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NAVIGATING THE MINEFIELD OF WHEN TO APPEAL IN A CIVIL CONTEMPT ACTION

A party to a domestic relations dispute often will invoke the contempt power of the court to enforce the terms of a decree. What happens when a contemnor wants to appeal from a judgment with a civil contempt order? Or on the flip side, what happens when the obligee in such a dispute wants to appeal from a judgment not finding the obligor in contempt? These scenarios present an appellate lawyer with a unique set of challenges. This article is designed to provide general information about when to appeal under Missouri law.¹

I. The Traditional Rules for When a Judgment Becomes Final

For most judgments, the time for filing the notice of appeal is straightforward. The judgment ordinarily is final for purposes of appeal upon the expiration of 30 days. See, Mo.Sup.Ct. R. 81.05(a)(1). But if a timely post-trial motion is filed by either side or both, then the judgment becomes final when the last such motion is rule on, or after the expiration of 90 days from the date of the last such motion if the trial court fails to rule within that time period. See, Mo.Sup.Ct. R. 78.06, 81.05(a)(2). Once the judgment is final, an appellant wishing to appeal from the judgment has 10 days by which to file the notice of appeal. Mo.Sup.Ct. R. 81.04(a). All these settled expectations change when the trial court issues a civil contempt order.

¹ Appellate rules vary from one jurisdiction to another. The author is providing no information about appeals in any jurisdiction other than Missouri.

II. The Special Rules for Appealing from Civil Contempt Orders

“In order for an appeal to lie, there must be a final judgment or order.” *Michel v. Michel*, 142 S.W.3d 912, 929 (Mo.App. S.D. 2004). “The purpose of a civil contempt order is to compel compliance with the relief granted.” *Jones v. Jones*, 296 S.W.3d 626, 528 (Mo.App. W.D. 2009). A party held in civil contempt has two options: (1) to purge himself or herself of the contempt by complying with the trial court’s order, thereby making the case moot and unappealable; or (2) to appeal from the order, but only after the trial court’s order is enforced by incarceration or otherwise. *Emmons v. Emmons*, 310 S.W.3d 718, 722 (Mo.App. W.D. 2010). A civil contempt order thus is not final and appealable until it is enforced. *Id.* at 722.

The form of enforcement dictates when the contempt order becomes final and appealable. *Eaton v. Bell*, 127 S.W.3d 690, 697 (Mo.App. W.D. 2004). Enforcement of a contempt order can take the form of imprisonment or the imposition of a fine. *Emmons*, 310 S.W.3d at 722. When the remedy is a fine, the contempt order is enforced when then moving party executes on the fine. *In re Marriage of Crowe and Gilmore*, 103 S.W.3d 778, 781 (Mo. 2003). When the remedy is imprisonment, the traditional rule is that the contempt order is enforced when there is actual incarceration pursuant to an order or warrant of commitment. *Id.* at 781. Once incarceration occurs, the contemnor is entitled to be released on bail pending the appeal. *Emmons*, 310 S.W.3d at 722. But the contemnor’s right of appeal ordinarily is triggered from the point when the order of commitment is issued. *In re Marriage of Crowe and Gilmore*, 103 S.W.3d at 782.

After the *Crow* decision, some appellate courts departed from the *Crow* rule when an order of commitment was stayed to permit the contemnor to purge himself or herself of the contempt. *Carothers v. Carothers*, 337 S.W.3d 21, 25 (Mo. 2011), citing *Eaton v. Bell*, 127 S.W.3d at 698 and *Emmons v. Emmons*, 310 S.W.3d at 723-724. In *Emmons*, the Western District held that if the warrant is stayed, the judgment will not be final and appealable until either (1) the contemnor is “actually incarcerated on the stayed or conditioned warrant of commitment” or (2) “the trial court takes evidence to determine whether the contempt has been purged and then reissues the warrant of commitment.” *Id.* at 723.

The Missouri Supreme Court in *Carothers* adopted the *Emmons* rule of “when a stayed contempt order is final and appealable.” *Carothers*, 337

S.W.3d at 25. Without the issuance of a stay, the Court reaffirmed the *Crow* rule that “an order of commitment is sufficient to ‘enforce’ a contempt order and, therefore, actual incarceration was not required to appeal.” *Id.* at 24-25, citing *In re Marriage of Crow*, 103 S.W.3d at 780.

III. If the Trial Court Issues a Contempt Order with other Rulings

These special rules on finality are complex enough. But they pose even more challenges for the appellate lawyer when the trial court issues a civil contempt order in conjunction with other rulings. Trial courts commonly will consolidate the contempt motion with other issues for purposes of receiving evidence. Even if a contempt order in the judgment is not yet final, the contemnor may put himself or herself at risk by not appealing other adverse parts of the judgment. Just because the appeal from the civil contempt order is premature, it does not necessarily follow that the trial court still has jurisdiction over other parts of its judgment. The appellate lawyer must consider if those other parts of the judgment have become final under normal appellate court rules.

In evaluating this question, the contemnor’s lawyer must consider the general rule against collaterally attacking a judgment. “A judgment rendered by a court having jurisdiction of the parties and subject matter...is not open to collateral attack in respect of its validity or conclusiveness of the matters adjudicated.” *Lyons v. Sloop*, 40 S.W.3d 1, 9 (Mo.App. W.D. 2001) (holding that a father appealing from a contempt order was barred from collaterally attacking a prior consent judgment that he owed \$5,000 in medical bills). So, if the trial court issues a civil contempt order and at the same time makes other adverse rulings, the contemnor may be forced to appeal the other rulings as soon as they become final. By not doing so, the contemnor may be barred from attacking the judgment in later proceedings.

The Missouri Supreme Court has provided some clarification on these issues. Again, the controlling case is *In re Marriage of Crowe and Gilmore*, 103 S.W.3d 778, 782-783 (Mo. 2003). The trial court in *Crowe* issued a Judgment of Modification and Contempt – increasing the husband’s child support and finding him in contempt. The husband appealed. The Court in *Crowe* first dismissed the husband’s appeal from the contempt order because it was premature. No order of commitment had been issued. *Id.* at 782. But then the Court overruled the wife’s motion to dismiss the husband’s appeal from an attorney fee award in the same judgment. The fee award was

designed to compensate the wife for the husband's contempt, but it was not part of the civil contempt order. *Id.* at 782-83. And finally, the Court held that the modification portion of the judgment was final and separately appealable. *Id.* at 783. The Court thus drew a distinction between the finality of the civil contempt order and its jurisdiction over other final, appealable parts of the same judgment.

The Western District qualified this aspect of *Crowe* in *Emmons v. Emmons*, 310 S.W.3d 718, 724-725 (Mo.App. W.D. 2010). Just like in *Crowe*, the court denied a father's appeal from a contempt judgment because it was premature. But then the court also refused to permit an appeal from the rejection of the father's separate motion to abate child support and declare the emancipation of his daughter. *Emmons*, 310 S.W.3d at 724-725. The father argued that the motions for contempt and modification were independent from one another under *Crowe* and, thus, separate for purposes of appeal. The Western District rejected this argument because father's motion was not truly independent from mother's contempt motion. Instead, father was using his motion to defend against mother's complaints about father's failure to pay child support and college tuition. *Id.* at 725. The Western District carved out an exception to *Crowe* if the contemnor appeals from the denial of a motion used to defend against the contempt.

IV. An Obligee's Appeal from a Judgment of Non-Contempt

Most Missouri appellate court decisions on civil contempt focus on the contemnor's appeal rights. Yet the obligee also has a right to appeal from a judgment declining to punish the obligor for contempt. *In re Marriage of Beaver*, 954 S.W.2d 717, 721 (Mo.App. S.D. 1997), citing *Fugitt v. Fugitt*, 850 S.W.2d 396, 400 (Mo.App. S.D. 1993). See also, *Henderson v. Henderson*, 389 S.W.3d 260, 264 (Mo.App. E.D. 2012).

The obligee faces a unique timing problem when the trial court makes of finding of non-contempt in conjunction with a contempt order on another issue. The Southern District has suggested that the obligee's right to appeal exists independently from whether the contemnor's appeal from the same judgment is premature. See, *Beaver*, 954 S.W.2d at 721 ("Even though the Obligee could have appealed, it does not necessarily follow that Obligor can appeal."). But the Eastern District applied the same prematurity test for an obligee's appeal as it traditionally would apply for a contemnor. The court dismissed the obligee's appeal because neither the obligee nor the

contemnor had taken action on the contempt order; and the order thus had not yet been enforced. *Courtney v. Courtney*, 2015 Mo.App. LEXIS 280 * 38-39 (Mo.App. E.D. March 17, 2015).² Concluding that the appeal was premature, the Eastern District declined to rule on the merits even though it acknowledged the trial court's contempt judgment "was lacking in some respects." *Id.* at 37.

The obligee faces a similar challenge if the trial court does not rule on all issues raised in a contempt motion. If the trial court has not disposed of all issues, the judgment is not yet final. *Coleman v. Coleman*, 187 S.W.3d 331, 333 (Mo.App. E.D. 2006). Ideally, the obligee can correct this kind of omission with a post-trial motion. If not, the appellate court ordinarily will dismiss any appeal in such circumstances for lack of jurisdiction. *Id.* at 333

If the trial court enters a judgment finding no contempt at all, the traditional timing rule applies. Consistent with the obligee's appeal right, the Eastern District reversed a judgment not finding the husband in contempt for his refusal to pay marital debt assigned to him in a dissolution case. See, *Henderson v. Henderson*, 389 S.W.3d 260, 264 (Mo.App. E.D. 2012). The trial court erred in concluding that the debt was partially dischargeable in bankruptcy. *Id.* at 265. And it was unclear from the judgment if the trial court ever considered the husband's ability to pay the debt. *Id.* at 267.

V. Conclusion

In sum, Missouri case law creates a minefield of challenges for a lawyer facing an appeal in a civil contempt action. First, the contemnor's lawyer must wait until the civil contempt order is enforced before appealing from that part of a judgment. Because of this special rule for civil contempt orders, the lawyer may be compelled to file more than one notice of appeal from the same judgment. Finally, a lawyer representing an obligee may have to consider his or her right to appeal from a finding of non-contempt in the judgment. Just like with a contemnor's appeal, an appellate court will dismiss the obligee's appeal if the appeal is premature or if the trial court failed to resolve all issues. This article is not designed to provide an opinion about the propriety of an appeal in any particular factual situation. But it does suggest that the lawyer must exercise caution in practicing in this arcane area of appellate law.

² As a matter of disclosure, I represented the obligee in the *Courtney* appeal.

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