

{¶2} Karen L. Sizemore, n.k.a. Karen Dunn, and Sizemore were divorced in 1987. In the divorce decree, the trial court ordered Sizemore to pay support for the couple's two minor children in the amount of \$80 per week, plus poundage.

{¶3} In 1989, WCCSEA began steps to collect the unpaid child support owed by Sizemore. On December 5, 1989, pursuant to multiple motions for contempt, a domestic relations referee found Sizemore in contempt of court for failure to pay child support. From that point forward, Sizemore's child support arrearages continued to grow.

{¶4} After four additional findings of contempt, WCCSEA moved to convert Sizemore's child support arrearages into a lump sum judgment. On October 10, 1995, the trial court granted permanent judgment on the magistrate's decision involving the unpaid child support obligation. In that decision, the magistrate found that as of August 1, 1995, Sizemore owed arrearages totaling \$17,255.04.¹ In the same decision, the magistrate recommended that WCCSEA's motion for lump sum judgment be granted, with interest assessed to the judgment at the statutory rate. Sizemore did not appeal this decision, nor did he appeal the trial court's five additional findings of contempt between 1996 and 2008.

{¶5} In an entry dated August 30, 2006, the trial court adopted WCCSEA's Notice of Child Support Termination Investigation. Based on WCCSEA's investigation and its own audit, the trial court found that Sizemore had paid all child support amounts that had accrued after August 1, 1995. Thus, Sizemore's remaining unpaid obligation consisted solely of the lump sum judgment dated October 10, 1995, plus the accrued interest.

1. Specifically, the magistrate found that as of August 1, 1995, Sizemore owed \$13,171.04 to Dunn, \$3,745.18 to the Ohio Department of Human Services, and \$338.82 to WCCSEA.

{¶16} On September 29, 2008, WCCSEA filed its tenth and final motion for contempt against Sizemore for nonpayment. On that motion, the magistrate held Sizemore in contempt and recommended that the trial court re-impose his previously-suspended sentence of 582 days in the Warren County Jail, plus an additional 90 days for his most recent failure to pay. At the purge hearing on March 19, 2009, the trial court dismissed Sizemore's contempt charge, holding that it lacked authority to imprison Sizemore for his debt, stating that "[o]nce child support money is reduced to a lump sum judgment during a civil proceeding, the judgment becomes a debt and imprisonment for that debt is precluded under Ohio Constitution Article 1, Section 15." WCCSEA now appeals, asserting one assignment of error:

{¶17} "THE TRIAL COURT ERRED BY FINDING THAT IT DID NOT HAVE THE AUTHORITY TO IMPRISON MR. SIZEMORE FOR HIS FAILURE TO PAY HIS PAST DUE CHILD SUPPORT."

{¶18} WCCSEA argues that the trial court erred in refusing to exercise its contempt power to imprison Sizemore for failing to pay the lump sum judgment. Specifically, WCCSEA argues that domestic support obligations are not "debts" within the purview of the Ohio Constitution, thus courts may use their contempt power to enforce such obligations, even if reduced to a lump sum judgment, through imprisonment. WCCSEA relies on several cases to support its argument, including two Ohio Supreme Court cases, *Cramer v. Petrie*, 70 Ohio St.3d 131, 1994-Ohio-404, and *Young v. Young*, 70 Ohio St.3d 679, 1994-Ohio-97, as well as this court's decision of *In re J.M.*, Warren App. No. 2008-01-004, CA2008-Ohio-6763. However, we find that WCCSEA's reliance on each of these cases is misplaced.

{¶19} In the case at bar, the trial court concluded that imprisoning Sizemore for his failure to pay the lump sum judgment was unconstitutional imprisonment for a "debt"

under Article I, Section 15 of the Ohio Constitution, which states "[n]o person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud." In *Robinson v. Robinson* (Aug. 16, 1996), Lake App. No. 94-L-088, 1996 WL 502141, the Eleventh District Court of Appeals addressed the precise issue before us today: whether it is constitutional to order imprisonment for contempt to enforce those portions of unpaid child support arrearages that have been reduced to a lump sum judgment. Faced with somewhat unclear Ohio Supreme Court holdings in *Young* and *Cramer*, the court in *Robinson* addressed the effect of these cases on a court's authority to order imprisonment for contempt to enforce unfulfilled orders to pay child support arrearages versus unpaid lump sum judgments.

{¶10} In *Robinson*, the Eleventh Appellate District interpreted *Young* as maintaining a distinction between (1) continuing orders to pay child support arrearages: obligations that, according to *Cramer*, are not "debts," and are thus enforceable by imprisonment for contempt, and (2) child support arrearages that have been reduced to lump sum judgments: "debts," which preclude imprisonment for contempt, and against which liens may attach and interest may accrue.² *Robinson* at *2; *Cramer*, 70 Ohio St.3d at 135. We agree with this distinction, and, like the Eleventh Appellate District, hold that while there are no constitutional impediments to ordering imprisonment for contempt "after emancipation of the child, for failure to make support payments on that portion of the obligation *not reduced to judgment*," it remains unconstitutional to imprison for failure to pay a *lump sum* obligation. (Emphasis added.) *Robinson* at *3. Thus, we find the cases upon which WCCSEA relies to support its contention that Sizemore's lump sum judgment is properly the subject of imprisonment through contempt

2. "[A]rrearages in child support which have not been reduced to a lump-sum judgment are not subject to the interest provisions of R.C. 1343.03." *Dunbar v. Dunbar*, 68 Ohio St.3d 369, 370, 1994-Ohio-509.

proceedings distinguishable from the case at bar.

{¶11} WCCSEA relies primarily on *Young* and *Cramer* to support its argument. However, as previously stated, these cases lend little to our analysis. In *Young*, the Ohio Supreme Court determined that a contempt order entered after children are emancipated does not violate Article I, Section 15 of the Ohio Constitution. *Young*, 70 Ohio St.3d 679. See, also, *Robinson*, 1996 WL 502141. The trial court in *Young* used contempt against the father of three emancipated children for failing to pay court-ordered child support that had been reduced to a lump sum judgment *and* for failing to make additional court-ordered child support payments due after the judgment. The Second District Court of Appeals reversed, holding that the trial court lacked authority to use contempt to (1) enforce payment of the lump sum judgment, and (2) enforce the child support arrearages due after the children's emancipation that had not been reduced to a lump sum. *Young v. Young* (Apr. 20, 1994), Miami App. No. 93 CA 10, unreported.

{¶12} In one sentence, the Ohio Supreme Court summarily reversed and reinstated the trial court's order "*on the authority*" of *Cramer*, which held that "an order to pay child support may be enforced by means of imprisonment through contempt proceedings even after the child who is the subject of the order is emancipated." *Cramer*, 70 Ohio St.3d at 131. However, the child support arrearages addressed in *Cramer* had *not* been reduced to a lump sum judgment. Thus, in squarely relying on *Cramer* as the sole basis for its decision, the Court's holding in *Young* is narrower than it appears. Specifically, *Young* upholds the use of imprisonment for contempt to enforce *only* those child support arrearages that have not been reduced to a lump sum judgment. Accordingly, *Cramer* and *Young* carry no weight in deciding the issue in the case at bar, which involves constitutional methods of enforcing unpaid child support

arrearages that *have* been reduced to a lump sum judgment.

{¶13} WCCSEA next cites this court's decision of *In re J.M.* However, this court's holding in *J.M.* is inapposite to the case sub judice. In *J.M.*, this court held that fees for a child's therapy were not a 'debt,' but were instead part of the father's "*ongoing* child support" as ordered by the court. (Emphasis added.) *J.M.*, 2008-Ohio-6763 at ¶73. This court further held that the trial court had authority to order the father to serve a jail sentence through contempt proceedings for failing to pay the therapy fees. *Id.* at ¶75. However, as in *Cramer*, the past due support obligations in *J.M.* were never reduced to a lump sum judgment. Thus, *J.M.* is likewise inapplicable to the case at bar, because the money Sizemore owes consists solely of child support arrearages that were reduced to a lump sum judgment in 1995, plus interest.

{¶14} Our intention to preserve the distinction between continuing "orders" to pay child support arrearages and those reduced to lump sum judgments is well supported in Ohio. See *Smith v. McDaniel* (Mar. 12, 1985), Ross App. No. 1108, 1985 WL 6579, *2 ("contempt and the reduction of arrearages to a single lump sum judgment are simply different methods of enforcing the original order awarding child support"); *Smith v. Hayward* (Dec. 6, 1991), Lake App. No. 90-L-15-182, 1991 WL 260177, *1 ("The person to whom alimony or support is owed in installments has an absolute right to have all past due and delinquent installments reduced to a lump-sum judgment * * * [s]uch a judgment is for the recovery of money and is like any other money judgment of a court * * * which may be executed upon or certified as a judgment lien which may be transferred and on which attachment or garnishment may issue * * * [prior orders for] periodic payments, may be enforced by contempt[.]"); *Peters v. Peters* (1962), 115 Ohio App. 443, 447 ("A *judgment* in Ohio * * * is the final determination of the rights of the parties in action. An *order* of the court is a direction by the court or judge made or entered in

writing, and not included in a judgment[.]"). (Emphasis added.)

{¶15} We find no reason to collapse the remedies or to muddle the clear distinctions between the two concepts by relying on cases that lend little to the analysis in resolving the precise issue at hand. Maintaining the distinction between "judgments" and continuing "orders" of the court is particularly important in light of the different characteristics attributable to each remedy; while contempt is the proper remedy to enforce continuing "orders" to pay child support arrearages, child support arrearages that have been reduced to lump sum "judgments" are properly enforced through execution and levying proceedings. See *Cabrera v. Cabrera*, Franklin App. No. 08AP-26, 2008-Ohio-4359, ¶35. Once child support arrearages have been reduced to a lump sum judgment, contempt has no place in enforcing the outstanding obligation. See *Bauer v. Bauer* (1987), 39 Ohio App.3d 39, 39-40 ("After a child has attained the age of majority and child-support money yet unpaid is reduced to a lump-sum judgment during a civil proceeding, the judgment becomes a debt, and imprisonment for that debt is precluded under Section 15, Article I of the Ohio Constitution."); *Beckelhymer v. Beckelhymer* (Dec. 2, 1991), Clermont App. No. CA91-02-012, at 2 ("When the children of an obligor have attained the age of majority, and the child support arrearages are reduced to a lump sum judgment in a civil proceeding, the judgment becomes a debt, and imprisonment for that debt is enjoined by Article I, Section 15 of the Ohio Constitution. Therefore, in such a situation the trial court cannot enforce a prior order for child support by exercising the power of contempt[.]");³ *Miller v. Dupler* (Jan. 11, 1993),

3. In *Beckelhymer*, this court actually upheld the trial court's use of imprisonment for contempt over an unpaid lump sum judgment, despite appellant's claim that the contempt was unconstitutional. *Id.* at 2. However, we again find that this case is distinguishable from the case at bar. As we recognized in *Beckelhymer*, the relevant inquiry is whether the purpose of the contempt sanction is to punish an act of disobedience (criminal contempt), or to "benefit" the complainant (civil contempt). *Id.* In *Beckelhymer*, the trial court clearly stated that appellant was "in contempt for the violation of [a] restraining order" that the court had placed on appellant's funds. Further, the trial court did not order any "other funds to be applied

Hocking App. No. 92 CA 4, 1993 WL 3521, *2 (reversing the trial court's order to imprison a father for failing to pay child support arrearages after they had been reduced to a lump sum judgment); *Myers v. Myers*, 147 Ohio App.3d 85, 93, 2002-Ohio-405, ¶37 (while the trial court properly granted

to the child support judgment." *Id.* Thus, we held that the contempt in *Beckelhymer* was "criminal" in nature because it was intended to *punish* appellant's "intentional" disposal of specified funds, not to enforce the unpaid child support judgment. *Id.* Conversely, in the case at bar, the magistrate stated that Sizemore was in contempt "for failing to timely pay his child support obligation," and that he must make payments in order to purge the contempt. Thus, the purpose of the contempt was to enforce a debt for Dunn's "benefit." In other words, the contempt in the case at bar was civil in nature because it was aimed at enforcing and collecting Sizemore's debt, *not* towards punishing Sizemore for his noncompliance. However, as previously discussed, once Sizemore's debt was reduced to a lump sum judgment in 1995, the use of imprisonment for contempt was enjoined by Article I, Section 15 of the Ohio Constitution.

plaintiff's motion for lump sum judgment on past-due child support, it "erred in concluding that the support obligation [was] not a 'debt[.]'"; *Thompson v. Albers* (1981), 1 Ohio App.3d 139.

{¶16} We do, however, note that the distinction between lump sum "judgments" and continuing "orders" to pay child support arrearages lies in potential conflict with several previous Ohio appellate rulings. These cases upheld the constitutionality of using imprisonment for contempt to enforce unpaid lump sum judgments. However, in reaching this conclusion, these cases relied squarely on *Young* and/or *Cramer* - both Ohio Supreme Court cases that we conclude have no bearing on the constitutional method(s) of enforcing child support arrearages reduced to lump sum judgments.

{¶17} First, in *Stychno v. Stychno*, Trumbull App. No. 2008-T-0117, 2009-Ohio-6858, the Eleventh District Court of Appeals relied on *Cramer* in holding that imprisonment for contempt did not violate Article I, Section 15 of the Ohio Constitution when used to enforce unpaid spousal and child support arrearages that had been reduced to judgment. Similarly, the Eighth District Court of Appeals in *Bacharowski v. Bacharowski* (Sept. 11, 1997), Cuyahoga App. No. 71164, 1997 WL 570952, held that contempt was properly used to collect both spousal and child support arrearages that had been "reduced to judgment" in the parties' divorce decree on the authority of *Young* and *Cramer*. However, because these cases relied distinctly on the authority of *Young* and/or *Cramer*, we find that they are inapplicable to the case at bar. As previously discussed, the support obligations in *Cramer* were never reduced to a lump sum judgment, thus its holding is completely immaterial to our analysis. Likewise, *Young*, which admittedly involved child support arrearages that had been reduced to a lump sum judgment, as well as others that had not been so reduced, was based "on the authority of *Cramer*," a case that we continue to emphasize *did not involve a lump sum*

judgment. Young, 70 Ohio St.3d at 680. Accordingly, we find these Ohio cases to be both factually and legally distinguishable from the case at bar.

{¶18} In this case, Sizemore's unpaid obligation was limited to the finite lump sum that was calculated in October 1995 (plus interest), for which the magistrate recommended Sizemore serve jail time. We find that the trial court did not err in declining to use contempt to imprison Sizemore for failing to pay the judgment, since doing so would contravene the Ohio Constitution's prohibition on imprisonment for "debt," as defined by Article I, Section 15.

{¶19} Accordingly, the assignment of error is overruled and the judgment of the trial court is hereby affirmed.

RINGLAND and HENDRICKSON, JJ., concur.