

IN THE SUPREME COURT OF MISSOURI

NO. SC91160

DENNIE L. CAROTHERS,

RESPONDENT,

v.

PAMELA CAROTHERS,

APPELLANT.

**APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF MACON COUNTY, MISSOURI
41ST JUDICIAL CIRCUIT
THE HONORABLE JAMES P. WILLIAMS, JUDGE**

APPELLANT'S SUBSTITUTE BRIEF

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JURISDICTIONAL STATEMENT

This action is an appeal from a judgment finding Appellant in contempt of a Macon County judgment regarding child support. The Motion for Contempt was brought by Respondent Dennie Carothers.

The issues raised on appeal do not involve any of the categories reserved for exclusive appellate jurisdiction of the Supreme Court of Missouri, therefore, jurisdiction of the Supreme Court lies in the Missouri Court of Appeals, Western District, Article V, Section 3, Missouri Constitution.

STATEMENT OF FACTS

Appellant Pam Carothers was granted a judgment dissolving her marriage from Respondent Dennie L. Carothers by the Macon County Circuit Court on June 30, 1993. (L.F.6). During the trial in that matter, Respondent introduced audio recordings of Appellant's conversation with third parties of which Respondent was not a party which resulted in Appellant obtaining a judgment against Respondent in Macon County for the principal amount of \$10,000 on December 29, 1999 in case number 41V019600131. (L.F.18). Since that judgment, Respondent did not pay any voluntary amounts toward that judgment and at the time Respondent filed against Appellant his motion for contempt on September 3, 2009 in this matter, Respondent owed approximately \$15,913.11 on that judgment. (L.F. 18-19).

Respondent's motion for contempt alleges that Appellant Mother owes child support arrearage to Father of an unspecified amount. (L.F.13-14). Father's Motion for Contempt does not request that the amount Respondent owed Appellant for Mother's judgment against Respondent offset the amount Respondent alleges Mother owes Father in child support and that Appellant be found in contempt of the court's judgment. (L.F.13-14).

Hearing on Respondent's Motion for contempt was conducted on December 14, 2009. (L.F.3). Appellant appeared pro se. Upon that hearing, the trial court found the Mother in contempt of its judgment and ordered that Mother purge herself of contempt by executing a satisfaction of judgment in case number 41V019600131 and relinquishing her

interest in money being held by the court pursuant to a garnishment against Respondent. (L.F.17-21; 36-39).

Mother filed her initial Notice of Appeal from the trial court's findings of contempt on February 11, 2010. (L.F.22). The Western District Court of Appeals issued an Order for Mother to Show Cause why her appeal should not be dismissed pursuant to the authorities of **Melson v. Melson, WL1748698** and **Eaton v. Bell, 127 S.W.3d 690 (Mo.App. 2004)**. (App. 6). On March 25, 2010, Mother voluntarily withdrew her initial appeal. (L.F. 4).

On March 31, 2010, the trial court entered ordered Mother be taken into custody on the "Contempt Warrant". (L.F. 4). Mother then filed her second Notice of Appeal challenging the trial court's findings of contempt on April 6, 2010. (L.F. 5). The Western District dismissed Mother's second appeal again citing the **Melson, supra**, and **Eaton, supra**, as authorities. (App. 8). The Court further denied Mother's Motion for Rehearing and/or Transfer. This Court accepted transfer and Appellant Mother appeals the trial court's finding of contempt, her order of commitment, her subsequent commitment and the Western District's dismissal of her appeal.

POINTS RELIED ON

I. THE WESTERN DISTRICT COURT OF APPEALS ERRED IN DISMISSING MOTHER'S SECOND APPEAL BECAUSE MOTHER'S SECOND APPEAL IS TIMELY IN THAT APPELLANT'S NOTICE OF APPEAL WAS FILED WITHIN 10 DAYS AFTER THE TRIAL COURT ISSUED AND SERVED A WARRANT OF COMMITMENT ON APPELLANT AND A CONTEMPT ORDER IS NOT A FINAL JUDGMENT FOR APPEAL PURPOSES UNTIL A WARRANT OF COMMITMENT ON A FINDING OF CONTEMPT IS SERVED AND THE PERSON INCARCERATED.

Missouri Supreme Court Rule 81.04

Missouri Supreme Court Rule 81.05

Emmons v. Emmons, 310 S.W.3d 718 (Mo.App. W.D. 2010)

II. THE TRIAL COURT ERRED IN FINDING APPELLANT IN CONTEMPT

OF ITS JUDGMENT AND ORDERING HER COMMITMENT UNTIL SHE PURGES HERSELF OF CONTEMPT BECAUSE THE ORDER COMMITTING MOTHER TO INCARCERATION IS INSUFFICIENT IN ON ITS FACE IN THAT THE WARRANT OF COMMITMENT DOES NOT CONTAIN ANY REPRESENTATION THAT MOTHER HAS ANY PRESENT ABILITY TO PAY THE CHILD SUPPORT ARREARAGE, IT MERELY STATES CONCLUSIONS AND DOES NOT STATE HOW MOTHER MAY PURGE HERSELF OF CONTEMPT EXCEPT BY EXECUTING A SATISFACTION OF JUDGMENT IN RESPONDENT'S FAVOR AND BY RELINQUISHING ANY RIGHT SHE HAD TO MONEY HELD BY THE TRIAL COURT PURSUANT TO GARNISHMENT AGAINST RESPONDENT THUS INAPPROPRIATELY LIMITING MOTHER'S ABILITY TO PURGE HERSELF OF CONTEMPT.

Jacoby v. Jacoby, 675 S.W.2d 117 (Mo.App. W.D. 1984)

Lyons v. Sloop, 40 S.W.3d 1 (Mo.App. W.D. 2001)

Mischeaux v. Hais, 939 S.W.2d 49 (Mo.App. E.D. 1997)

III. THE TRIAL COURT ERRED IN FINDING MOTHER IN CONTEMPT OF

ITS JUDGMENT BECAUSE THE COURT DID NOT ADVISE MOTHER OF HER RIGHT TO COUNSEL OR OBTAIN A VOLUNTARY WAIVER THEREOF, FATHER'S MOTION FOR CONTEMPT DOES NOT ADVISE MOTHER OF THE AMOUNT OF CHILD SUPPORT FATHER BELIEVES MOTHER OWES TO HIM, DOES NOT GIVE MOTHER A REASONABLE OPPORTUNITY TO MEET THE ALLEGATIONS BY WAY OF DEFENSE OR EXPLANATION BY GIVING SUCH NOTICE IN THAT FATHER'S MOTION ALLEGES MOTHER OWES FATHER A CHILD SUPPORT ARREARAGE, BUT NOT A SPECIFIC AMOUNT, DOES NOT APPRISE MOTHER OF FATHER'S CALCULATION CONSTITUTING THE AMOUNT OWED, DOES NOT ALLEGE THAT MOTHER HAS A PRESENT ABILITY TO PAY THE SAME OR THAT FATHER WAS REQUESTING OFFSET BY TAKING CREDIT FOR AMOUNTS FATHER OWED TO MOTHER IN A SEPARATE JUDGMENT.

Cheatham v. Cheatham, 101 S.W.3d 305 (Mo.App. E.D. 2003)

U.S.C.A. Const.Amend. 14.

I. THE WESTERN DISTRICT COURT OF APPEALS ERRED IN DISMISSING MOTHER’S SECOND APPEAL BECAUSE MOTHER’S SECOND APPEAL IS TIMELY IN THAT APPELLANT’S NOTICE OF APPEAL WAS FILED WITHIN 10 DAYS AFTER THE TRIAL COURT ISSUED AND SERVED A WARRANT OF COMMITMENT ON APPELLANT AND A CONTEMPT ORDER IS NOT A FINAL JUDGMENT FOR APPEAL PURPOSES UNTIL A WARRANT OF COMMITMENT ON A FINDING OF CONTEMPT IS SERVED AND THE PERSON INCARCERATED.

ARGUMENT

Missouri Supreme Court Rules 81.04 and 81.05 direct that an aggrieved party may file a Notice of Appeal after a judgment becomes final. A judgment becomes final 30 days after entry. **Missouri Supreme Court Rule 81.05(a)(1)**. In the case of a civil judgment, however, it “is not appealable until it is enforced.” **Melson v. Melson, 292 S.W.3d 375, 378 (Mo.App. W.D. 2009) Emmons, supra at 723 citing** . Likewise, “[t]here is no right to appeal from an order of civil contempt before it has been enforced.” **Emmons, supra at 723 citing Lieurance v. Lieurance, 111 S.W.3d 445, 446 (Mo.App. E.D. 2003)**. “Enforcement of a contempt order can take the form of imprisonment or the imposition of a fine. **Id.** “If the enforcement remedy issued is imprisonment, the contempt order is not deemed ‘enforced’ until there is actual incarceration pursuant to an

order or warrant of commitment. Once actual incarceration has occurred, a contemnor is entitled to release on bail pending appeal. Until the issuance of a warrant of commitment or actual incarceration, however, the contempt order remains interlocutory and unappealable.” **Emmons, v. Emmons, 310 S.W.3d 718, 723 (Mo.App. W.D. 2010).**

“The form of enforcement dictates when the contempt order is deemed enforced, and thus when the contempt order becomes final and appealable.” **Eaton, 127 S.W.3d at 697.**

In our case, the trial court initially entered its Judgment of Contempt and Warrant of Commitment against Appellant on January 12, 2010. (L.F. 17-21). However, the court made a docket entry staying that commitment until January 25, 2010. (L.F. 3). On February 1, 2010, the court made a docket entry issuing the Warrant for Commitment. (L.F. 3). Appellant filed her first Notice of Appeal on February 11, 2010. (L.F. 3). The Western District Court of Appeals, by a letter dated March 9, 2010, advised Appellant that her Notice of Appeal was untimely pursuant to **Melson v. Melson, WL1748698** and **Eaton v. Bell, 127 S.W.3d 690 (Mo.App. 2004)**. (App.6). As a result of that notification from the Court, Appellant dismissed the appeal on March 25, 2010. (App. 7).

The Warrant of Commitment was not served on Appellant until March 31, 2010 when Appellant was taken into custody and the bond set at \$2,000 cash. (L.F. 4; 40). Appellant filed her second appeal with the Western District on April 6, 2010. (L.F. 33). On July 9, 2010, the Western District notified Appellant that the second Notice of Appeal was untimely pursuant to **Supreme Court Rules 81.04 and 81.05** as well as **Eaton v. Bell, supra**. On August 5, 2010, the Court of Appeals dismissed Appellant’s second

appeal as untimely. (App.8).

Our case is very similar to **Emmons v. Emmons, supra**. In **Emmons**, the Father sought review of a Boone County decision finding him in contempt of a dissolution judgment. A warrant of commitment was issued in the contempt judgment, but the warrant was stayed. The Western District declared that since the commitment order was stayed, Father's appeal was premature, had not been enforced and was not final and appealable. **Emmons, supra, at 724**. Further, the Court of Appeals held that a "warrant of commitment is essentially negated and presents no imminent threat of incarceration" and is therefore, not appealable. **Id., at 724**. Finally, the Court holds that "[i]f the enforcement remedy used is imprisonment, the contempt order is not deemed 'enforced' until there is actual incarceration pursuant to an order or warrant of commitment." **Emmons, supra, at 722 citing Eaton, supra, at 697**; See also **Crow v. Gilmore, 103 S.W.3d 778 (Mo. 2003)**; **Femmer v. Femmer, 687 S.W.2d 697 (Mo.App. E.D. 1985)**.

Appellant here was not incarcerated until March 31, 2010. Appellant certainly appreciates the Western District's belief that her first Notice of Appeal filed February 11, 2010 was untimely pursuant to the **Melson and Eaton** authorities, but she is dumbfounded as to why her second Notice of Appeal is untimely pursuant to the same authority. In reliance on the Western District's directive, Appellant did voluntarily dismiss her first appeal after review of **Eaton and Melson**. Pursuant to that reliance, it was the Appellant who sought commitment for purposes of perfecting her appeal on March 31, 2010 by appearing in court to be committed pursuant to the warrant. Since

commitment did not occur until March 31, 2010, Appellant's second Notice of Appeal of the trial court's finding of contempt was timely when filed on April 6, 2010 pursuant to **Missouri Supreme Court Rule 81.04.**

II. THE TRIAL COURT ERRED IN FINDING APPELLANT IN CONTEMPT OF ITS JUDGMENT AND ORDERING HER COMMITMENT UNTIL SHE PURGES HERSELF OF CONTEMPT BECAUSE THE ORDER COMMITTING MOTHER TO INCARCERATION IS INSUFFICIENT IN ON ITS FACE IN THAT THE WARRANT OF COMMITMENT DOES NOT CONTAIN ANY REPRESENTATION THAT MOTHER HAS ANY PRESENT ABILITY TO PAY THE CHILD SUPPORT ARREARAGE, IT MERELY STATES CONCLUSIONS AND DOES NOT STATE HOW MOTHER MAY PURGE HERSELF OF CONTEMPT EXCEPT BY EXECUTING A SATISFACTION OF JUDGMENT IN RESPONDENT'S FAVOR AND BY RELINQUISHING ANY RIGHT SHE HAD TO MONEY HELD BY THE TRIAL COURT PURSUANT TO GARNISHMENT AGAINST RESPONDENT THUS INAPPROPRIATELY LIMITING MOTHER'S ABILITY TO PURGE HERSELF OF CONTEMPT.

“Findings in a civil contempt case for noncompliance with a child support order at divorce regarding what a contemnor’s income is, what his other financial obligations are, whether he previously divested himself of assets, and what other assets contemnor holds in order to purge himself of the payments that he was found to be delinquent on are the types of findings that must be made in order to justify commitment, as well as a specific finding regarding how the contemnor may presently purge himself of the contempt.”

Lyons v. Sloop, 40 S.W.3d 1, 14-15 (Mo.App. W.D. 1984). “Civil contempt and

criminal contempt are legally distinguishable—the primary purpose of civil contempt is to coerce a party litigant to comply with relief granted to his adversary, while the primary purpose of criminal contempt is to protect, preserve, and vindicate the power and dignity of the law itself.” **Ex Parte Ryan, 607 S.W.2d 888, 890 (Mo.App. 1980)**. “Due to their distinguishing features, one guilty of criminal contempt is committed for a fixed period while one guilty of civil contempt is committed for an indeterminate period, ie. until he purges himself.” **Jacoby v. Jacoby, 675 S.W.3d 117, 120 (Mo.App. W.D. 1984)**, citing **Leslie v. Leslie, 620 S.W.2d 48,50 (Mo.App. 1981)**. “In contempt proceedings, whether direct or indirect, the facts and circumstances constituting the offense, not mere legal conclusions, must be recited with particularity in both the judgment of contempt and the order of commitment.” **Id.**, citing **Ex Parte Brown 530 S.W.2d 228, 231 (Mo. banc 1975)**. A judgment of criminal contempt is void when posited upon conduct different from that contained in the charge citing the alleged contemnor. **Id.**

In our case, the Respondent alleges in his Motion for Contempt that Appellant Mother has “willfully failed and refused to pay her support obligations and necessities for Cameron Carothers while a minor child in contempt of this Court’s support orders and obligations under law.” (L.F. 14). Further, Respondent represents that he has paid his support obligations to Appellant “as evidenced by the Circuit Court of Macon County’s Payment History Report” which he incorporates, but makes no allegation as to how much, if any, Appellant owes Respondent as and for child support. (L.F. 14). According to the legal file, however, no such attachment was made to the motion with the trial court.

Likewise, the Father does not allege that the Mother has any present ability to pay any such amounts in his motion for contempt. (L.F. 13-14).

Subsequently, the trial court's judgment of contempt and warrant of commitment that incorporates the judgment of contempt indicate that the mother is "in arrears for unpaid child support in the amount of \$15,996.86 plus accrued interest of \$8,554.22" and she was to pay child support "during times when she has had access to earnings and moneys that were not remitted" and that therefore, the mother "has willfully and contumaciously refused to pay the child ordered in it's previous judgments and finds that Respondent should be incarcerated according to the terms thereof." (L.F. 37; 39).

Similarly, the trial court's judgment of contempt and warrant do not state that the Mother has any present ability to pay child support by any other means other than to execute a satisfaction of judgment and release her interest in funds being held in partial satisfaction of that judgment in a separate case. (L.F. 39).

In **Jacoby v. Jacoby, 675 S.W.2d 117 (Mo.App. W.D. 1984)**, the Western District set aside a trial court's commitment order for a father's failure to pay child support. In her motion for contempt, the mother alleged that the father "had failed and refused to [her] child support per the decree of dissolution and, as of the date of said motion, \$450.00 in child support payments were in arrears." **Id., at 118-119.** During the hearing on the motion for contempt, evidence was introduced that the father had received \$60,000.00 in "fire insurance proceeds", \$34,000.00 of which he spent on clothing and household goods for the benefit of himself and the wife of a second marriage, with the

remainder apparently having been spent for living expenses and unsuccessful farming operations.” **Id., at 119.** In its finding of contempt against the father, the Jacoby trial court issued a warrant of commitment containing language that allowed the father to purge himself of contempt “by causing part of his \$34,000.00 household goods to be sold so that the sum of \$1,250.00 can be paid on the said present \$2,585.00 child support delinquency.” **Id., at 120.**

The Court of Appeals found that the mother’s “Motion for Contempt charged one thing and the trial court purported to find contemnor guilty of another thing.” **Id., at 121.** Further, the Jacoby Court holds that “[l]iterally construed, the only way contemnor could purge himself of contempt would be to sell or liquidate such portion of household goods purchased with the \$34,000.00 insurance proceeds as was required to raise \$1,250.00 for availability for payment to proponent. The glaring fallacy of the aforementioned, in addition to not being responsive to the Motion for Contempt, is that it was immaterial where the money came from for contemnor to discharge the child support arrearages. The limitation placed upon contemnor’s right to purge himself of contempt in the order of commitment is equally as void as the judgment of contempt from which it emanated.” **Id.**

In our case, the Father alleges that the Appellant owes an unspecified amount of child support obligation, but no allegation in his motion or finding in the trial court’s judgment of contempt that Appellant has any present ability to pay the same. Further, there simply is no notice to Appellant in the motion for contempt that would sufficiently apprise the Mother of what factual allegations were being made against her by the Father

so that she may prepare a defense to those allegations and call witnesses or introduce evidence to refute those allegations. Likewise, the judgment of contempt and warrant of commitment merely contain conclusions that Appellant has had access to money and earnings in the past, do not state how much those monies and earnings were or that Appellant has any present ability to pay the amounts recited. Finally, the judgment and warrant give Appellant Mother the ability to purge herself of contempt only by executing a satisfaction of judgment in a separate matter and releasing her interest in money held by the court in that separate case from a garnishment return on the Father. (L.F. 36-40).

As in the Jacoby court, the only prescribed way the Appellant here may purge herself of contempt is by those specific acts enumerated by the trial court. Apparently, Appellant may not simply pay the judgment through other means. Limiting the mother's ability to purge herself of contempt makes the judgment and commitment subject to reversal and being set aside.

Equally important is the fact that the trial court's judgment does not indicate what Appellant's current earnings are, how much her living expenses are or what other financial obligations she pays in determining that she has voluntarily and contumaciously placed herself in a position to not comply with the court's judgment.

In **Lyons v. Sloop, 40 S.W.3d 1, 14-15 (Mo.App. W.D. 1984)**, the Western District reversed a judgment of contempt and commitment warrant due to the trial court's findings that the Father "has had" the ability to pay the amount owed the Mother. **Id., at 14.** The Court further held that since the findings were in the past tense in that the trial

court found that the Father “has been” financially able to pay does not equate to a finding that Father has the present financial ability to make the payments as required, or more importantly, to purge himself of the judgment of contempt.” **Id.** Further, the Lyons court cites the **Mischeaux v. Hais** ruling for the proposition that “the trial court’s findings were insufficient to support commitment where no findings were ‘made regarding what Father’s income is, what his other financial obligations are, whether he had divested himself of assets, nor what other assets father holds in order to purge himself of the payments that he is found to be delinquent on. **Id.**, citing **Mischeaux v. Hais, 939 S.W.2d 49, 51 (Mo.App. E.D. 1997).**”

As in Lyons and Mischeaux, the trial court here makes no findings as to the Appellant’s present ability to pay. Further, the judgment of contempt does not contain any recitation of findings regarding Mother’s other financial obligations. Stating that the Mother “has had” access to earnings and money from which she could have paid any part of a child support obligation is deficient vis a vis the authorities cited herein. If there is any such finding of present ability to pay anything on an obligation, it would be due to the Father’s recalcitrance in paying the judgment entered against him in Mother’s favor on a separate matter. The only possible scintilla of evidence in favor of the Father in this regard would be that the Mother perhaps had some ability to pay if the Father would have paid the judgment entered against him in the separate case. The irony is not lost on Appellant here.

III. THE TRIAL COURT ERRED IN FINDING MOTHER IN CONTEMPT OF ITS JUDGMENT BECAUSE THE COURT DID NOT ADVISE MOTHER OF HER RIGHT TO COUNSEL OR OBTAIN A VOLUNTARY WAIVER THEREOF, FATHER’S MOTION FOR CONTEMPT DOES NOT ADVISE MOTHER OF THE AMOUNT OF CHILD SUPPORT FATHER BELIEVES MOTHER OWES TO HIM, DOES NOT GIVE MOTHER A REASONABLE OPPORTUNITY TO MEET THE ALLEGATIONS BY WAY OF DEFENSE OR EXPLANATION BY GIVING SUCH NOTICE IN THAT FATHER’S MOTION ALLEGES MOTHER OWES FATHER A CHILD SUPPORT ARREARAGE, BUT NOT A SPECIFIC AMOUNT, DOES NOT APPRISE MOTHER OF FATHER’S CALCULATION CONSTITUTING THE AMOUNT OWED, DOES NOT ALLEGE THAT MOTHER HAS A PRESENT ABILITY TO PAY THE SAME OR THAT FATHER WAS REQUESTING OFFSET BY TAKING CREDIT FOR AMOUNTS FATHER OWED TO MOTHER IN A SEPARATE JUDGMENT.

“Procedural due process requires that one charged with contempt of court be advised of charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have a right to be represented by counsel, and have chance to testify and call other witnesses in his or her behalf either by way of defense or explanation.” **Cheatham v. Cheatham, 101 S.W.3d 305 (Mo.App. E.D. 2003)** citing **U.S.C.A. Const.Amend. 14.**” In the case of indirect contempt, civil or criminal, unless

the trial judge predetermines nature of infraction is of insufficient gravity to warrant imposition of imprisonment if accused is found guilty, to comply with procedural due process unrepresented accused must be advised of his or her right to counsel and, absent knowing and intelligent waiver thereof, be given adequate opportunity to obtain representation.” **Cheatham, supra, at 309.**

In Cheatham, the trial court did not advise a father prior to a hearing on mother’s motion for contempt that he was entitled to have an attorney present. **Cheatham, supra, at 308.** Further, the father alleged that the trial court did not inquire as to whether he was indigent for purposes of having an attorney appointed to represent him. **Id., at 308-309.** Finally, he also raised the issue that since no such advice or inquiry was made, he did not make an intelligent and knowing waiver of his right to counsel. **Id., at 309.**

In reversing the trial court’s judgment finding the father in contempt, the Cheatham court held that the record did not reflect that the trial court informed the father that he had the right to be represented by counsel. **Id., at 310.** Further, the Court found that the father had not been asked whether he was indigent and could therefore have counsel appointed for him. **Id.** Finally, the court found that the trial court did not inquire as to whether the father wished to waive his right to counsel or to ensure he made an intelligent and knowing waiver on the record. **Id.**

As in Cheatham, Ms. Carothers was not asked whether she wished to waive her right to trial and proceed. Though there is a finding in the trial court’s judgment of contempt that Appellant waived the right to counsel, there is no reference in the transcript

from the contempt hearing that any inquiry was made of mother in this regard. (L.F. 17). Without such inquiry and intelligent waiver, the Cheatham case requires a reversal of the trial court's judgment finding the mother in contempt of its prior order regarding child support. This is especially the case where the trial court not only found contempt, but ordered Appellant to be incarcerated to ensure compliance with its judgment. (L.F. 36-40).

Likewise, Father's pleadings lack specific facts upon which Mother could present a defense. The Father alleges here that the Mother failed to pay child support allegations, but no specific amount is mentioned. (L.F. 13-14). There is no attachment to Father's motion, but even if it had been, apparently it was for the purpose of showing that the Father had complied with the trial court's prior order regarding child support. **Id.** Again, there is no allegation by the Father that the Mother has any present ability to pay any order. **Id.** Since Missouri is a fact pleading state, the Mother was entitled to minimal due process by being informed of the factual allegations against her. As such, this Court should reverse the trial court's finding of contempt and order of commitment.

CONCLUSION

For the reasons cited herein, Appellant Pam Carothers prays for an order finding her appeal is timely, reversing the trial court's judgment finding her in contempt of its order, setting aside the trial court's warrant of commitment and for such other and further orders as the Court deems just and proper in the premises.

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NO. SC91160

DENNIE L. CAROTHERS,

RESPONDENT,

v.

PAMELA CAROTHERS,

APPELLANT.

**APPELLANT'S CERTIFICATE OF SERVICE
OF APPELLANT'S SUBSTITUTE BRIEF**

The undersigned certifies that the foregoing Appellant's Substitute Brief and floppy disk of the Brief was mailed via UPS, Overnight Mail, postage prepaid, to the following attorney of record this 7th day of December, 2010:

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v.

PAMELA CAROTHERS,

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APPELLANT'S CERTIFICATION OF COMPLIANCE

The undersigned certifies that the foregoing Appellant's Substitute Brief complies with Supreme Court Rules 84.06 and 55.03 and that the brief contains 4,096 words and 369 lines and was composed in Word Perfect Legal Suite 11. The undersigned further certifies that the disk simultaneously filed with the hard copies of the brief has been scanned for viruses and is virus-free.

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