

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

JANUARY TERM 2010

RAFAEL CARBONELL,

Petitioner,

v.

CASE NO. 5D10-160
SECOND CORRECTED

DEYDRY CAPELLA,

Respondent.

_____ /

Opinion filed March 18, 2010

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

Rafael Carbonell, Orlando, *pro se*.

No Appearance for Respondent.

PER CURIAM.

Rafael Carbonell seeks habeas corpus relief after he was found in civil contempt for failure to pay court-ordered child support and sentenced to 179 days in the Orange County Jail. We grant the petition and vacate the contempt order.

In his petition, Carbonell argues that he lacks the present ability to purge himself of the contempt. Further, he contends that the trial court failed to make the appropriate findings that he has the present ability to pay the purge amount set at \$7,034.48, which is the full amount of his child support arrears. No response was filed with this Court to refute Carbonell's assertions.

In this case, the order of contempt generally sets forth that Carbonell's failure to pay the court-ordered child support was willful and that he has the present ability to pay the full arrear amount. However, the order, which appears to be a form order, fails to provide any factual support for these findings. In addition to making the general findings of willfulness and present ability to pay, the trial court is required to set forth a "recital of the facts on which these findings are based." Fla. Fam. L. R. P. 12.615(d)(1). It is further compulsory, where a purge amount is set, to memorialize in a "separate affirmative finding that the contemnor has the present ability to comply with the purge" and to present the factual basis to support that finding. Fla. Fam. L. R. P. 12.615(e). The order in this case does not satisfy these mandates. Therefore, we grant the petition for writ of habeas corpus, ordering that Carbonell be immediately released.

PETITION GRANTED

ORFINGER, EVANDER and JACOBUS, JJ. concur.