violation of DRS Probation, the defendant is brought before the Court for an arraignment proceeding. At the arraignment, the Court advises the obligor of the violations charged against him/her, the Court notifies the obligor that he/she could be incarcerated as a result of his/her violation, the Court advises the obligor of the date and time established for a Violation Hearing and the Court appoints counsel for the obligor if he/she does not have private counsel.

(7) At a DRS Probation Violation Hearing, the Court hears sworn testimony from representatives of DRO and other witnesses who may be called by DRO. Thereafter, the obligor will be given an opportunity to also provide sworn testimony. Based upon all of the information and evidence presented, the Court will render a determination as to whether the obligor has violated the terms of DRS Probation.

(8) If an obligor is found in violation of DRS Probation, sanctions will be imposed. Those sanctions can include incarceration or an

extension of the term of probation. The Court will not establish another purge amount. Whatever sanctions are determined will be implemented immediately.

In creating the above, we candidly acknowledge that we could not follow a so-called "letter of the law" because no such letter exists with respect to DRS Probation.[6] However, we can and we did do our level best to honor the purpose of child support, which is to ensure that innocent children receive needed financial support from both parties. We also sought to respect legal precedent regarding civil contempt, including ***Bredbenner v. Hall***. In addition, we sought to honor the clear preference of the Pennsylvania Superior Court to limit incarceration for child support contempt to only the most egregious of circumstances. Finally, the process outlined above was designed to re-instill respect for Court Orders; plaintiffs should be able to view Orders as worth more than the paper they are written upon.

Until or unless we are advised differently by an Appellate Court, we will continue to use the DRS Probation process outlined above in order to enforce child support collection in Lebanon County. By so doing, we will afford due process and an individualized sanction determination to obligors. Our hope is that Pennsylvania's Appellate Courts will recognize the

[6] No Statute, Rule of Court or Appellate Court declaration exists to guide us with respect to DRS Probation.

necessity of a meaningful child support enforcement mechanism and that they will approve the process outlined above as a viable method.[7]

F. **Defendant's Argument**

The Lebanon County Public Defender's Office has taken the position that this Court lacks the authority to incarcerate anyone for child support contempt unless the contemnor acknowledges that he/she possesses funds in the bank that he/she refuses to pay. Focusing myopically on the "immediate ability to pay" language of ***Bredbenner*** and other Superior Court cases, the Public Defender's Office argues that "immediate ability to pay" must be equated with cash in the bank. Thus, the Public Defender's Office takes the position that no purge amount established by the Court can exceed the amount of money a defendant admits possessing.

The Public Defender's Office also takes the position that it is the responsibility of the Court to ensure that an inquiry is conducted into "immediate ability to pay." The Public Defender's Office believes that the burden of establishing ability to pay is upon the Court and not upon the contemnor.

[7] We recognize that the method we have created may not be the only method and we remain open to other options to enable *meaningful* child support contempt enforcement. What we implore of the Superior Court is to not adopt arguments such as the one proffered by the Lebanon County Public Defender that would render enforcement of child support nearly impossible.

G. **Reasoning of the Court**

In the interest of transparency, we wish to articulate some of the factors that were considered by this Court and DRO in crafting the process outlined above. In no particular order of importance, we will highlight aspects of our thought process as follows:

(1) The position advocated by the Lebanon County Public Defender's Office would effectively neuter child support enforcement. If all a defendant need do to avoid incarceration is say "I have nothing in the bank", word will quickly spread and obstreperous obligors would be able to parrot necessary language to avoid paying child support almost with impunity.

(2) Child support must be a priority for parents. When a parent chooses self-indulgence over parental responsibility, tools must exist to incentivize a change of attitude. DRS Probation can be such a tool, but only if violations of probation are accompanied with meaningful consequences.

(3) We acknowledge that the historic approach to child support contempt formerly used in Lebanon County probably did not do enough to provide due process to obligors charged with contempt. Therefore, we have created an arraignment procedure that will afford the obligor with actual notice of his/her violations plus an opportunity to be represented by counsel.

(4) Even though we have respected the Superior Court's decision in ***Bredbenner***, we nevertheless disagree with the notion that a Court must undertake the responsibility to disprove a defendant's claim of poverty before a purge amount can be established. Pennsylvania's Superior Court has recognized that a man without money in the bank can still be found in contempt and punished when he chose to use money to buy his girlfriend a vehicle instead of paying child support. *See, e.g.*, ***Commonwealth ex rel Cochran v. Cochran***, 489 A.2d 804 (Pa. Super. 1985). Similarly, the Court in ***Sinaiko v. Sinaiko***, 664 A.2d 1005 (Pa. Super. 1995) refused to overturn a finding of contempt because the defendant claimed he did not immediately have money to pay a purge because banks were not open. The Court stated that the defendant had ten (10) months to comply with his payment obligation and his inability to pay on a Friday afternoon must be viewed through that prism. Based in part on these cases, we remain convinced that purge amounts can be determined based upon a totality of circumstances, including an evaluation of the defendant's past prioritization of his own resources.[8]

[8] On multiple occasions, this Court has encountered support obligors who have admitted using money to feed a drug addiction. Requiring child support contempt Courts to ignore the reality that the obligor in these cases made a conscious choice to spend money on drugs instead of children would belie common sense.

(5) Historically, Pennsylvania's Appellate Courts viewed child support contempt proceedings through a prism that focused upon "lack of good faith." *See,* ***Griffin v. Griffin***, 558 A.2d 86 (Pa. Super. 1989); ***Hopkinson v. Hopkinson***, 470 A.2d 981 (Pa. Super. 1984). For example, in ***Commonwealth ex rel Wright v. Hendrick***, 312 A.2d 402 (Pa. Super. 1973), the Court focused upon the question of whether an obligor's failure to pay was "through no fault of his own." Very few of the older Pennsylvania Appellate cases regarding child support contempt focused upon the question of how much a defendant possessed that was immediately available to be paid toward a child support obligation. Rather, a broader analysis was employed that included a focus upon the defendant's past prioritization of his/her own financial resources.

(6) As it relates to the phrase "immediate ability to pay", we choose an interpretation that includes discernment of what *should* have been available had the defendant acted in a reasonable manner. We choose this broader interpretation because we prioritize the needs of innocent children for financial support over an obligor's vested interest in imposing a hyper-technical strict interpretation of Superior Cour precedent.

(7) The underlying purpose of a purge amount is to afford an obligor with a meaningful and achievable method by which to avoid

incarceration.[9] By using the approach outlined above, we have afforded obligors with multiple opportunities to avoid incarceration through modification of their own priorities. In particular, using DRS Probation instead of immediate incarceration affords obligors with the benefit of having oversight and advice from a trained DRS Probation Officer. All that any defendant must do to avoid the possibility of incarceration is comply with the instructions of the DRS Probation Officer. By the time a defendant reaches Court on a DRS Probation Violation, he/she has already be given multiple opportunities to avoid incarceration.

(8) It is readily apparent that Pennsylvania's Superior Court does not favor incarceration as a sanction for failing to pay child support. In recognition of that reality, we have used the DRS Probation process to create yet another layer of opportunity for obligors before incarceration is an option.

(9) By a significant margin, more plaintiffs than defendants complain about the child support enforcement process. On almost a weekly basis, the Court and/or DRO receives complaints from plaintiffs. Their complaints include:

[9] One case described this process by stating that a contemnor must "hold keys to the jailhouse door." ***Diamond. V. Diamond***, 716 A.2d 1190, 1194 (Pa. Super. 1998).

- "I sacrifice every day for my children. I need help from their other parent. Why can't you make him/her pay anything?"
- "Aren't Court Orders supposed to mean something? What kind of system allows a person to violate Court Orders with impunity?"
- "Why can the other parent avoid responsibility to pay the entire amount he/she owes by simply paying a "purge" that is far less than his/her total arrearage balance?"

We often lack the ability to provide any good response to these types of complaints. Therefore, one goal of DRS Probation is to create a process where Court Orders will mean what they say.

H. **Act 44**

In 2023, Pennsylvania's General Assembly passed what has become known as "Act 44". *See,* 42 Pa.C.S.A. § 9771. Act 44 is designed to limit judicial discretion in cases involving criminal probation violations. Among other things, Act 44 contains the following limitation on probation violation sentences:

> "If a court imposes a sentence of total confinement following a revocation, the basis of which is for one or more technical violations..., the court shall consider the employment status of the defendant. The defendant shall be sentenced as follows:
> (i) For a first technical violation, a maximum period of fourteen (14) days;

(ii) For a second technical violation, a maximum period of incarceration of thirty (30) days;
(iii) For third or subsequent technical violation, the court may impose any sentencing alternatives available at the time of the initial sentencing..."

42 Pa.C.S.A. § 9771(c)(2)

As it relates to DRS Probation, a significant question exists about whether Act 44 applies. Without question, Act 44 was passed to govern probation violations in Criminal Court. Nothing contained in Act 44 overtly mentions DRS Probation as authorized in 23 Pa.C.S.A. § 4345. Moreover, rules of supervision in Criminal Probation are far more invasive of liberty than are rules governing DRS Probation. Still, both Criminal Probation and DRS Probation necessarily impose limitations on behavioral freedom and consequences for any violation of the delineated terms of probation.

In the absence of any specific decisional precedent, Statute or Rule of Court, we have decided to honor the limitations of Act 44 as it relates to technical violations of DRS Probation. Without question, failure to report and failure to advise DRO of a change of address can and should be considered technical violations. A more difficult question is whether voluntary actions leading to a loss of employment falls within the category of a technical violation. Our visceral impression is that in a child support context, a voluntary choice not to work and pay support should be equated with committing a new criminal offense when on Criminal Probation. Under such circumstances, the limitations of Act 44 do not apply.

Up until today, this Court has not had to face the question of whether Act 44 limitations apply in a DRS Probation Violation context. Today, we

proclaim going forward that Act 44 will apply to all technical violations of DRS Probation. We will not consider voluntary failure to work and voluntary failure to pay to be technical violations.

V. DECISION APPLICABLE TO THIS CASE

This Court has already conducted a hearing at which the Defendant was found to have violated DRS Probation. Even the Defendant has not challenged the propriety of our finding that he was in contempt of Court as a result of his failure to pay. We therefore re-affirm that finding based upon everything that was presented on April 29, 2025.

We also reaffirm the decision we rendered to require $2,000 as a purge amount. This purge represented less than 20% of the total arrearage balance on this docket. Had the Defendant maintained employment as he should have done, he should have periodically paid the entire $11,000 that now constitutes his arrearage balance. Requiring that he be responsible for less than 20% of the amount he should have paid was not unreasonable. In addition, on nine (9) separate past occasions, the Defendant was able to pay lump sum amounts to avoid incarceration, thus signaling that he possessed financial resources that he was not willing to disclose or pay until it became necessary to avoid incarceration. The Defendant did not object or present evidence in opposition to the $2,000 purge amount we imposed. Moreover, at no time during the history of this case did the Defendant provide proof of any disability, injury or illness that would have

prevented him from working in order to pay child support. Because of the above, we stand by the $2,000 purge amount that we initially assessed.

With all of the above having been said, we will modify the period of incarceration imposed for the Defendant's DRS Probation Violation. Even though the Defendant failed to work and pay support during and following his time as a fugitive, that behavior was not charged as part of the DRS Probation Violation petition. Rather, the Defendant was only charged with failing to report. That is a technical violation. Thus, Act 44 prevents us from imposing more than a fourteen (14) day prison sentence.

Via a Court Order that will be entered simultaneous with this Opinion, we will vacate the three (3) month sentence imposed on April 29, 2025 based upon the Defendant's DRS Probation Violation. In its place, we will impose a fourteen (14) day period of incarceration. Thus, when the Defendant completes serving his sentence for failure to appear, he will be required to spend another fourteen (14) days in prison. Of course, the Defendant can obviate the necessity for spending that fourteen (14) day period of time in prison by paying the purge amount of $2,000 that was imposed at the time of his initial contempt finding.

VI. CONCLUSION

We have written this unusually detailed Opinion to chronicle what occurred leading up to the advent of DRS Probation. In preparing this Opinion, we endeavored to be as transparent as possible with respect to

what was done, and why, following the ***Bredbenner v. Hall*** decision. We understand that the Lebanon County Public Defender intends to appeal any imposition of incarceration in this case to Pennsylvania's Superior Court. We welcome such an appeal and we intend to rely upon this Opinion in support of the process we created and its application to this particular case. With that said, we will issue a Court Order to affirm our decision to incarcerate the Defendant for his violation of DRS Probation, but we will modify the length of the sentence in accordance with Act 44.