

100TH JUDICIAL DISTRICT COURT FOR THE PARISH OF BLACK ACRE
STATE OF LOUISIANA

NO. 123-456

DIVISION "A"

JANE DOE,
Petitioner,
-versus-
JOHN DOE,
Defendant.

FILED: _____

DEPUTY CLERK

RULE FOR CONTEMPT¹

NOW INTO COURT, comes mover, JOHN DOE, and on suggesting to the court that JANE DOE, was ordered by this court to visitation with the minor child on Father's Day, (see Exhibit "A" annexed hereto and made a part hereof) and that the defendant-in-rule, JANE DOE has withheld visitation, in violation of Article 224 of the Louisiana Code of Civil Procedure, and that this court should cite and punish JANE DOE for contempt of court by for violating the honor and dignity of this court.

WHEREFORE, mover, JOHN DOE, SR, prays that the defendant-in-rule, JANE DOE Be ordered to appear on a date and time set by the Court to show cause (1) why she should not be held in contempt; (2) why defendant-in-rule should not be ordered to present the child for visitation immediately to the mover; (3) why defendant-in-rule should not be imprisoned; (4) why defendant-in-rule should not be ordered to pay attorney fees and court costs associated with this rule; and (5) any other relief to which the mover may be entitled.

Respectfully Submitted,

JOHN DOE
123 Maple Leaf Drive
Black Acre, Louisiana 70000
(504) 555-1212

JOHN DOE
In Proper Person

¹ The United States Supreme Court has held that the allegations of a pro se litigant's pleadings are to be held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972). Article 865 of the Louisiana Code of Civil Procedure mandates that every pleading shall be construed as to do substantial justice.

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ORDER

Considering the rule for contempt filed in this matter by JOHN DOE, it is ordered that defendant-in-rule, JANE DOE appear before this Honorable Court on the _____ day of _____, 2004 at _____ o'clock a.m. and show cause why:

- (1) why she should not be held in contempt; and,
- (2) why she should not present the child for visitation immediately that is currently overdue to the mover; and,
- (3) why the defendant in rule should not be imprisoned; and,
- (4) why defendant-in-rule should not be ordered to pay attorney fees and court costs associated with this rule; and,
- (5) any other relief to which the mover may be entitled.

Order rendered and signed at Black Acre, Louisiana on this the _____ day of _____, 2004

J U D G E

PLEASE SERVE:

JANE DOE
Through her attorney of record
Support Inc.
Attorneys at Law
123 Canal Street
Black Acre, Louisiana 70000

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MEMORANDUM IN SUPPORT OF THE RULE FOR CONTEMPT²

NOW INTO COURT, comes mover, JOHN DOE, SR, who submits this Memorandum in Support of the Rule for Contempt, respectfully requesting that this Honorable Court declare defendant-in-rule, JANE DOE to be in contempt for her willful failure to provide the child for his Father's Day Visitation, as this willful failure is prejudicial to the administration of justice, and violates the dignity and honor of this Court.

MAY THIS MEMORANDUM PROPERLY INFORM THE COURT:

Facts and Course of Proceedings

On May 20, 2003 the above entitled matter came before the Court for visitation and custody. In that judgment this Honorable Court declared that the mover be granted "visitation with the minor child on Father's Day." See *Consent Judgment* signed July 7, 2003. The mover intentionally withheld visitation from the mover on Father's Day. Therefore, mover, JOHN DOE, SR, respectfully requests that this Honorable Court declare that the defendant-in-rule is in contempt, and requests that the be imprisoned in addition to court costs and attorney fees in furtherance of this rule.

Law and Argument

Contempt proceedings in civil cases are regulated by Louisiana Code of Civil Procedure Article 221- 227 and Louisiana Revised Statutes 13:4611. Louisiana Code of Civil Procedure Article 224 provides in pertinent part that "a constructive contempt of court is any contempt

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other than a direct one.” La. C.C.P. art. 224 (West 2004). Moreover, “any of the following acts constitute a constructive contempt of court: willful disobedience of any lawful judgment, order, mandate, writ, or process of the court.” Id. Louisiana Code of Civil Procedure Article 227 provides:

“A person may not be adjudged guilty of a contempt of court except for misconduct defined as such, or made punishable as such, expressly by law.”

La. C.C.P. art. 227 (West 2004). The punishment which a court may impose upon a person adjudged in contempt of court is provided in La. R.S. 13:4611, which provides in pertinent part:

Except as otherwise provided by law:

(1) The supreme court, the courts of appeal, the district courts, family courts, juvenile courts and the city courts may punish a person adjudged guilty of contempt of court therein, as follows ...

(c) For a deliberate refusal to perform an act which is yet within the power of the offender to perform, by imprisonment until he performs the act.

La. R.S. 13:4611 (West 2004).

To find a person guilty of constructive contempt, it is necessary to find that he or she violated the order of court intentionally, knowingly and purposefully, without justifiable excuse. Brunet v. Magnolia Quarterboats, Inc., 711 So.2d 308, 312, 97-187 (La.App. 5 Cir. 3/11/98). In making this determination, the trial court is vested with great discretion. City of Kenner v. Jan P. Jumonville, Placide Jumonville, p. 5-6, 97-125 (La.App. 5th Cir. 8/27/97), 701 So.2d 223; Reeves v. Thompson, 95-0321 (La.App. 4th Cir. 12/11/96), 685 So.2d 575, 579. Proceedings for contempt must be strictly construed, and the law does not favor extending their scope. Estate of Graham v. Levy, 93-0636, 93-0134 (La.App. 1st Cir. 4/8/94), 636 So.2d 287, 290, writ denied, 94-1202 (La.7/1/94), 639 So.2d 1167. Constructive contempt may be found on a rule to show cause, with defendant being allowed at least forty-eight hours, from the date he or she receives notice, to prepare a defense. La. C.C.P. art. 225 (West 2004). The motion for the rule may issue on the court's own motion or on motion of a party and shall state the facts alleged to constitute the contempt. Id. The due process limitations on summary contempt procedures were discussed in State v. Watson, 465 So.2d 685, 687 (La.1985), the court quoted In re Oliver, 333 U.S. 257, 68 S.Ct. 499, 92 L.Ed. 682 (1948) that discusses the due process limitations on summary contempt procedures:

Except for a narrowly limited category of contempts, due process of law as explained in the Cooke Case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires ... that the accused be accorded notice and a fair hearing as above set out. 333 U.S. at 275, 276, 68 S.Ct. at 508, 509, 92 L.Ed. at 695.

Pittman Const. Co., Inc. v. Pittman, 96-1079 (La.App. 4th Cir. 3/12/97), 691 So.2d 268, 273.

Furthermore, a contempt proceeding is designed for the vindication of the dignity of the court rather than for the benefit of a litigant. Nungesser v. Nungesser, 558 So.2d 695, 701 (La.App. 1st Cir.1990). Thus, the court cannot order a fine or penalty to be paid to a litigant because such payment does not vindicate the court. City of Kenner v. Jan P. Jumonville, Placide Jumonville, p. 8. The fine must be made payable to the court itself. Id.

In this case, JANE DOE, is effectively usurping the authority and power of this court, as this court has ordered her to provide access to the child for Father's Day Visitation. The willful and intentional violations and offenses of the dignity of this Honorable Court by the defendant-in-rule, and his failure to abide by the orders of this Honorable Court must be villified and vindicated. Therefore, JOHN DOE, SR, mover, respectfully suggests that this Honorable Court declare that defendant-in-rule, JANE DOE is in contempt of this Honorable Court.

Conclusion

Mover, JOHN DOE, SR, respectfully requests that this Honorable Court hold defendant-in-rule, JANE DOE, in contempt of this court for the willful and intentional violations of the orders of this court, and violating the dignity of this court, requiring the defendant-in-rule to provide access to the child for visitation immediately in addition to the court costs and attorney fees in furtherance of this rule, and the enforcement of this judgment.

Respectfully Submitted,

JOHN DOE
123 Maple Leaf Drive
Black Acre, Louisiana 70000

(504) 555-1212

JOHN DOE
In Proper Person