

BRIEF OF APPELLANT

Submitted By:

JAMES ANAGNOSTAKIS

Attorney for Appellant
P.O. Box 7163
Douglasville, GA 30154
Phone: 678-838-1816
Fax: 678-288-7849
Email: algesq@gmail.com
Georgia Bar No: [REDACTED]

CASE NO: [REDACTED]

IN THE COURT OF APPEALS
STATE OF GEORGIA

In the interest of:

█

A Minor Child.

)
)
)
)
)
)
)

Case No. █

APPELLANT'S BRIEF - INDEX

<u>DESCRIPTION</u>	<u>PAGE</u>
Index.....	1
Part One – Statement of Proceedings, Relevant Facts, Jurisdictional Statement.	2
Part Two – Enumeration of Errors	3
Part Three – Argument and Citation of Authority	3
Conclusion	5
Certificate of Service	6

IN THE COURT OF APPEALS
STATE OF GEORGIA

In the interest of:

██████████

A Minor Child.

)
)
)
)
)
)
)

Case No. ██████████

APPELLANT’S BRIEF – PART ONE

**STATEMENT OF PROCEEDINGS, RELEVANT FACTS,
JURISDICTIONAL STATEMENT AND STANDARD OF REVIEW**

This is an appeal from an order entered by the Douglas County Juvenile Court finding Appellant ██████████ in contempt. The original order, entitled “Order for Contempt” was entered on March 8, 2017. [R-p. 004] A Notice of Appeal was timely filed on March 20, 2017. [R-p. 001] It is from the *Order for Contempt* that Appellant appeals. The Court of Appeals has jurisdiction because this case involves the correction of errors of law in a matter not specifically reserved to the Supreme Court. [1983 Georgia Constitution, Art. VI, Sec. V, Par. III.; *City of Trenton v. Dade County*, 201 Ga. 189 (1946)] Contempt is solely within the sound discretion of the Judge and will not be interfered with unless this discretion has been manifestly abused. *McCullough v. McCullough*, 208 Ga. 776 (1952)

APPELLANT’S BRIEF – PART TWO

ENUMERATION OF ERRORS

1.

The Court erred in finding Appellant in willful contempt.

APPELLANT’S BRIEF – PART THREE

ARGUMENT AND CITATION OF AUTHORITY

Statement of Law

Traditionally, there are two types of contempt, civil and criminal, distinguishable by their remedies. Civil contempt remedies are coercive in nature designed to force compliance with an existing court order; criminal remedies, on the other hand, are punitive and punish prior acts of “contumacy.” Civil remedies are conditional and dependent upon future acts of the contemnor while criminal acts are unconditional. *American Medical Security Group, Inc. v. Parker*, 663 S.E.2d 697, 700 (Ga. 2008) The remedial nature, for instance, of imprisonment for civil contempt may require that the contemnor remain in prison until they have “performed the affirmative act required by the court’s order;” such imprisonment is not punishment because it is coercive and lasts only until the contemnor complies with an order.^{xii} If the contemnor is imprisoned for a definite period of time with no ability to change his status through action, then the imprisonment is punitive and, thus, criminal. *Gompers v. Buck’s Stove & Range, Co.*, 221 U.S. 418, 443

(1911). In this case, the *Order for Contempt* provided that appellant be incarcerated until she entered treatment. Thus, the contempt in this case was civil in nature.

“In order for one to be held in contempt, there must be a willful disobedience of the court's decree or judgment.” *Simpkins v. Simpkins*, 278 Ga. 523, 524 (2004). In the instant case, the Court found Appellant in contempt for two reasons. First because she failed to obtain a substance abuse assessment and second because she failed to provide income verification. When asked why she had not taken the substance abuse assessment appellant indicated that she was unemployed and the assessment cost \$200, which she did not have. [T. – p. 14] Further, Appellant clearly testified that she had no friends or family members who could assist in paying the fee. [T. – pp. 16, 17] In fact, Appellant did not even have a license or transportation if she did have the money, which she didn't [T. – p. 16].

When asked why she had not provided income verification Appellant responded she only had odd jobs for cash and had no work in the past several weeks. She had no pay stubs or documentation she could provide. [T. – p. 18] The Guardian Ad Litem who had filed the *Motion for Contempt* provided no evidence to contradict this testimony and presented no evidence at all as to willfulness. Inability to pay has long been recognized as showing the requisite lack of willfulness. *Floyd v. Floyd*, 247 Ga. 551 (1981); *Hughes v. Dept. of Human Resources*, 269 Ga. 587 (1998); *Shiselman v. Trust Co. Bank*, 246 Ga. 274 (1980);

Corriher v. McElroy, 209 Ga. 885 (1953); Hamilton Capital Group v. Equifax, 266 Ga. App. 1 (2004) Further, Appellant could not provide income verification because she had no income. Inability to comply with a court order makes a complete defense to contempt. Turner Advertising Company v. Garcia, et al, 252 Ga. 101 (1984)

Conclusion

In concluding, the Appellant respectfully asserts that a review of the proceedings at the trial level reveals that the order should be reversed. The Court committed several errors. It was an abuse of discretion to require the Appellant to pay an amount she was unable to or provide verification of income she did not have. In essence she was jailed for being poor in what amounted to imprisonment for debt, which is barred. Blalock v. Blalock, 214 Ga. 586 (1958) Consequently, the order entered by the Douglas County Juvenile Court should be reversed by this Court and the Appellant respectfully requests that this Court do so.

This submission does not exceed the word limit imposed by Rule 24.

Respectfully Submitted,

James Anagnostakis
Attorney for Appellant
Georgia Bar No. 015622

P.O. Box 7163
Douglasville, GA 30154
Phone: (678) 838-1816
Email: algesq@gmail.com

