

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-000811-MR

GARY WASHABAUGH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DOLLY WISMAN BERRY, JUDGE  
ACTION NO. 94-FD-001965

ROBIN CURTSINGER

APPELLEE

OPINION  
REVERSING & REMANDING

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BEFORE: CLAYTON AND VANMETER, JUDGES; KNOPF,<sup>1</sup> SENIOR  
JUDGE.

KNOPF, SENIOR JUDGE: On December 4, 2006, Robin Curtsinger filed a  
motion asking the court to find Gary Washabaugh in contempt for failure to pay  
child support. Although Washabaugh did not attend the February 9, 2007, hearing,  
he notified the court that he would be unavailable on that date due to medical

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<sup>1</sup> Senior Judge William L. Knopf presiding as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

testing. The hearing continued without Washabaugh present or counsel representing him. Washabaugh was found to be in contempt of the court's order to pay child support.

The court appointed the Louisville Metro Public Defender to represent Washabaugh for the sentencing. On the scheduled sentencing date, Washabaugh was not present but represented by appointed counsel. Although defense counsel provided the court with an explanation of Washabaugh's absence, the court sentenced Washabaugh to 180 days in jail which could be purged by the payment of \$4,100.00.

Washabaugh appeals both the February 20, 2007, contempt order and the March 20, 2007, sentencing order from the Jefferson Circuit Court, claiming that he was entitled to appointed counsel prior to the contempt hearing. We agree and reverse the orders of the trial court.

In *Lewis v. Lewis*, 75 S.W.2d 862, 863 (Ky. 1993), the Kentucky Supreme Court held that "the legislature has determined that an indigent person who is facing incarceration for any amount of time is entitled to appointed counsel."

The trial court found that Washabaugh had no right to counsel because the contempt hearing was a civil proceeding. However, the controlling question is whether imprisonment was a possible sentence.

The predominant issue in any such contempt proceeding regarding determination of an entitlement to appointed counsel is not whether the proceeding is denominated

civil or criminal, but whether the court could elect to imprison the indigent defendant.

*Lewis v. Lewis*, 75 S.W.2d 862, 865 (Ky. 1993).

KRS 31.100(4) provides representation as a right during any legal action which could result in the detainment of a defendant. *Id.* at 864. When that defendant is indigent, he or she is entitled to have counsel appointed. *Id.*

Failure to pay child support is a serious matter. Contempt of a court order arising from the failure to pay child support is a serious matter. Incarceration for such failure is equally a serious matter, such a situation means that any legal action which could result in the detainment of an indigent by law enforcement calls for the appointment of counsel.

*Id.* at 865.

Therefore, whenever imprisonment is a possible outcome of a proceeding, whether it is a criminal or civil case, the defendant is entitled to counsel.

Accordingly, we reverse the February 20, 2007, contempt order and subsequent sentencing order of the Jefferson Family Court and remand with directions to reappoint counsel as necessary for Washabaugh and conduct a new contempt hearing.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Bruce P. Hackett  
Office of the Louisville Metro Public  
Defender  
Louisville, Kentucky