

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2009

JACOB MILLER,

Petitioner,

v.

CASE NO. 5D08-4101

KARA MILLER MURRAH,

Respondent.

/

Opinion filed May 15, 2009

Petition for Writ of Habeas Corpus,
A Case of Original Jurisdiction.

Jacob Miller, Daytona Beach, pro se.

Kara Miller Murrah, Deltona, pro se.

PER CURIAM.

Petitioner sought habeas corpus release after he was found in civil contempt for failing to pay child support and was ordered to be held in county jail for ninety days, with a purge amount of \$2,500. He argued that the trial court failed to make a finding of his present ability to purge the amount; therefore, immediate discharge was mandated. We agreed and ordered his immediate discharge, with this opinion to follow.

Under the facts presented in this case, no written order was rendered beyond a court action form and no finding of present ability to purge was made by the trial judge. Incarceration for civil contempt cannot be imposed absent a

finding by the trial court that the contemnor has the present ability to purge himself of the contempt. See Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985). We grant the petitioner's petition for writ of habeas corpus, immediate release having previously been ordered.

PETITION GRANTED.

SAWAYA, ORFINGER and LAWSON, JJ., concur.