

FILED

JUN 10 2004

JEANNE A. KRIEGER
CLERK OF COURT

STATE OF MINNESOTA
TRIBAL COURT OF THE SHAKOPEE MDEWAKANTON SIOUX (DAKOTA)
COMMUNITY

In Re the Marriage of:

Court File No. 508-03

Clarence Wilbur Enyart,

Petitioner

and

**MEMORANDUM OPINION AND
GARNISHMENT ORDER**

Mary Ellen Enyart,

Respondent.

This matter came on for hearing on May 14, 2004, at the Tribal Court of the Shakopee Mdewakanton Sioux (Dakota) Community, Scott County, Prior Lake, Minnesota, on the parties' cross-motions for temporary relief. Gary A. Debele, Esq. appeared on behalf of Petitioner. Mark H. Gardner, Esq. appeared on behalf of Respondent.

THE COURT, based upon the testimony, files, and proceedings in this case, issues an Order as follows:

MEMORANDUM OPINION

On January 16, 2004, this Court issued an Order awarding temporary spousal maintenance to Respondent. The award consisted of \$10,000 per month base maintenance, including \$5454 for residential care and accommodations, \$900 per month for Petitioner's PT Cruiser toward purchase of a handicap-accessible van, and \$3646 for a live-in care provider. Respondent also was awarded \$40,000 in back maintenance, equaling four months at the base rate of \$10,000 per month. The amount due for the first twelve months was to be \$13,333, with

the first payment due no later than Friday, January 30, 2004, and payments thereafter to be due on the 15th of each month.

At the May 14, 2004 hearing, counsel for Petitioner requested that the Court reduce its original award amount due to Petitioner's attenuated financial circumstances. The Court acknowledges Petitioner's limitations and modifies its Order awarding temporary maintenance in the superseding Garnishment Order set forth below.

Respondent, however, has made no spousal maintenance payment to date, stemming less from financial hardship than from his persistent denial of this Court's authority over him. The Respondent's open and notorious refusal to abide orders of the Court threatens the credibility and fundamental authority of the Court to bind parties to their promises and to Community law.

The enforcement, or "contempt power" of a court lies at the core of a sovereign's authority to make its own laws and to be governed by them. As the United States Supreme Court has observed, "Courts thus have embraced an inherent contempt authority as a power necessary to the exercise of all others." United Mine Workers of America v. Bagwell, 512 U.S. 821, 831 (1994) (quoting United States v. Hudson, 7 Cranch 32, 34, 3 L.Ed. 259 (1812) (internal quotations omitted)). Courts may find parties in summary contempt for behavior actually observed by the Court:

Longstanding precedent confirms the power of courts to find summary contempt and impose punishment. See, e.g., *Ex parte Terry*, 128 U.S. 289 (1888). In *Cooke v. United States*, 267 U.S. 517 (1925), the Court said: 'To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court when occurring in open court. There is no need of evidence or assistance of counsel before punishment, because the court has seen the offense. Such summary vindication of the court's dignity and authority is necessary. It has always been so in the courts of the common law and the punishment imposed is due process of law.' *Id.*, at 534, 45 S.Ct., at 394.

Pounders v. Watson, 521 U.S. 982, 987-988 (1997).

In this case, the Court is a witness to the Respondent's refusal to comply with the Court's temporary maintenance order. The Respondent's argument to justify his noncompliance is that the Community's Domestic Relations Ordinance provides for spousal maintenance awards without any enforcement provision comparable, for example, to the garnishment provisions for child support orders. While it is true that, under Community law, per capita payments may not be assigned to non-members, the Court may award spousal maintenance under the Community's Domestic Relations Code, Chapter III, Section 6a. Temporary maintenance awards are permissible under the Community's Rules of Procedure for Divorce, Chapter V, Section 3b(2) of the Domestic Relations Code. The Respondent does not deny the statutory provisions for temporary maintenance but openly defies the Court's enforcement authority.

To avoid a crisis of the Court's inherent, sovereign powers of enforcement, the Court must have the power to garnish per capita payments. The source of this power is not in the Domestic relations ordinance, but rather in Community Resolution 02-13-88-01, pursuant to which the Court was created, and Resolution 11-14-95-003, approving a Jurisdictional Amendment. Under the remedial powers inherent to the Court, the Court may enforce its orders by holding parties subject to its personal jurisdiction in contempt for failure to abide orders of the Court. To deny this Court's power to enforce its own orders against noncompliant parties is to cripple the Court and, ultimately, to emasculate the Community's sovereignty. *See, e.g., Campbell v. SMS(D)C*, Nos. 33-93 and 34-93 (SMS(D)C Tr. Ct. Dec. 5, 1995) (recognizing broad remedial authority of Court as encompassing an order to Community to make per capita payments under Section II of the Court Ordinance); *Smith v. SMS(D)C*, No. 38-94 (SMS(D)C Tr. Ct. Feb. 7, 1994) (recognizing adoption of 8th Circuit test for entitlement to preliminary relief in *Welch v. Crooks*, Case No. 3-88, SMS(D)C Tr. Ct. Dec. 16, 1988).

The Petitioner in this case has been ordered to pay temporary spousal maintenance to Respondent pending the Court's final adjudication of their divorce, and the Petitioner refuses to comply with any such Order of this Court. Accordingly, this Court finds the Petitioner in contempt of Court, and issues a Garnishment Order to enforce the temporary spousal maintenance award as set forth below.

GARNISHMENT ORDER

Effective immediately upon service of this Order upon Petitioner Clarence Enyart, Petitioner's per capita monthly payments shall be garnished and conditionally withheld as follows:

1. \$2,500 per month shall be garnished and paid to Respondent Mary Ellen Enyart.
2. Respondent's net per capita payments payable to Mr. Enyart after the date of service of this Order shall be withheld pending an Order of this Court releasing said payments, which shall issue upon proof provided by Petitioner to the Court that he has transferred title to his PT Cruiser to Respondent, or alternatively, that he has paid Respondent cash amounting to fair market value of the vehicle.

This Garnishment Order supersedes the Court's January 16, 2004 Order awarding temporary spousal maintenance.

IT IS SO ORDERED on June 10, 2004.



Hon. Robert A. Grey Eagle