

What are the requirements for being found in civil contempt of court?

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The requirement is there “must be a clear and unequivocal command and an equally clear and undoubted disobedience.” M.M. v. D.A., 79 Mass. App. Ct. 197, 198 (2011).

This means that the court order cannot be ambiguous (unclear) and that it is clear that you did not comply. That is the general idea. But who has the burden of proof and what if you cannot comply?

Well, for there to be a finding of contempt, the putative contemnor must be able to fulfil the court’s order. Diver v. Diver, 402 Mass. 599, 603 (1988); O’Connell v. Greenwood, 59 Mass. App. Ct. 147, 154 (2003) (“A putative contemnor may no doubt avoid a finding of contempt if she meets her burden of proving her inability to comply with the relevant court order.”).

When it comes to the debtor context, when the question is usually whether the debtor has paid the amount he was ordered to, the burden is on the party complaining that there was a violation. Mass. Gen. Laws c. 224 § 16; In re Birchall, 454 Mass. 837, 852 (2009). And it must be met with clear and convincing evidence. Id. at 853. It is not adequate to claim that the payment order did not specify what assets the debtor was to liquidate to support the argument that the payment order was unclear.

If the person complaining, usually a plaintiff in a supplementary process action, meets the burden and the court determines the debtor is in contempt for failure to pay, the court has the power to incarcerate the debtor for 30 days. At the end of the 30 days, there should be another hearing to determine whether the debtor is still in contempt. As long as the debtor remains able to pay and does not, this can continue.

However, the purpose of civil contempt, as opposed to criminal contempt, is to get the contemnor to comply. Sodones v. Sodones, 366 Mass. 121, 129-130 (1974). It has been said that the civil contemnor “carries the keys of his prison in his own pocket” because all he has to do is comply to get out of jail. International Union, United Mine Workers v. Bagwell, 512 U.S. 821, 828 (1994). (Criminal contempt is different and beyond the scope of this blog.). Also, if the court believes that the incarceration is no longer a motivation to stimulate the contemnor’s compliance, it is to release the contempt. However, it is a fools folly to rely on this principal.

When it comes to the domestic relations context, when the question is usually whether a party has complied with a probate/divorce court’s order to perform or refrain, the burden is on the possible contemnor. Mass. Gen. Laws c. 215 § 34; Diver v. Diver, 402 Mass. 599, 603 (1988). This means if you are accused of contempt in the probate court, you should take it quite seriously and be prepared to prove either you complied or were unable to comply.

In the event that you find yourself facing a contempt complaint/accusation or believe another party has violated a court order, feel free to contact this office to discuss.

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