

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Family Court

Melissa J Buckhannon, Family Court Judge

Case No. 2021-DR-26-02006

Kimberly Brooke Crissey,

Respondent,

v.

Nicolas Jay Genest,

Appellant.

Initial Brief

STATEMENT OF ISSUE ON APPEAL

Whether the family court erred in finding Appellant in willful contempt and ordering incarceration where the court made no findings regarding Appellant's ability to pay, despite evidence in the record, and relied solely on a conclusory determination.

STATEMENT OF THE CASE

This is an appeal from a final order of the South Carolina Family Court entered on September 2, 2025, in which the court found that the Appellate is in civil contempt. (Civil Contempt Order).

On June 20, 2025, the underlying action was initiated when the Clerk of Courts, ordered the appellant to appear in Horry County Family Court (Rule 24 Clerks Affidavit). The appellant submitted a financial disclosure prior to the hearing on September 2, 2025, (Financial Disclosure) The matter proceeded through various filings and hearings, including a hearing held on September 2, 2025, at which the court heard testimony and argument. (Transcript)

Following the hearing, the court issued its final order on September 2, 2025. The order included a 6-month sentence in the county detention center which could be purged upon payment of \$5000 and compliance with monthly payments for 12 months. (Civil Contempt Order).

On September 11, 2025, the Appellant timely filed a Motion to Reconsider. (Motion to Reconsider)

As of the filing of this appeal, the trial court has not ruled on the Motion to Reconsider. (Motion to Reconsider). Due to this delay, Appellant filed a Notice of Appeal on April 1, 2026, to preserve appellate rights. (Notice of Appeal).

This appeal follows.

Standard of Review

Appeals from the South Carolina Family Court are reviewed de novo on the record. Accordingly, the appellate court may find facts in accordance with its own view of the preponderance of the evidence, while giving due deference to the trial court's credibility determinations.

Whether the trial court made sufficient findings of fact to permit meaningful appellate review presents a question of law. Accordingly, where the court fails to make findings on a material issue, the appellate court reviews the issue de novo and may reverse and vacate or remand for additional findings. *Simmons vs Simmons* 392 SC 412, 414, 709, SE 2A 666, 667 (2010)

ARGUMENT

The family court erred in finding Appellant in willful contempt and ordering incarceration because it failed to make findings regarding Appellant's ability to pay. (Transcript)

A finding of civil contempt for nonpayment requires evidence that the alleged contemnor had the ability to comply with the court's order and willfully failed to do so. See *Turner vs Rogers*. Accordingly, the court must make specific findings demonstrating the basis for its determination. As recognized in *Turner v. Rogers*, due process requires that before incarceration for nonpayment, the court must make a reliable determination—based on the evidence—that the alleged contemnor had the ability to pay.

It is well established that an appellate court cannot conduct meaningful review where the trial court fails to make sufficient findings of fact. See *Baker v. Baker*. Where such findings are lacking, the proper remedy is remand for additional findings.

Here, the record contains Appellant's financial affidavit, which addresses his income, expenses, and overall financial condition. (Financial Affidavit) However, neither the transcript nor the order (Civil Contempt Order) reflects any analysis of Appellant's ability to pay.

Instead, the order contains only a conclusory determination that Appellant "had the ability to pay," without reference to supporting evidence or explanation of how the court evaluated

the financial information before it. Such a conclusory finding is insufficient to support a determination of willfulness, particularly where incarceration is imposed.

Because the order contains no findings addressing Appellant's ability to pay, this Court cannot conduct meaningful appellate review. Accordingly, the contempt finding and resulting incarceration order should be reversed or, alternatively, remanded for specific findings.

Conclusion

For the foregoing reasons, Appellant respectfully requests that this Court reverse and vacate the family court's finding of contempt and resulting incarceration order, or, in the alternative, remand the matter for further proceedings with instructions to make sufficient findings regarding Appellant's ability to pay.

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