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Apr 14 2026

S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT**

Appellate Case No. 2026-000433

Rodney Ajaira Hicks,

Petitioner,

v.

South Carolina Department of Social Services
and Kizzie Oglesby,

Respondents.

**PETITION FOR ORIGINAL JURISDICTION
AND EXPEDITED CONSIDERATION**

Petitioner Rodney Ajaira Hicks respectfully requests that this Court authorize the bringing of this action within its original jurisdiction pursuant to Rule 245, SCACR, S.C. Code Ann. § 14-3-310, and S.C. Const. art. V, § 5. Petitioner seeks vacatur of an order of the Greenville County Family Court adjudging him in willful civil contempt of a child support order. The adjudication was entered notwithstanding the family court's acceptance on the record of uncontroverted evidence that Petitioner had no assets, no savings, and no present ability to satisfy the purge amount

the order imposed. The contempt adjudication is a permanent, operative finding. It exposes Petitioner not only to eventual activation of a suspended ninety-day sentence but, more immediately, to the compounding prejudice that attaches to every future family court proceeding in which a prior contempt finding will be read as willful disregard of lawful orders. Because that continuing harm is present now, because no appellate remedy remains, and because this Court has never had occasion to apply *Turner v. Rogers*, 564 U.S. 431 (2011), in a civil contempt child support enforcement proceeding, Petitioner respectfully requests that this Court exercise its original jurisdiction and grant expedited consideration.

I. INTRODUCTION AND SUMMARY

This Petition is filed in direct response to this Court's Order dated April 10, 2026. In that Order, this Court struck the petition for writ of certiorari for lack of appellate jurisdiction. In footnote two of that Order, this Court expressly stated that nothing prevents Petitioner from filing a petition seeking relief under Rule 245, SCACR. This Petition is filed in response to that invitation.

The matter presents a narrow question. The family court, after accepting on the record that Petitioner had no assets, no savings, and no money, imposed a purge requirement of \$11,703.71 upon a ninety-day suspended sentence for civil contempt. The court identified no standard of proof. The court made no express finding that Petitioner had the present ability to accumulate the purge amount within the six months the order allowed, while simultaneously continuing to submit to weekly garnishment of \$206.85 against his temporary-agency wages. The court's contempt adjudication rested instead on a past-period finding — that Petitioner had been delinquent during an earlier period while he was employed, before the temporary staffing agency lost its placement contract. That past-period finding does not support the contempt adjudication the court entered.

Under *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), as applied by the Court of Appeals in *Hicks v. Hicks*, 280 S.C. 378, 312 S.E.2d 598 (Ct. App. 1984), a parent unable without fault to comply with a support order is not in civil contempt. The family court's order cannot be reconciled with that rule.

Petitioner seeks vacatur of the contempt finding itself, not merely a stay of its execution. The finding is a permanent judicial determination of willful disobedience. It is entered on the docket of the Greenville County Family Court. It is discoverable by opposing counsel in any future proceeding. It will inform the discretion of every future family court judge who sees this case in any form — modification, future arrears, visitation, any proceeding involving the minor child. In every such future proceeding, the existence of a prior contempt adjudication will function as a practical presumption of willfulness against a working-poor obligor who has no means to contest the presumption in real time. That compounding prejudice is the injury this Petition asks the Court to redress. It is present now. It does not depend on whether the Sheriff executes the ninety-day sentence.

Petitioner does not seek the appointment of counsel. Petitioner was represented by undersigned counsel at the contempt hearing and remains so today. The holding of *Turner v. Rogers*, 564 U.S. 431 (2011), concerning the appointment of counsel to indigent obligors where the opposing party is also unrepresented, is therefore not the holding on which this Petition depends. What this Petition depends on is the underlying constitutional principle that *Turner* reflects: that a civil contempt adjudication exposing an indigent obligor to incarceration must rest on evidence in the record supporting a determination of present ability to comply. That principle is congruent with the substantive rule of South Carolina contempt law established in *Moseley* and reaffirmed in *Hicks v. Hicks*, *Bearden v. Bearden*, 272 S.C. 378, 252 S.E.2d 128 (1979), *Brooks v.*

Brooks, 277 S.C. 322, 286 S.E.2d 669 (1982), and *Jackson v. Jackson*, 241 S.C. 1, 126 S.E.2d 855 (1962). State and federal principle point in the same direction here.

Petitioner respectfully submits that the matter is within this Court's original jurisdiction under Rule 245(a), SCACR, for the reasons set forth in Sections II and III. Petitioner further submits that on the record before the Court, the contempt adjudication must be vacated.

II. AUTHORITY OF THIS COURT TO ASSUME ORIGINAL JURISDICTION

Article V, Section 5 of the South Carolina Constitution vests this Court with original jurisdiction. S.C. Code Ann. § 14-3-310 confirms that authority. Rule 245(a), SCACR, permits this Court to entertain a matter in its original jurisdiction where the public interest is involved, or where special grounds of emergency or other good reasons exist. *Doe v. State*, 421 S.C. 490, 497, 808 S.E.2d 807, 811 (2017). This Court has further held that a legitimate constitutional issue may itself supply the good reason required. *Id.* The standard is extraordinary but not forbidding, and it is the Court's settled practice to apply it when the circumstances of a matter so require. *See Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991) (declining original jurisdiction on the facts but articulating the governing standard).

This Court has recently exercised its original jurisdiction in a series of matters presenting constitutional or statewide questions. *See Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020) (challenge to gubernatorial allocation of federal education funding); *S.C. Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016) (challenge to Appropriations Act proviso); *Mitchell v. City of Greenville*, 411 S.C. 632, 770 S.E.2d 391 (2015) (challenge to municipal election ordinance); *State v. County of Florence*, 406 S.C. 169, 749 S.E.2d 516 (2013) (challenge to proposed county tax referendum); *Aakjer v. City of Myrtle Beach*, 388 S.C. 129, 694 S.E.2d 213 (2010) (challenge to helmet ordinance); *Layman v. State*, 368 S.C. 631, 630 S.E.2d 265

(2006) (retirement system challenge). Federal courts interpreting this Court's Rule 245 practice have described the threshold as an extraordinary reason such as a question of significant public interest or an emergency. *Wilson v. Moore*, 178 F.3d 266 (4th Cir. 1999).

One further ground, unique to this case, justifies the exercise of original jurisdiction. *Turner v. Rogers*, 564 U.S. 431 (2011), arose on review from a decision of this Court in a civil contempt child support enforcement proceeding. The United States Supreme Court reversed. Fifteen years have passed. In those fifteen years, this Court has not had occasion to apply *Turner* in a civil contempt child support enforcement proceeding, and no reported decision of the Court of Appeals has done so either. The family courts of this State administer proceedings under S.C. Code Ann. § 63-17-390 daily without guidance from this Court on what the constitutional floor *Turner* established requires in the setting where *Turner* itself arose. The public interest in that guidance, standing alone, warrants the exercise of original jurisdiction under Rule 245(a).

This case satisfies the Rule 245(a) threshold in multiple respects. It presents a constitutional question of direct public interest. It presents a continuing and compounding prejudice to Petitioner in the form of an operative contempt adjudication. It arises on a closed evidentiary record that leaves nothing for a lower court to develop. And it implicates a fifteen-year gap in this Court's jurisprudence applying the federal due process floor to the civil contempt child support setting in which it was set. Any one of those grounds would support original jurisdiction. All are present here.

III. REASONS FOR TAKING ORIGINAL JURISDICTION

Three reasons support this Court's exercise of original jurisdiction in this matter.

First, the question presented is of significant public interest. Civil contempt proceedings under S.C. Code Ann. § 63-17-390 occur daily in the family courts of this State. The uniform

application of the substantive rule of *Moseley v. Mosier*, 279 S.C. 348 (1983) — that a parent unable to comply without fault is not in contempt — and the uniform application of the federal due process principle reflected in *Turner v. Rogers*, 564 U.S. 431 (2011), are matters in which the public has a direct and continuing interest. A decision of this Court will guide every family court judge in this State in the conduct of every civil contempt proceeding arising from nonpayment of child support. No lower court can provide that guidance.

Second, the contempt adjudication Petitioner asks this Court to vacate is not an abstract concern. It is a permanent, operative judicial determination of willful disobedience. It is entered on the docket of the Greenville County Family Court. It is discoverable in any future enforcement proceeding. Every future family court judge who encounters a subsequent arrears dispute, a modification petition, a visitation adjustment, or any other matter involving Petitioner and the minor child will see the October 24, 2024 contempt adjudication as part of the file. The existence of that prior adjudication will, in practical effect, function as a presumption of willfulness against Petitioner in any future proceeding in which noncompliance is alleged. The harm accrues proceeding by proceeding. It is compounding. It is present. It is not contingent on the activation of the suspended ninety-day sentence. *See Turner v. Rogers*, 564 U.S. at 439-40 (holding that civil contempt proceedings for nonpayment of child support are not moot after the period of incarceration ends because of the likelihood of recurrence).

Third, the case presents purely legal questions on a closed record. The transcript of the October 23, 2024 contempt hearing, the exhibits introduced by Petitioner, the order of commitment, and the briefing before the Court of Appeals are all before this Court. The family court's findings are what they are. There are no factual disputes requiring further development. What remains is the application of the substantive South Carolina rule of *Moseley* and *Hicks v.*

Hicks, and the federal due process principle reflected in *Turner*, to a closed record. This Court is the body best positioned to undertake that application. A decision by this Court serves the interests of judicial economy by eliminating further proceedings in lower courts.

There is a fourth reason. The Respondent South Carolina Department of Social Services had a full and fair opportunity to defend the contempt order on the merits in the Court of Appeals. On April 9, 2025, the Clerk of the Court of Appeals notified counsel for the Department that the time for filing the respondents' initial brief and designation of matter had expired. The Clerk directed her to file within ten days or move for leave to file out of time, failing which the appeal would proceed without a respondent's brief. Counsel filed nothing. By May 20, 2025, the Clerk confirmed to Petitioner's counsel that the Department would not be filing a brief, and directed Petitioner to proceed with his final brief. The appeal was submitted without any brief from the Department of Social Services. See Exhibits N and O. The State was given its opportunity to defend a suspended ninety-day sentence imposed on an indigent obligor who the family court had accepted possessed no home, no car, no money, and no savings. The State chose silence. This Court is not being asked to resolve a contested constitutional question. It is being asked to reach the question the Court of Appeals never reached on the merits — the one the State already declined to contest.

Ordinary appellate review is no longer available. After fourteen months of pendency and full briefing, the Court of Appeals dismissed Petitioner's appeal on a proof-of-service defect that this Court subsequently observed may have reflected only a typographical error. Order of April 10, 2026, at 1. No timely petition for rehearing was filed. The remittitur issued. This Court, in its April 10, 2026 Order, held itself constrained to strike the petition for writ of certiorari. In

footnote two of that Order, this Court identified Rule 245 as the remaining avenue for relief. Rule 245 is not merely available. It is the only door left open.

IV. THE FACTS

The Greenville County Family Court entered a child support order directing Petitioner to pay the sum of \$206.85 per week to the custodial parent. The family court's authority to enforce that order by bench warrant and commitment is found in S.C. Code Ann. § 63-17-390.

Petitioner was employed through Higher Dynamics, a temporary staffing agency that placed him at the Magna plant. Over the Fourth of July break in 2024, Magna terminated its contract with Higher Dynamics. Petitioner learned of the termination on July 19, 2024, when he attempted to return to work. He was immediately unemployed through no fault of his own.

Petitioner did not conceal the loss of his placement. He reported it to the Department of Social Services, as the order and the Department had instructed him to do. He applied for unemployment benefits. He applied for work with other employers. He documented his efforts in twenty exhibits that were introduced at the contempt hearing. He obtained new employment through Aerotek, another temporary staffing agency, which placed him at Steelworks. That placement was active at the time of the contempt hearing, and garnishment of his Steelworks wages had commenced days before.

The contempt hearing was held on October 23, 2024, before the Honorable Timothy Madden, Judge of the Family Court. Petitioner was present and represented by undersigned counsel. The custodial parent, Ms. Kizzie A. Oglesby, appeared pro se.

At the hearing, the family court identified the arrears, together with the Clerk's collection cost, as \$11,703.71. Counsel for Petitioner did not dispute the amount. The court then asked counsel whether he wished to present proof as to why Petitioner should not be held in contempt.

Counsel presented twenty exhibits documenting the Magna termination, Petitioner's immediate job search, the obstacles Petitioner encountered in that search, and his eventual placement with Steelworks. Counsel argued the substantive South Carolina rule — that inability to comply, without fault, is a defense to civil contempt. Counsel offered to place Petitioner on the stand. The court declined to require live testimony and stated that it would accept that Petitioner's testimony would be as counsel had described.

The family court inquired into Petitioner's present financial circumstances. The court asked whether Petitioner owned a home, owned a car, or had any money in the bank. Petitioner answered that he owned none of those things. Counsel confirmed: no money. The court accepted on the record that Petitioner had no assets, no savings, and no income beyond the temporary-agency wages that were then being garnished.

The family court then ruled. The court observed that the period of delinquency was not limited to the period between the last hearing and the present one, and reasoned that Petitioner had fallen behind during an earlier period when he was employed — before the Magna termination. On that past-period basis, the court found Petitioner in civil contempt. The court did not state the standard of proof it applied. The court made no express finding that Petitioner had the present ability to accumulate and pay \$11,703.71 within six months while also continuing to submit to weekly garnishment of \$206.85 against temporary-agency wages. The court sentenced Petitioner to ninety days in the county detention center, suspended that sentence on the condition that Petitioner bring the account balance to zero no later than April 30, 2025, and directed that the payroll garnishment alone would not satisfy the purge condition. The written order followed.

The purge deadline of April 30, 2025, has passed. The contempt adjudication remains in force. The ninety-day suspended sentence remains operative. Petitioner is not today in custody,

but the order continues to expose him to activation of that sentence and, more immediately, to the compounding prejudice that attaches to every future family court proceeding in which the prior contempt finding will be visible on the docket.

Petitioner timely noticed his appeal. The Notice of Intent to Appeal was filed on November 20, 2024, twenty-eight days after the entry of the October 23, 2024 contempt order, and within the thirty-day period prescribed by Rule 203(b)(3), SCACR. The accompanying proof of service, however, contained a typographical error reciting a service date of March 2, 2016, a date at odds on its face with the November 20, 2024 signature date and filing-fee check. Because the custodial parent had appeared pro se in the family court and had not provided a service address for the appeal, the notice of appeal was served upon the South Carolina Department of Social Services, which represents the State's interest in the enforcement of child support obligations, together with the Clerk of the South Carolina Court of Appeals and the Greenville County Clerk of Court. By letter dated November 26, 2024, the Clerk of the Court of Appeals identified four curable deficiencies in the notice and directed that each deficiency must be corrected within ten days of the date of the letter or the matter would be dismissed. Petitioner corrected each deficiency within that ten-day window. An amended notice of appeal was filed on December 5, 2024, nine days after the Deficiency Letter, together with a corrected proof of service. By letter dated December 9, 2024, the Clerk acknowledged receipt of the amended notice, assigned Appellate Case No. 2024-002000, and directed a change in caption. The appeal proceeded to full briefing. Petitioner's Final Brief was submitted on June 4, 2025. Fourteen months after the original notice of appeal was filed, and after the appeal was fully briefed, the Court of Appeals entered an order on January 28, 2026 dismissing the appeal on the basis of untimely service, computing the thirty-day service period from the corrective filing rather than from the original timely notice — notwithstanding that the

corrective filing was made within the ten-day cure window the Clerk herself had prescribed. As this Court subsequently observed, the notice of appeal may in fact have been timely served, and the proof of service simply contained a typographical error. Order of April 10, 2026, at 1. Counsel inadvertently overlooked the electronic transmission of the dismissal order, and the remittitur was thereafter sent pursuant to Rule 221, SCACR. Petitioner sought review in this Court by petition for writ of certiorari. By Order dated April 10, 2026, this Court held itself constrained to strike the petition for writ of certiorari for lack of appellate jurisdiction, citing Rule 242(a), SCACR; Rule 242(c), SCACR; and *Stogsdill v. South Carolina Department of Health & Human Services*, 415 S.C. 568, 784 S.E.2d 669 (2016). In footnote two of the April 10, 2026 Order, this Court expressly stated that nothing prevents Petitioner from filing a petition seeking relief under Rule 245, SCACR. This Petition follows.

V. THE SUBSTANTIVE AND CONSTITUTIONAL FLOOR

The controlling substantive South Carolina authority is this Court's decision in *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983). In *Moseley*, this Court held that a parent who is unable to make child support payments as ordered is not in contempt. *Moseley*, 279 S.C. at 351, 306 S.E.2d at 626. The Court of Appeals applied that rule in *Hicks v. Hicks*, 280 S.C. 378, 312 S.E.2d 598 (Ct. App. 1984), where the obligor had been held in contempt for nonpayment of support after a period of unemployment. The record in *Hicks* showed that the obligor was unemployed during the relevant period and was actively seeking work. The Court of Appeals held that the trial court had abused its discretion in finding him in contempt, because, where a contemnor is unable, without fault on his part, to obey an order of the court, he is not to be held in contempt. *Hicks*, 280 S.C. at 381, 312 S.E.2d at 599.

The rule of *Moseley* and *Hicks v. Hicks* did not come from nowhere. In *Brooks v. Brooks*, 277 S.C. 322, 286 S.E.2d 669 (1982), this Court reaffirmed that inability to comply, without fault, is a complete defense to civil contempt. In *Bearden v. Bearden*, 272 S.C. 378, 252 S.E.2d 128 (1979), this Court held that a contempt determination is subject to reversal where it is based on a finding that is without evidentiary support. In *Jackson v. Jackson*, 241 S.C. 1, 126 S.E.2d 855 (1962), this Court held that the power of contempt is to be exercised sparingly and within the sound discretion of the trial judge. Those authorities frame the question presented here. Did the family court, on the record of the October 23, 2024 hearing, have evidentiary support for the finding that Petitioner’s past-period delinquency amounted to willful disobedience, and for the further finding — necessary to support the \$11,703.71 purge requirement — that Petitioner possessed the present ability to accumulate that sum within six months on temporary-agency wages?

The federal due process principle reflected in *Turner v. Rogers*, 564 U.S. 431 (2011), is congruent with the South Carolina rule. *Turner* addressed civil contempt proceedings for nonpayment of child support, on review from a decision of this Court. The United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment requires, at a minimum, that a civil contempt adjudication exposing an indigent obligor to incarceration be supported by evidence of the obligor’s ability to comply. *Turner*, 564 U.S. at 447-48. *Turner*’s further holding — that due process does not automatically require the appointment of counsel to an indigent obligor when the custodial parent is also unrepresented, provided certain procedural safeguards are available — is not at issue in this case. Petitioner was represented by counsel at the contempt hearing. The question *Turner* answered about counsel is therefore not the question this Petition presents. The question this Petition presents is the deeper one that *Turner* also addresses: whether a contempt finding that exposes the obligor to incarceration may rest on a record that does not

support a determination of present ability to comply. Whether the obligor appears with counsel or without, a contempt adjudication must rest on evidence. *See Bearden v. Georgia*, 461 U.S. 660 (1983) (applying due process limits to incarceration imposed on indigents in a related setting).

The compounding-prejudice concern underlying this Petition is also recognized in *Turner*. In that case, the obligor had already served the period of incarceration imposed by the contempt order by the time the United States Supreme Court considered the appeal. The Court rejected the argument that the case was moot. It held that the likelihood of recurrence of the same action — civil contempt for nonpayment — kept the controversy live. *Turner*, 564 U.S. at 439-40. That holding confirms what South Carolina law already recognizes: that the harm of a contempt adjudication is not exhausted when the period of incarceration ends. The harm persists in every future proceeding in which the prior adjudication is a matter of record. Petitioner’s claim is justiciable on the same reasoning, whether or not the Sheriff activates the suspended ninety-day sentence.

Civil contempt in South Carolina must be proven by clear and convincing evidence. *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982); *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998); *Moore v. Smith*, 441 S.C. 261 (Ct. App. 2023). The family court in this case did not identify the standard of proof it applied. That omission is an independent ground for vacatur. The omission is compounded by what the record affirmatively shows: that the court accepted the defense’s representation of present indigency and then imposed a purge requirement that, on its face, could not be satisfied consistent with that representation.

VI. APPLICATION TO THIS CASE

The mismatch between what the family court accepted and what it ordered is the heart of this case. The court accepted, on the record, that Petitioner had no home, no car, no money, and

no savings. The court simultaneously imposed a purge requirement of \$11,703.71, to be satisfied within six months, in addition to continuing weekly garnishment of \$206.85, on temporary-agency wages. The court did not state how that purge requirement could be satisfied consistent with the court's own findings. The court did not identify any asset, any income stream beyond temporary-agency wages, or any realistic schedule of accumulation by which Petitioner could bring the balance to zero by April 30, 2025.

The court's contempt finding rested on a different theory: that during an earlier period, before the Magna termination, Petitioner had been employed and had fallen behind. That past-period finding, whatever evidentiary support it may have, is not a finding of present ability to satisfy the purge amount. Past delinquency during a period of employment is relevant to willfulness in that period. It does not establish the present ability to satisfy a new and substantial purge requirement in six months on temporary-agency wages. The court elided that distinction. *Moseley, Hicks v. Hicks, Bearden, Brooks, and Jackson* do not permit the elision. *Turner* does not permit it. Nor does the clear and convincing evidence standard of *Moore and Poston*.

Petitioner made these points, in substance, in the family court. Undersigned counsel argued the inability-without-fault rule of *Hicks v. Hicks* at length. Counsel introduced twenty exhibits documenting the termination, the job search, the obstacles Petitioner faced, the new employment at Steelworks, and the garnishment already in progress. Counsel offered Petitioner for testimony. The court accepted the proffer rather than requiring live testimony and then rejected the defense on a past-period theory the court had not signaled during the presentation of evidence. That rejection is the abuse of discretion this Petition asks the Court to correct.

The constitutional floor under which the conditional sentence was imposed compels the same result. In *Curlee v. Howle*, 277 S.C. 377, 287 S.E.2d 915 (1982), this Court adopted the

reasoning of *Shillitani v. United States*, 384 U.S. 364 (1966), and held that the justification for coercive imprisonment depends upon the ability of the contemnor to comply with the court's order. *Curlee*, 277 S.C. at 384, 287 S.E.2d at 919. When the contemnor carries the keys of the prison cell in his own pocket, coercive conditional imprisonment is permissible. When he does not, it is not. The family court here imposed a conditional ninety-day sentence on a man the court itself had just accepted had no home, no car, no money, and no savings. The purge condition was \$11,703.71 within six months, to be paid over and above continuing weekly garnishment of \$206.85 against temporary-agency wages. That condition is not a key in the contemnor's pocket. It cannot serve the coercive purpose that alone justifies civil conditional imprisonment under *Curlee* and *Shillitani*. It functions instead as imprisonment for debt.

VII. CONTROLLING AND PERSUASIVE AUTHORITY

The controlling South Carolina authority is the chain beginning with *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), and continuing through *Hicks v. Hicks*, 280 S.C. 378, 312 S.E.2d 598 (Ct. App. 1984); *Brooks v. Brooks*, 277 S.C. 322, 286 S.E.2d 669 (1982); *Bearden v. Bearden*, 272 S.C. 378, 252 S.E.2d 128 (1979); and *Jackson v. Jackson*, 241 S.C. 1, 126 S.E.2d 855 (1962). Each case stands for the proposition that inability to comply, without fault, is a defense to civil contempt, and that a contempt finding unsupported by evidence of willfulness or ability to pay is subject to reversal.

The modern decisions of the Court of Appeals confirm the rule. Civil contempt requires willful disobedience of a clear and definite court order. *Register v. Dixon*, 437 S.C. 434, 879 S.E.2d 9 (Ct. App. 2022); *Campione v. Best*, 435 S.C. 451, 868 S.E.2d 378 (Ct. App. 2021); *Daily v. Daily*, 432 S.C. 608, 854 S.E.2d 856 (Ct. App. 2021). Willfulness requires a voluntary and intentional act. Involuntary unemployment is not willfulness. A good-faith, documented job search

is not willfulness. A good-faith attempt to comply with a court order, even if unsuccessful, does not warrant a finding of contempt. *Ex parte Lipscomb*, 398 S.C. 463, 470, 730 S.E.2d 320, 324 (Ct. App. 2012). A man who loses his placement when the end employer terminates a staffing contract, who reports the loss to the Department as the order required, who applies for unemployment, who documents his applications to other employers, and who secures new placement within weeks, has not willfully disobeyed anything during the period following his termination.

Once a prima facie case of noncompliance is shown, the burden shifts to the obligor to show inability to comply. *Pratt v. South Carolina Department of Social Services*, 283 S.C. 550, 324 S.E.2d 97 (Ct. App. 1984). Petitioner satisfied that burden. The ultimate burden of proving civil contempt, however, rests on the party alleging it, and the standard is clear and convincing evidence. *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982); *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998); *Moore v. Smith*, 441 S.C. 261 (Ct. App. 2023). No such standard was identified in the family court. That is reversible error.

Because this matter is in equity and was tried by a judge alone, this Court may determine the facts in keeping with its own view of the preponderance of the evidence. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *see also Moore v. Smith*, 441 S.C. at 269. The preponderance points one way on this record. The court accepted indigency. The court then imposed a purge on indigency. The rule of *Moseley* and *Hicks v. Hicks* requires vacatur.

Although this Court has not yet had occasion to apply *Turner v. Rogers*, 564 U.S. 431 (2011), in a civil contempt child support enforcement proceeding, *Turner's* underlying due process principle is directly on point. The Fourteenth Amendment requires that a civil contempt adjudication exposing an indigent obligor to incarceration rest on evidence of ability to comply.

Turner, 564 U.S. at 447-48. That requirement applies where the obligor is represented by counsel no less than where the obligor is not. A represented defendant is no less entitled to a contempt finding supported by the record than a pro se defendant. The protection against imprisonment for debt does not turn on who is at counsel's table.

Sister jurisdictions have applied *Turner*'s underlying principle to settings materially similar to this one. In *Stehle v. Zimmerebner*, 2016 Ark. 290, the Arkansas Supreme Court vacated a civil contempt incarceration order where the circuit court had failed to make a finding of present ability to pay the purge amount. In *In re A.C.B.*, 2022 COA 3, the Colorado Court of Appeals held that a trial court violated due process by imposing a civil contempt sanction without adequate inquiry into present indigency. In *Pompey v. Cochran*, 685 So. 2d 1007 (Fla. Dist. Ct. App. 1997), the Florida court held that incarceration for civil contempt is permissible only upon a separate, affirmative finding of present ability to pay. These decisions are uniform. South Carolina, the State where *Turner* itself originated, should not stand alone in failing to give effect to *Turner*'s underlying principle.

VIII. THE RECORD

Contemporaneously with this Petition, Petitioner submits the exhibits identified in the accompanying Table of Exhibits. The packet includes the April 10, 2026 Order of this Court; the Family Court contempt order of October 24, 2024; the transcript of the October 23, 2024 contempt hearing before the Honorable Timothy Madden; the Final Brief previously submitted to the Court of Appeals; the Court of Appeals order dated January 28, 2026 dismissing the appeal; the original Notice of Intent to Appeal dated November 20, 2024 with its accompanying Certificate of Service, filing-fee check, and transcript request form; the Court of Appeals deficiency letter dated November 26, 2024 and the Court of Appeals letter dated December 9, 2024 acknowledging

receipt of the notice of appeal and assigning Appellate Case No. 2024-002000; the underlying child support order; the Rule to Show Cause and return of service; the twenty exhibits introduced by Petitioner at the contempt hearing; the Court of Appeals letter dated April 9, 2025 notifying counsel for Respondent South Carolina Department of Social Services that the time for filing a respondents' brief had expired; and the Court of Appeals letter dated May 20, 2025 confirming that no respondents' brief would be filed and directing Petitioner to proceed with his final brief. The Record on Appeal, formally prepared and transmitted to the Court of Appeals, incorporates each of the foregoing documents and is submitted as part of the packet. Each factual assertion in this Petition is anchored in those filings and can be traced to a specific transcript page, order, or docket entry. Petitioner respectfully directs the Court to the Table of Exhibits and the accompanying materials for the full evidentiary basis of the representations made herein.

IX. REQUEST FOR EXPEDITED CONSIDERATION AND PROPOSED SCHEDULE

Because the contempt adjudication is a permanent, operative finding whose prejudicial effect compounds with each day it remains on the docket, and because the suspended ninety-day sentence may be activated without further notice, Petitioner respectfully requests that this Court give this matter expedited consideration. Discovery is not necessary. The case may be decided on the filings by the parties and any briefing requested by this Court. Petitioner proposes the following schedule for disposition of this matter:

1. Respondents' response to this Petition due seven days after entry of this Court's order exercising original jurisdiction.
2. Petitioner's brief due fourteen days after entry of this Court's order exercising original jurisdiction.
3. Respondents' brief due fourteen days after service of Petitioner's brief.

4. Petitioner's reply brief due seven days after service of Respondents' brief.
5. Oral argument and disposition at this Court's earliest convenience.

Pending the Court's disposition of this Petition, Petitioner respectfully requests an immediate stay of enforcement of the family court contempt order, including any warrant, bench warrant, commitment, or order of incarceration based upon that order. The stay is necessary to preserve the meaning of the relief this Petition seeks.

X. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court order the following relief:

1. Grant this Petition and assume original jurisdiction under Rule 245, SCACR;
2. Vacate the order of the Greenville County Family Court entered on or about October 24, 2024, adjudging Petitioner in willful civil contempt of the child support order and imposing a ninety-day suspended sentence and a \$11,703.71 purge requirement, as an abuse of discretion unsupported by the record and contrary to the substantive rule of *Moseley v. Mosier*, 279 S.C. 348, 306 S.E.2d 624 (1983), and the due process principle reflected in *Turner v. Rogers*, 564 U.S. 431 (2011);
3. Enter an immediate stay of enforcement of the family court contempt order, including any warrant, bench warrant, commitment, or order of incarceration based upon that order, pending this Court's disposition of this Petition;
4. Issue a writ of prohibition or such other extraordinary writ as may be appropriate, barring Respondents from causing the incarceration of Petitioner under the existing contempt order and from relying upon the existence of the existing contempt order in any future family court proceeding as evidence of willful disobedience of a lawful order;

5. In the alternative to vacatur, remand for a new contempt hearing to be conducted in conformity with the clear and convincing evidence standard, the substantive rule of *Moseley v. Mosier*, and the Due Process Clause of the Fourteenth Amendment;
6. Expedite consideration of this Petition in accordance with the schedule proposed in Section IX; and
7. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



Fletcher N. Smith, Jr.
SC Bar No. 5165
Attorney for Petitioner
112 Wakefield Street
Greenville, South Carolina 29601
(864) 232-6541

Dated: April 13, 2026

RECEIVED

Apr 14 2026

S.C. SUPREME COURT

CERTIFICATE OF SERVICE

I, Fletcher N. Smith, Jr., hereby certify that on the date set forth below, I served a true and correct copy of the foregoing Petition for Original Jurisdiction and Expedited Consideration upon counsel for Respondents South Carolina Department of Social Services and Kizzie Oglesby by electronic mail and by United States Mail, first-class postage prepaid, at their addresses of record.



Fletcher N. Smith, Jr., SC Bar No. 5165

Dated: April 13, 2026