

SARAH A. SOLLENBERGER : IN THE SUPERIOR COURT OF  
: PENNSYLVANIA

**V.**

Appellant

: No. 1093 MDA 2023

Appeal from the Order Entered June 9, 2023  
In the Court of Common Pleas of York County Domestic Relations at  
No(s): 03209 SA 2004

**V.**

Appellant

: No. 998 MDA 2023

Appeal from the Order Entered June 9, 2023  
In the Court of Common Pleas of York County Domestic Relations at  
No(s): CP-67-SA-1248-2019, DRO 123142, PACSES No. 388116875

MEMORANDUM BY BOWES, J.:

Jason D. Funk ("Appellant") has appealed from the order imposing a sentence of six months of incarceration, followed by twenty-four months of probation, after he was found in civil contempt for failing to appear, failing to report, failing to job search, and failing to pay court-ordered child support to the mothers of two of his children, Gina Parks and Sarah A. Sollenberger. On

appeal, Appellant challenges the portion of the order setting forth his purge conditions, whereby he could avoid imprisonment if he either paid \$2,000 or completed 120 days of work release at the York County Prison. Upon initial review, we vacated the work-release condition because Appellant did not have a present ability to satisfy that condition, but affirmed the order's monetary purge provision after finding sufficient evidence for the trial court to conclude that Appellant had a present ability to pay that amount. Appellant sought further review in our Supreme Court. The High Court granted his allocatur petition, vacated our orders, and remanded for us to reconsider the appeals in light of its intervening decision in **Bredbenner v. Hall**, 353 A.3d 683 (Pa. 2026) (plurality), which, *inter alia*, addressed which party should bear the burden of proof regarding ability to satisfy a financial purge. **See Sollenberger v. Funk**, 2026 WL 1810669, at \*1 (Pa. June 24, 2026). Having reconsidered the matter in view of our Supreme Court's concerns, we vacate the order as to both purge conditions and remand with instructions.<sup>1</sup>

We begin with an overview of the landscape for these cases, which we previously set forth as follows:

Appellant is currently ordered to pay \$457.92 and \$487.91 per month to Ms. Parks and Ms. Sollenberger, respectively, to support the minor child that he has with each woman. On June 8, 2022, the trial court found Appellant in contempt and ordered him to serve six months of incarceration, deferred until July 1, 2022.

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<sup>1</sup> As in our prior disposition, "[w]e resolve these appeals jointly given that they involve overlapping facts and stem from the same finding of contempt." **Sollenberger v. Funk** ("**Sollenberger I**"), 326 A.3d 426, 2024 WL 3738598, at \*1 n.1 (Pa.Super. 2024) (non-precedential decision).

When Appellant failed to appear at York County Prison, the court issued a warrant for his arrest but released him approximately six weeks later when he satisfied a \$2,000 purge. Appellant borrowed this money from his mother and has since been unable to repay her.

Due, at least in part, to a period of misfortune in his employment, Appellant's payment history never improved, and between June 8, 2022 and March 29, 2023, he accrued combined arrears of \$21,128.69. Prior to September 2022, Appellant owned and operated a tree business as his sole means of income. On September 9, 2022, however, a hired contractor stole his equipment and damaged [a loaned] work vehicle. Subsequently, Appellant borrowed equipment to maintain his operations, but in February 2023, the garage where he stored this equipment was destroyed by fire, leaving Appellant unemployed, and with no other means to continue his tree services.

. . . .

Having continued to fail to satisfy his support obligations, Appellant was again brought before the court on March 29, 2023, to address the present contempt allegations. The trial court found Appellant in contempt of the respective support orders, and it continued [the sanctions hearing] to June 7, 2023, in order for Appellant to [secure] employment.

***Sollenberger I***, 2024 WL 3738598, at \*1. In the meantime,

Appellant began working at Ollie's Bargain Outlet Warehouse [("Ollie's")], [loading] forklifts. He worked more than forty hours per week and earned \$15 per hour. As of June 7, 2023, he had been employed for over five weeks, but had only received one full paycheck, which Appellant claimed amounted to \$600. To make ends meet, Appellant resided rent-free with his mother, but planned to contribute to rent . . . in the future.

. . . .

Prior to sentencing, Appellant submitted \$457.77, which was \$2,517.75 short of his support obligations for the ten-week period since the March hearing. Ultimately, the court imposed the abovementioned sentence, which included two purge options. The first required Appellant to pay a monetary purge of \$2,000. The

second granted him liberty after completing a 120-day work-release program.

***Id.***

These timely appeals followed. Both Appellant and the trial court complied with their respective Pa.R.A.P. 1925 obligations. In this Court, Appellant presents the same issue in each case: “Did the lower court abuse its discretion in setting the purge components of [Appellant]’s contempt judgment and sentence where there was no evidentiary basis for concluding that, beyond a reasonable doubt, [Appellant] had the present ability to satisfy either purge condition and thus avoid incarceration?” Appellant’s brief at 4.<sup>2</sup> As noted, our Supreme Court has instructed us to reconsider this question in light of its decision in ***Bredbenner***.

In that case, the High Court reaffirmed that “the standard of review when considering an appeal from an order holding a party in contempt of court is narrow: We will reverse only upon a showing of an abuse of discretion.” ***Bredbenner***, 353 A.3d at 692 n.33 (opinion announcing the judgment of the court (“OAJC”)) (cleaned up). “The court abuses its discretion if it misapplies the law or exercises its discretion in a manner lacking reason.” ***Id.*** (cleaned up).

The ***Bredbenner*** Court also reiterated the purpose of purge conditions in support proceedings thusly:

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<sup>2</sup> The briefs in these cases are identical except for the appellees’ names and their respective arrears amounts. For simplicity, we only cite the briefs relating to Ms. Sollenberger in this memorandum.

The goal of civil contempt is to coerce compliance. The method to reach that goal is the purge condition. In support cases, a sentence of incarceration can be necessary to coerce the obligor to pay the purge condition. An obligor's payment of the purge condition serves all parties. The obligee receives some of the support owed. The obligor avoids imprisonment and remains able to maintain or seek employment, which would be difficult, if not impossible, while in jail. **For this process to have the intended coercive effect, the purge condition must be within the obligor's ability to pay.** If not, the condition cannot have the desired coercive effect and, instead, becomes punishment. Punishment transforms the remedy from civil to criminal contempt, a transformation that requires additional procedural safeguards. Whatever its merits, punishment in this context does not aid the obligee in receiving support, and it prevents the obligor from continuing or seeking employment for the period of confinement. In setting an appropriate purge condition, the ability to pay is the crucial inquiry.

***Id.*** at 694 (emphasis added).

The method of answering that question divided the Court. In the OAJC, three Justices placed the duty entirely upon the petitioning party:

In civil support contempt proceedings, a trial court must attach an attainable condition so that the obligor may purge himself of contempt. The record must support the obligor's ability to meet that condition. The burden is on the petitioning party to develop that record. The record is inadequate if it merely contains the discredited testimony of the obligor. This may make enforcement of support orders more difficult. Often, the only testimony is from the obligor. That testimony may be self-serving. Our decision may require the [domestic relations office] to ask more questions on cross-examination regarding the obligor's assets or income. It may require that the obligee be called as a witness, because a co-parent may have relevant information about income or assets. It may require that the trial court ask the witnesses questions so that the record does not remain undeveloped. Regardless of the difficulties, the record must support any purge condition, because difficulty of proof has never been allowed as an excuse for dispensing with it.

***Id.*** at 695–97 (cleaned up).

Instead of encumbering only the petitioner, three Justices would require both parties to present evidence as to whether the obligor has the ability to pay. Chief Justice Todd laid out this framework in the following manner:

[T]he burden does not lie exclusively on the petitioning party to prove beyond a reasonable doubt that the contemnor has the present ability to pay the purge condition. Distinct from a criminal trial — where the Commonwealth must prove each element of the crime beyond a reasonable doubt and the defendant bears no evidentiary burden — in my view, the contemnor in a child support civil contempt proceeding has the initial burden of production to present some evidence of their inability to pay the purge condition. In the event a recalcitrant contemnor refuses to present such evidence or fails to adequately respond to inquiries regarding the same, the trial court may, and should, in my opinion, compel disclosure of the contemnor's financial records by employing its power of contempt. The petitioning party thereafter bears the burden of persuasion to rebut the contemnor's evidence and may present its own evidence demonstrating that the contemnor indeed has the present ability to pay the purge condition. Critically, however, . . . to impose coercive imprisonment for civil contempt, the trial court must be convinced beyond a reasonable doubt, based upon a totality of the evidence presented by both the contemnor and the petitioning party, that the contemnor has the present ability to pay the purge condition; otherwise, the punishment imposed by the trial court ceases to be coercive, and becomes punitive, without affording the contemnor the requisite criminal safeguards.

***Id.*** at 697–98 (Todd, C.J., concurring) (footnotes omitted).

Finally, Justice Brobson concluded that “[w]hile the positions of the parties relative to the purge condition may be insightful, the responsibility to ensure that it is legally valid lies with the court because, ultimately, courts, not parties, are the ones that have the power to enforce their orders.” ***Id.*** at 703–04 (Brobson, J., concurring). Therefore, his concurrence focused upon

the trial court's obligations in setting a purge condition, providing in pertinent part as follows:

In my view, it is unnecessary, and improper, to assign to any party a burden of proof, production, and/or persuasion . . . when a trial court sets a purge condition to avoid incarceration. Placing an evidentiary burden on either the petitioning party or the respondent would ignore that it is the responsibility of the court to ensure that a contemnor is capable of complying with a purge condition; that burden rests solely on the court that is utilizing its discretionary power. To the extent any party wishes the court to reach a certain conclusion with respect to the purge condition, the party should place supporting evidence into the record. If the court finds the record supplied by the parties inadequate to establish a purge condition . . . , it simply has two choices—(a) take incarceration off the table, or (b) compel the parties to present additional evidence to aid the court in [setting an appropriate purge condition].

***Id.*** at 704–05.

While who ultimately bears the evidentiary burden remains unclear, the entire ***Bredbenner*** Court agreed that it should not be wholly borne by the obligor. In considering the case before it, the Justices concurred that there was insufficient evidence to establish beyond a reasonable doubt that the obligor had the present ability to satisfy the financial purge condition. He had testified that he was unemployed, the petitioning party did not rebut that evidence, and the trial court did not require the obligor to produce any financial documentation. Indeed, no record evidence was introduced to establish that the obligor had the money available or sufficient liquid assets to pay a specific purge amount. Rather, “[t]he trial court believed, based on its experience with [the obligor], that [he] had the financial resources to pay

the \$2,000 purge condition.” **Id.** at 690 (OAJC). This belief was premised on the obligor’s demonstrated “pattern of providing child support payments at the last minute when faced with a potential sentence of imprisonment in the past[.]” **Id.** at 703 (Todd C.J., concurring). Thus, the High Court affirmed this Court’s decision, which had vacated the trial court’s order and remanded for additional proceedings to establish an appropriate method of ensuring compliance with the ordered support.

Mindful of this backdrop, we turn to the contempt proceedings *sub judice*. At the deferred sanctions hearing in June of 2023, Appellant and his attorney discussed Appellant’s efforts to obtain employment following the March hearing and his recently-acquired job at Ollie’s. Thus, unlike in **Bredbenner**, Appellant was employed at the time of the sanctions hearing. However, the details of his employment remained sparse and supplied only by Appellant and his counsel. The sole evidence was elicited by the court and Appellant’s counsel as they asked Appellant “a series of questions designed to plumb his ability to pay.” Trial Court Opinion, 9/5/23, at 10.

Appellant did not provide a hire date, but indicated that he acquired the position approximately one month prior, earned \$15 per hour, and worked “in excess of [forty] hours[.]” N.T. Sentencing, 6/7/23, at 4, 7 (counsel estimated he began “three to four weeks ago” but Appellant clarified he “started over a month ago”). Appellant relayed that although his paycheck was for \$1,300, he only received \$600, presumably because, among other unknown deductions, he had child support payments automatically taken out of his

paychecks. ***Id.*** at 10, 15-16. He also explained that his mother provided the funds to satisfy the prior purge amount. Since beginning employment at Ollie's, he attested that he had not yet earned enough to reimburse his mother for that purge satisfaction or to pay her rent for residing at her home. Moreover, while Appellant testified that he was not presently paying rent, there was no testimony that he was otherwise free from all other living expenses.

There was no documentary evidence regarding Appellant's financial situation, such as a bank account, paystub, or timesheet, or testimony from any other individual. Left only with Appellant's testimony and his counsel's statements, the court focused on Appellant's history of having paid a \$2,000 purge earlier that year in fashioning an identical purge amount. ***See*** N.T. Sentencing, 6/7/23, at 8 (noting that Appellant "came up with [two] grand to get out of jail. So what that tells me is that your client can come up with the money when he needs to"); ***id.*** at 12 ("So what you're telling me is you're always able to come up with a purge."); ***id.*** at 14 ("[Y]ou don't have to report if you pay \$2,000. You've done that before. You've always been able to come up with your cash purges throughout the entire history of this case. Domestic relations is asking for [\$]2,500. You've paid [\$]2,000 before. You can pay it again.").

Appellant voiced his inability to meet either the financial or the work-release purge conditions. ***Id.*** at 15. He recounted that his actual paycheck is significantly diminished, his mother could not supply him the money again,

and work-release takes three months to set up. **Id.** While not expressly discrediting this testimony, the court stressed the significant arrears Appellant owed, the chances he had received, that he could have secured employment elsewhere earlier or obtained a second job, and emphasized, again, that he's "always come up with the money." **Id.** at 16.

Reviewing the conditions *seriatim*, we begin with the work-release condition. In its Rule 1925(a) opinion, the trial court conceded that imposing this purge option was improper because it relied upon a future event that Appellant could not immediately satisfy. **See** Trial Court Opinion, 9/5/23, at 13. We agree. **See *Cunningham v. Cunningham***, 182 A.3d 464, 472 (Pa.Super. 2018) (contemnor must have present ability to comply with purge condition). Therefore, we once again vacate that part of the appealed-from order.

Turning to the monetary purge condition, the trial court maintained that it was proper and supported by the evidence. It determined that because Appellant had been working overtime for five weeks and lacked any living expenses, he "had more than sufficient funds, at the time of sentencing, to satisfy the remainder of his purge." Trial Court Opinion, 9/5/23, at 15. It further found that his testimony about only receiving \$600 from his paychecks "[wa]s, frankly, impossible[.]"<sup>3</sup> **Id.**

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<sup>3</sup> Nonetheless, the trial court surmised that the garnishments "might well have extinguished the purge amount **on their own**." Trial Court Opinion, 9/5/23, at 16 (emphasis in original).

Applying **Bredbenner**, we conclude that the record is insufficiently developed as to Appellant's ability to meet the \$2,000 purge condition at the time of the sentencing hearing. As in **Bredbenner**, the only testimony came from Appellant. However, as the Justices agreed, the obligor should not have shouldered the entire burden of proof. Additionally, the **Bredbenner** Court disapproved of the trial court feeling that "enough [wa]s enough" and imposing a \$2,000 purge amount because the obligor's "pattern of providing child support payments at the last minute when faced with a potential sentence of imprisonment in the past indicated that he must also presently possess funds to satisfy the [new] purge condition[.]" **Bredbenner**, 353 A.3d at 703 (Todd, C.J., concurring) (cleaned up). Understandably, the same rationale and frustration appears to have motivated the trial court here.

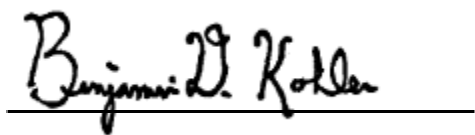
However, as the **Bredbenner** Court clarified by agreement of all Justices, the trial court should not have imposed such a purge condition after placing the entire burden upon Appellant to establish an inability to pay, particularly where he testified that he would not have the means to satisfy that amount this time. Since the court here likewise lacked any evidence beyond that proffered by Appellant regarding whether he could satisfy the \$2,000 purge condition this time, we must conclude that it abused its discretion. **Id.** at 694 (OAJC) ("For this process to have the intended coercive effect, the purge condition must be within the obligor's ability to pay. If not, the condition cannot have the desired coercive effect and, instead, becomes punishment."); **see also id.** at 698 (Todd, C.J., concurring) (explaining that

precedent “makes clear that, to impose coercive imprisonment for civil contempt, the trial court must be convinced beyond a reasonable doubt, based upon a totality of the evidence presented by both the contemnor and the petitioning party, that the contemnor has the present ability to pay the purge condition; otherwise, the punishment imposed by the trial court ceases to be coercive, and becomes punitive, without affording the contemnor the requisite criminal safeguards”).

Based on the foregoing, we vacate the sentencing order. Upon remand, the trial court may hold a hearing to accept evidence regarding Appellant’s present ability to comply with any coercive conditions the court deems appropriate to ensure compliance with his support obligations. Mindful of ***Bredbenner***, the court must not place this burden solely upon Appellant.

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 09/29/2026