

## COA Opinion: Inability to pay is not a defense to charge of felony failure to pay child support

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9. June 2010 By Jason Byrne

On June 8, 2010, the Court of Appeals approved for publication its April 20, 2010 per curiam opinion in *People v. Likine*, No. 290218. That case arose from the defendant's failure to pay court ordered child support. Initial support payments were under \$200/month, but based upon hearings that revealed the defendant's purchase of a \$500,000 home and new car, were raised to over \$1,000/month. Defendant failed to make the adjusted court-ordered payments and was eventually charged with felony failure to pay child support. The trial court ordered that defendant would not be permitted to raise a defense of inability to pay, because the charge was a strict liability offense. The defendant was convicted. On appeal, she argues that the underlying statute was unconstitutional based on precedent that holds that the Legislature cannot impose the duty to perform an act upon a person, which is impossible for that person to perform, and then make such non-performance a crime. The Court of Appeals found that the precedent did not apply in this case, noting that the defendant had a full opportunity for due process regarding the child support amount and her ability to pay in the civil context. In those proceedings, the civil court had determined that she did, in fact, have the ability to perform the ordered support obligations. Additionally, she argued that the trial court's decision preventing her from raising the inability-to-pay defense was a due process violation. Again, the Court of Appeals disagreed, finding that the right to present a defense is not an absolute right, and that the inability-to-pay was irrelevant to any fact at issue in the case. Thus, the Court of Appeals affirmed the conviction.