

ENFORCEMENT/CONTEMPT:

IT'S ONE THING TO WIN; IT'S ANOTHER TO COLLECT

By: Steven H. Everts¹

I. IMPORTANCE

We spend a lot of time talking and learning about how to get correct and proper orders on the myriad of issues that we face in family law cases. But, orders often mean nothing unless they are enforced. Thus, the means and remedies by which we enforce clients' orders are critical in the successful outcome of any case.

We have all had the experience of winning one or more hotly contested issues after a difficult trial and, after patting ourselves on the back, our client tells us that they really don't feel like they won anything yet, or they ask what has really been accomplished? They also often expect that orders automatically happen, that the court monitors them, or that they are self-enforcing, and may not even be aware that actions can be taken to try to defeat the orders or that another round of litigation may be necessary in order to actually get what they thought they already achieved. The subject of enforcement, together with contempt, collection, post-trial remedies and changes in circumstances should preferably be a conversation that occurs well before we embark on lengthy and costly litigation.

II. SCOPE

The scope of enforcement and contempt is undoubtedly broader than we initially suspect. Out of curiosity and in preparation of these materials, I wanted to know exactly how many authorities and the range of subject matters that are within the scope of enforcement and contempt. So, we made a list. In Title 25 there are at least 112 statutes that use either the words "contempt," "enforce," or "enforcement." Legal research also revealed dozens of reported family law cases where contempt was mentioned in one form or another. There are also four rules (91-94) of the Arizona Rules of Family Law Procedure that specifically address post-decree and post-judgment proceedings to enforce orders. To assist in further research and litigation on these issues, a summary of each of the statutes, a list and summary of 27 selected cases, and the identity and subparts of each of the rules is attached in the accompanying materials.

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The case law and rules also often express or denote differences between civil contempt and criminal contempt proceedings. Therefore, a summary table is attached showing the differences between the two in the areas of definition, purpose, purge, standard of proof, punishment and appeal.

III. HOW TO ENFORCE

A. Preparation. Of significant importance to the eventual enforcement of court orders is the preparation that takes place in drafting and using the orders. In other words, the better the orders, the better the chance of enforcement. On the other hand, poorly drafted orders or actions not taken can sometimes mean the difference between collecting and not collecting. For example:

- Has the legal description of the property been included in the PSA and/or Decree?
- Was the Judgment/Decree recorded?
- Did discovery identify relevant financial accounts and employment information for execution?
- Was the Judgment or Order signed and certified?
- Is a *Lis Pendens* appropriate?
- Did the Judgment/Decree identify a specific sum and/or date for compliance?
- Were attorney's fees to be paid to the client, the lawyer, or both?
- Has adequate security been provided and implemented in case of default?
- Has registration or domestication taken place?
- Was renewal calendared and done?
- Should proceeds from the sale of assets be held in trust pending disposition or offsets?
- Was a request for findings of fact and conclusions of law made in the trial court?
- And so on, and so on.

B. Elements of Civil Contempt

1. Knew of the order.
2. Had the ability to comply with the order.
3. Willfully failed to comply with the order.

C. Sanctions and/or Contempt for Violations of Legal Decision-Making/Parenting Time Orders (With cases)

1. Contempt for violation of parenting time (*Hindsley, Hurd*).
2. Contempt sanctions are limited to non-evidentiary concerns that do not conflict with the best interests of the child (*Hays*).
3. Contempt sanctions for third-party visitation violations (*Munari*).
4. May need modifications to legal decision-making under A.R.S. § 25-401, et.seq., including A.R.S. § 25-411.
5. Sanctions for violations of parenting time are addressed under A.R.S. § 25-414.

D. Enforcing Orders for Assets/Debts (With cases)

1. No contempt (meaning incarceration) for non-payment of debts (*Stone, Proffit, Frese, Masta*).
2. No contempt for failure to make property payments (*Johnson, Danielson*).
3. Contempt to compel signing of deeds and other documents (*Noble*).
4. Purge always available and, if done, precludes incarceration (*Korman*).
5. Civil contract action necessary for post-majority obligations (*Young, Soloman, Steiner*).
6. A.R.S. § 25-318(E) allows lien for interest in property, debts, child support, spousal maintenance, damages (*Crawford*).
7. No right of appeal for civil contempt (*Hays, Danielson*).
8. *Lis Pendens* has to directly affect title to the property (not just requesting ownership) (*Muchesko*).
9. Judgments for money (except child support, spousal maintenance and their fees) must be renewed every five years and periodic payments run as each installment becomes due (*Johnson, Jensen*).
10. Consider Rule 85(C) motion where BK filed to eliminate debts (*Birt*).
11. Court may consider VA disability payments when determining spousal maintenance arrearage payments, but not IWO (*Dougall*).

E. Enforcing Spousal Maintenance/Child Support Orders (With cases)

1. Contempt available for child support even after emancipation (*Tande*).
2. Rule 94: Civil arrest warrant and child support arrest warrant.

F. Enforcing Attorney's Fees Orders (With cases)

1. Contempt available (*Johnson, Danielson, Natale*).

2. Can now be paid from community property without violating Preliminary Injunction (overruled *Little*).

G. Petitions for Enforcement

1. In General [(Rule 91(A)).

- Parties remain same as in prior order
- Under oath
- State the nature of the proceeding
- Estimated time for hearing
- Terms, date and location of prior order
- State with specificity all relief requested
- Original and three copies of Petition and Order to Appear
- AFI may be required depending on type of enforcement

2. Petition for Enforcement of Child Support/Spousal Maintenance/UME [Rule 91(C)].

- Calculation of sums due from Clearinghouse, if available
- Detailed summary of all UME with all bills claimed, all bills paid by insurance or third party, remaining unpaid balance, and pro-rata obligation of each party

3. Petition for Enforcement of Legal Decision-Making/Parenting Time [Rule 91(G)].

- Detailed facts constituting violation of order (*See* amended Rule 91(G)(2) (effective 1/1/17)
- Specific remedy sought

4. Other Petitions [Rule 91(H)]

- Legal authority that confers subject matter jurisdiction
- Specific relief requested

5. Petition for Civil Contempt [Rules 91(I) and 92]

- Same as above
- Personally served on alleged contemnor

H. Petitions for Modification

1. Spousal Maintenance/Child Support [Rule 91(B)]

- a. Must state substantial and continuing change of circumstances under A.R.S. § 25-327(A)
- b. The addition or change in availability of health insurance may qualify
- c. Effective first day of first month following notice (unless court orders otherwise)
- d. Spousal maintenance terminates on death of either party or remarriage unless agreed otherwise
- e. Child support not terminated on death of parent obligated to pay support unless otherwise agreed
- f. Court may suspend interest during incarceration or period of physical or mental disabilities
- g. Completed and blank AFIs required
- h. Financial disclosure in Rule 91(P) required
- i. May use Simplified Procedure with Worksheet for child support

2. Legal Decision-Making [Rule 91(D)]

- a. Must comply with A.R.S. § 25-411
- b. Must state whether mediation or ADR is required
- c. Notice of Filing required
- d. Affidavit required under A.R.S. § 25-1039 (UCCJEA) if prior Order or Decree not issued in Arizona
- e. Response due in 20/30 days
- f. Must provide Request for Order Granting or Denying Hearing within 5 days after Response due

3. Parenting Time [Rule 91(F)]

- a. Petition with detailed facts
- b. Outline parenting time sought
- c. Must state whether mediation or ADR required
- d. If supervision or denial of parenting time is sought must explain reasons why unrestricted parenting time would seriously endanger the child's physical, mental, moral or emotional health
- e. If prior order not entered in Arizona then affidavit required under A.R.S. § 25-1039 (UCCJEA)

I. Dismissal

If Petition to enforce or modify is not presented in proper form, if filed but not served, or is otherwise abandoned for 120 days with no hearings the court may issue a notice for dismissal. After one year the court may dismiss without notice.

J. Attorney's Fees/Costs/Expenses

- a. An AFI is required whenever attorney's fees is an issue in any post-decree proceeding
- b. Applicant files with Petition and opposing party must file three days before hearing. If opposing party initiates request, then AFI must be served five days after service of Petition and applicant must file AFI three judicial days before hearing.

CIVIL v. CRIMINAL CONTEMPT

	CIVIL	CRIMINAL
Definition	One disobeys a court order directing an act for the benefit of the opposing party.	The commission of a disrespectful act directed at the dignity and authority of the Court which obstructs justice.
Purpose of Punishment	Coerce a person to do or refrain from doing some act in a private dispute or compensate the complainant for losses sustained. Benefits the complainant.	Enforce respect for the court. Solely to punish.
Purge	Contemnor must be given opportunity to comply. It is absolute. Contemnor may not be punished merely for punitive purposes.	Cannot be avoided through compliance.
Standard of Proof	Preponderance of the evidence.	Beyond a reasonable doubt.
Punishment	Comply with the Order.	Usually a fine or jail time.
Appeal	Special Action only.	

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TABLE OF TITLE 25 STATUTES ADDRESSING CONTEMPT AND/OR ENFORCEMENT

I.

Contempt

A. Temporary Orders/Preliminary Injunction

- 25-315 Temporary order or preliminary injunction; effect; definition
(A) and (G) Contempt for violation of Preliminary Injunction and may be subject to arrest and prosecution
(B) Enforcement for equal possession of liquid assets
(C) TRO or Preliminary Injunction for exclusive use of residence
(D) TRO without notice if irreparable injury
(E) Preliminary Injunction or temporary order for maintenance, support and property

B. Separation Agreement

- 25-317 Separation agreement; effect
(E) Enforceable by all remedies, including contempt

C. Property/Debts

- 25-318 Disposition of property; retroactivity; notice to creditors; assignment of debts; contempt of court
(P) If a party is found in contempt for payment of community debts, the court may impose appropriate sanctions. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

D. Maintenance/Support

- 25-322 Payment of maintenance or support; records; disclosure

- (C) Failure to notify the clerk of the court or the support payment clearinghouse of a change in residential address or employment may be basis for contempt.

E. Education Program

- 25-353 Failure to comply
Failure to complete the education program may result in contempt or other sanctions.

F. Conciliation Court

- 25-381.18 Dissolution of marriage; legal separation; annulment; stay of right to file; jurisdiction for pending actions
- (C) Conciliation may be used in regard to post-dissolution problems concerning contempt.

G. Legal Decision-Making/Parenting Time

- 25-414 Violation of visitation or parenting time rights; penalties
- (A) Violation of visitation of parenting time order without good cause shall be the basis for finding of contempt.
 - (C) Court costs and attorney's fees shall be awarded to the non-violating parent.
- 25-415 Sanctions for litigation misconduct
- (B) Court may institute civil contempt proceedings for false claims and violation of discovery orders.

H. Family Support

- 25-502 Jurisdiction, venue and procedure; additional enforcement provisions
- (I) Failure to appear for a hearing on a support order may be a basis for a finding of contempt.
- 25-504 Order of assignment; ex parte order of assignment; responsibilities; violation; termination
- (C) and (K) Failure to notify the clerk of the court or the support payment clearinghouse of a change of residence or employment may subject a

person to sanctions for contempt, including reasonable attorney's fees and costs.

- (H) Any employer who willfully fails to comply with an Order of Assignment without good cause may be subject to contempt.
- (Q) An employer who refuses to hire or discharges or otherwise disciplines an employee or obligor because of service of an Order of Assignment is subject to contempt.

25-505.01 Administrative income withholding order; notice; definition

- (M) An employer who refuses to hire or discharges or otherwise disciplines an employee as a result of an Income Withholding Order is subject to contempt. An employer who fails without good cause to comply with an Income Withholding Order may be subject to contempt.

- (N) Failure of the obligor to notify the department of a change in residential or employment addresses may subject the obligor to sanctions for contempt, including reasonable attorney's fees and costs.

I. Maternity/Paternity

25-808 Preliminary injunction; temporary restraining order; effect

- (C) A warning shall be issued in the Preliminary Injunction that if a party fails to obey an order the court may find him/her in contempt of court and/or also be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime he/she may have committed in disobeying the order.
- (F) The Preliminary Injunction has the force and effect of an order signed by a judge and is enforceable by all remedies made available by law, including contempt of court.
- (I) The remedies for enforcement of the Preliminary Injunction are in addition to any other civil or criminal remedies available, including civil contempt of court. The use of one remedy does not prevent simultaneous or subsequent use of any other remedy.

25-809 Judgment

- (H) The court has contempt powers to enforce its orders for payment of child support, costs and other expenses.

J. UIFSA

- 25-1245 Duties and powers of responding tribunal
(B) The Court in a UFISA case may enforce its orders by civil or criminal contempt or both.

II.

Enforce/Enforcement

A. Marriage License

- 25-121 Marriage license; application; affidavit

B. Premarital Agreements

- 25-202 Enforcement of premarital agreements; exception

- 25-205 Limitation of actions on premarital agreements

C. Temporary Orders

- 25-315 Temporary order or preliminary injunction; effect; definition

D. Separation Agreement

- 25-317 Separation agreement; effect

E. Property/Debts

- 25-318 Disposition of property; retroactivity; notice to creditors; assignment of debts; contempt of court

F. Child Support

- 25-320 Child support; factors; methods of payment; additional enforcement provisions; definitions

- 25-322 Payment of maintenance or support; records; disclosure

G. Attorney's Fees

- 25-324 Attorney fees

H. Domestic Relations Education

25-352 Applicability of program; compliance

I. Conciliation Court

25-381.17 Orders; duration of effectiveness; reconciliation agreement

J. Legal Decision-Making/Parenting Time

25-402 Jurisdiction

25-408 Rights of each parent; parenting time; relocation of child; exception; enforcement; access to prescription medication and records

25-409 Third party rights

25-412 Expedited child support and parenting time fund

K. Family Support

25-502 Jurisdiction, venue and procedure; additional enforcement provisions

25-503 Order for support; methods of payment; modification; termination; statute of limitations; judgment on arrearages; notice; security

25-506 Order for assignment; foreign support order

25-508 Enforcement of support orders; fee prohibition

25-509 Representation by attorney general or county attorney; modification of order by attorney general or county attorney

25-513 Employer cooperation; violation; classification

25-514 Priority of action and judgments

25-516 Lien; notice; priority; recording; reciprocity

25-518 Child support arrearage; license suspension; hearing

25-520 Child support enforcement; administrative subpoena; civil penalty

25-522 Administrative review; notice; determination; judicial review; definitions

25-523 Financial institutions data match; nonliability; prohibited disclosure; liability; civil liability; definition

- 25-525 Administrative enforcement; interstate cases; definition
- 25-526 Child support enforcement information; internet posting
- 25-528 Title IV-D recipients; fee

L. Child Support Medical

- 25-531 Definitions
- 25-534 Employer obligations
- 25-535 Enforcement of health insurance coverage; medical support notice; administrative review; service

M. Spousal Maintenance

- 25-551 Clerk of the court
- 25-552 Jurisdiction; priority of action

N. Child Support Arrest Warrants

- 25-684 Preexisting warrants

O. Maternity/Paternity

- 25-808 Preliminary injunction; temporary restraining order; effect
- 25-809 Judgment
- 25-810 Liability of parents if putative mother or father is a minor; periodic payments

P. Covenant Marriage

- 25-903 Dissolution of a covenant marriage; grounds
- 25-904 Decree of legal separation; grounds

Q. UCCJEA

- 25-1001 Short title
- 25-1002 Definitions
- 25-1009 Appearance and limited immunity

- 25-1012 Cooperation between courts; preservation of records
- 25-1036 Simultaneous proceedings
- 25-1039 Information to be submitted to court
- 25-1051 Definitions
- 25-1052 Enforcement under Hague convention
- 25-1053 Duty to enforce
- 25-1055 Registration of child custody determination
- 25-1056 Enforcement of registered determination
- 25-1057 Simultaneous proceedings
- 25-1058 Expedited enforcement of child custody determination
- 25-1060 Hearing and order
- 25-1061 Warrant to take physical custody of child
- 25-1063 Recognition and enforcement
- 25-1065 Role of attorney general
- 25-1066 Role of law enforcement
- 25-1067 Costs and expenses

R. UIFSA

- 25-1202 Definitions
- 25-1205 Application of chapter to resident of foreign country and foreign support proceeding
- 25-1203 State tribunal and support enforcement agency
- 25-1221 Bases for jurisdiction over nonresident
- 25-1222 Duration of personal jurisdiction
- 25-1226 Continuing jurisdiction to enforce child support order
- 25-1227 Determination of controlling child support order

- 25-1228 Child support orders for two or more obligees
- 25-1231 Continuing, exclusive jurisdiction to modify spousal support order
- 25-1241 Proceedings under this chapter
- 25-1244 Duties of initiating tribunal
- 25-1247 Duties of support enforcement agency
- 25-1248 Duty of the attorney general
- 25-1250 Duties of department of economic security
- 25-1251 Pleadings and accompanying documents
- 25-1253 Costs and fees
- 25-1254 Limited immunity of petitioner
- 25-1256 Special rules of evidence and procedure
- 25-1259 Receipt and disbursement of payments
- 25-1271 Establishment of support order
- 25-1281 Employer's receipt of income withholding order of another state
- 25-1282 Employer's compliance with income withholding order of another state
- 25-1285 Penalties for noncompliance
- 25-1286 Contest by obligor
- 25-1287 Administrative enforcement of orders

S. Registration, Enforcement and Modification of Support Order

- 25-1301 Registration of order for enforcement
- 25-1302 Procedure to register order for enforcement
- 25-1303 Effect of registration for enforcement
- 25-1304 Choice of law
- 25-1305 Notice of registration of order

- 25-1306 Procedure to contest validity or enforcement of registered support order
- 25-1307 Contest of registration or enforcement
- 25-1309 Procedure to register child support order of another state for modification
- 25-1310 Effect of registration for modification
- 25-1312 Recognition of order modified in another state
- 25-1313 Jurisdiction to modify child support order of another state if individual parties reside in this state
- 25-1316 Procedure to register child support order of foreign country for modification

T. Support Proceeding Under Convention

- 25-1334 Initiation by department of economic security of support proceeding under convention
- 25-1335 Direct request
- 25-1336 Registration of convention support order
- 25-1337 Contest of registered convention support order
- 25-1338 Recognition and enforcement of registered convention support order
- 25-1339 Partial enforcement
- 25-1340 Foreign support agreement
- 25-1362 Conditions of rendition

ARFLP ON ENFORCEMENT/CONTEMPT

R. 91 Post-Decree/Post-Judgment Proceedings (amended 1/1/17)

- A. Enforcement in general
- C. Enforcement of child support or spousal maintenance
- G. Enforcement of Legal Decision-Making or Parenting Time
- H. Other enforcement petitions
- J. Contempt
- N. Differences between Motion and Petition
- Q. Sanctions for failure to appear or be prepared or to participate in preparation of a resolution statement or joint pre-hearing statement. Sanctions may be entered (claims or defenses, evidence, striking, dismissing or entering order, contempt, including expenses and attorneys' fees)

R. 92 Civil Contempt and Sanctions for Non-compliance with a court order

- B. Petition and Notice
- C. Warning
- E. Sanctions
- F. Purge
- G. Review Hearing

R. 93 Seizure of Person or Property

R. 94 Civil and Child Support Arrest Warrants

SELECTED ARIZONA FAMILY LAW CONTEMPT AND ENFORCEMENT CASES

1. *Stone v. Stidham*, 96 Ariz. 235, 393 P.2d 923 (1964)
2. *Proffit v. Proffit*, 105 Ariz. 222, 462 P.2d 391 (1969)
3. *Frese v. Superior Court*, 13 Ariz.App. 64, 474 P.2d 71 (1970)
4. *Johnson v. Johnson*, 22 Ariz.App. 69, 523 P.2d 515 (1974)
5. *Masta v. Lurie ex rel. Superior Court*, 22 Ariz.App. 170, 525 P.2d 301 (1974)
6. *Noble v. Noble*, 26 Ariz.App. 89, 546 P.2d 358 (1976)
7. *Pace v. Pace*, 128 Ariz. 455, 626 P.2d 619 (App. 1981)
8. *Korman v. Strick*, 133 Ariz. 471, 652 P.2d 544 (App. 1982)
9. *Young v. Burkholder*, 142 Ariz. 415, 690 P.2d 134 (App. 1984)
10. *Tande v. Bongiovanni*, 142 Ariz. 120, 688 P.2d 1012 (1984)
11. *Hindsley v. Hindsley*, 145 Ariz. 428, 701 P.2d 1236 (App. 1985)
12. *Solomon v. Findley*, 167 Ariz. 409, 808 P.2d 294 (1991)
13. *Matter of Maricopa County Juvenile Action No. JD-05401*, 173 Ariz. 634, 845 P.2d 1129 (App. 1993)
14. *In Re Marriage of Crawford*, 180 Ariz. 324, 884 P.2d 210 (App. 1994)
15. *Little v. Superior Court*, 180 Ariz. 328, 884 P.2d 214 (App. 1994)
16. *Steiner v. Steiner*, 179 Ariz. 606, 880 P.2d 1152 (App. 1994)
17. *Muchesko v. Muchesko*, 191 Ariz. 265, 955 P.2d 21 (App. 1997)
18. *Johnson v. Johnson*, 195 Ariz. 389, 988 P.2d 621 (App. 1999)
19. *Danielson v. Evans*, 201 Ariz. 401, 36 P.3d 749 (App. 2001)
20. *Hays v. Gama*, 205 Ariz. 99, 67 P.3d 695 (2003)
21. *Birt v. Birt*, 208 Ariz. 546, 96 P.3d 544 (App. 2004)
22. *Munari v. Hotham*, 217 Ariz. 599, 177 P.3d 860 (App. 2008)
23. *Hurd v. Hurd*, 223 Ariz. 48, 219 P.3d 258 (App. 2009)
24. *Thompson v. Corry*, 231 Ariz. 161, 291 P.3d 358 (App. 2012)
25. *In Re Marriage of Dougall*, 234 Ariz. 2, 316 P.3d 591 (App. 2013)
26. *Natale v. Natale*, 234 Ariz. 507, 323 P.3d 1158 (App. 2014)
27. *Jensen v. Beirne*, 241 Ariz. 225, 386 P.3d 411 (App. 2016)

**SELECTED ARIZONA FAMILY LAW CONTEMPT
AND ENFORCEMENT CASES**

Name/Cite	Facts/Issue(s)	Lower Court	Appellate Court	Subsequent Treatment/ Practice Tips
<p><i>Stone v. Stidham</i> 96 Ariz 235, 393 P.2d 293 (1964)</p>	<p>H&W entered into PSA which included property division payment from H to W of \$125/mo. for 10 years. H failed to pay. W argued contempt as payments were for her maintenance and support. H argued he could not be imprisoned for failure to pay debt under Arizona Constitution. Whether failure to pay debt can be enforced by contempt and/or by imprisonment?</p>	<p>H found in contempt. H ordered to pay W within 60 days or go to jail for six months.</p>	<p>Writ of Prohibition granted. Authorities are divided on question of whether the terms of the decree incorporating the PSA are enforceable by contempt. Arizona is already aligned with the jurisdictions which give alimony its narrow legal definition with regard to the general constitutional prohibition against imprisonment for debt. The debt here was contractual and not subject to modification.</p>	<p>Distinguished in <i>Tande v. Bongiovanni</i>, 142 Ariz. 120, 688 P.2d 1012 (1984)</p>
<p><i>Proffit v. Proffit</i> 105 Ariz. 222, 462 P.2d 391 (1969)</p>	<p>H owned savings bonds prior to marriage valued at \$6,300. W cashed and kept funds. H got judgment against W for \$6,300. H filed contempt. W argued H only entitled to lien and contempt violated Arizona Constitution prohibiting imprisonment for debt.</p>	<p>W found in contempt and imprisoned indefinitely.</p>	<p>Order vacated and remanded. Trial court had inherent power to direct one party to relinquish possession of separate property belonging to the other, just as it has power to order a division and disposition of community property. However, where a sum of money is ordered, it may not be enforced by contempt. Property settlement payments, as opposed to alimony and support, may not be enforced by contempt. <i>Stone v. Stidham</i> followed.</p>	

Name/Cite	Facts/Issue(s)	Lower Court	Appellate Court	Subsequent Treatment/ Practice Tips
<i>Frese v. Superior Court</i> , 13 Ariz. App. 64, 474 P.2d 71 (1970)	W awarded car in Decree and H ordered to make payments to bank. H failed to make payments and W's vehicle was repossessed. W sought contempt. H argued that contempt violated Arizona Constitution. W acknowledged H could not be in contempt for failure to pay debt, but H could be held in contempt for failure to keep W in full possession of vehicle.	H found in contempt with purge clause to restore vehicle to W by date certain or face sanctions.	Order of contempt vacated. W obtained possession of vehicle. H failed to pay debt. A failure to pay a debt may not be enforced by contempt.	
<i>Johnson v. Johnson</i> , 22 Ariz. App. 69, 523 P.2d 515 (1974)	Decree ordered H to pay \$5,000 in installments of \$100 per month in lieu of further division of community property. H also ordered to pay \$500 attorney's fees. H made no payments. W filed for contempt. H filed Motion to Dismiss.	Granted Motion to Dismiss on payments and attorney's fees.	Affirmed dismissal of property claim, but reversed and remanded on attorney's fees. Held: attorney's fees awarded in divorce are enforceable by post-judgment contempt in same manner as alimony or child support.	
<i>Masta v. Lurie, ex.rel. Superior Court</i> , 22 Ariz. App. 170, 525 P.2d 301 (1974)	In PSA, incorporated into decree, H was ordered to pay all community debts. H failed to pay some. W filed for contempt under A.R.S. § 25-317(E) permitting enforcement "by all remedies available for enforcement of a judgment including contempt." H argued violation of Arizona Constitution.	Found H in contempt and incarcerated him.	Reversed and order of incarceration vacated. Statutory language of A.R.S. § 25-317(E) did not invalidate Arizona Constitutional provision prohibiting imprisonment for debt.	

Name/Cite	Facts/Issue(s)	Lower Court	Appellate Court	Subsequent Treatment/ Practice Tips
<p><i>Noble v. Noble</i>, 26 Ariz. App. 89, 546 P.2d 358 (1976)</p>	<p>H&W purchased property in Denmark with separate property down payment and capital improvements by W of \$50,000.00. H argued community property. W argued S&S and AZ had no jurisdiction over title to land in foreign country.</p>	<p>Property in Denmark was community and to be sold with W receiving first \$50,000 and balance divided equally. Parties were ordered to execute all documents necessary to accomplish the sale.</p>	<p>Affirmed. While AZ has no jurisdiction over title to foreign property, AZ has jurisdiction to determine the parties' interests in the property and may use its contempt process on the person and compel the parties to execute deeds, releases, quit claims, etc., which are effective of their own force. A presumption of community property exists where sole and separate funds are used to acquire jointly held real property, but in this case it was subject to intent of both parties that \$50,000 was W's sole and separate property.</p>	<p>Distinguished in <i>Rosenthal v. Rosenthal</i> 2010 WL 5033517 (Memo.)</p>
<p><i>Pace v. Pace</i>, 128 Ariz. 455, 626 P.2d 619 (App. 1981)</p>	<p>Decree ordered H to pay child support and spousal maintenance. H failed to pay. W filed for contempt.</p>	<p>Entered finding of contempt and judgment for full amount of arrearages with purge clause and incarceration if not paid within 30 days. When H failed to pay he was sentenced to 30 days in jail.</p>	<p>H's appeal dismissed. There was no right of appeal for contempt under A.R.S. § 12-864 (direct or constructive contempt aka civil contempt). Only special action relief available.</p>	<p>Distinguished in <i>Green v. Lisa Frank, Inc.</i>, 221 Ariz. 138, 211 P.3d 16, (App. 2009). Holding cited with approval in <i>Matter of Maricopa County Juvenile Action No. JD-05401</i>, 173 Ariz. 634, 845 P.2d 1129 (App. 1993).</p>

Name/Cite	Facts/Issue(s)	Lower Court	Appellate Court	Subsequent Treatment/ Practice Tips
<i>Korman v. Strick</i> , 133 Ariz. 471, 652 P.2d 544 (1982)	Dissolution action. H failed to comply with several discovery requests. An order for attorney's fees was entered with a date certain for payment. H failed to pay until the day before OSC hearing.	Despite H's payment one day before the hearing, H was sentenced to 30 days in jail. H filed Special Action.	Relief granted and order vacated. H had absolute right to purge himself of civil contempt by paying W and could not be incarcerated solely for punitive purposes.	
<i>Young v. Burkholder</i> , 142 Ariz. 415, 690 P.2d 134 (App. 1984)	H and W entered into PSA where H agreed to pay college expenses for the children but failed to do so for one of them. The PSA was incorporated into Decree. W filed breach of contract action. H filed motion to dismiss on grounds PSA was merged into Decree.	Granted Motion to Dismiss. (Treated as MSJ because of Affidavits submitted).	Since children had emancipated, trial court only had jurisdiction in contract action. Cause of Action depended on whether merger occurred. Merger depends on intention of the parties which was a question of fact precluding summary judgment. Incorporation by reference is not necessarily a merger.	Practice Tip: Don't merge PSA into Decree for post-majority obligations.
<i>Tande v. Bongiovanni</i> , 142 Ariz. 120, 688 P.2d 1012 (1984)	H failed to pay certain child support payments in California Decree. W moved to Virginia and H moved to Arizona. W sought enforcement by contempt in Arizona under URESA.	Dismissed W's action on ground trial court did not have jurisdiction for arrearages where children were no longer minors. Ct. of Appeals reversed and held trial court had jurisdiction, but contempt was not a viable recovery.	Affirmed jurisdiction but reversed Court of Appeals on contempt. Contempt is a viable remedy for non-payment of child support arrearages even after the children have reached majority.	

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<p><i>Hindsley v. Hindsley</i>, 145 Ariz. 428, 701 P.2d 1236 (App. 1985)</p>	<p>Parties were awarded joint custody of child in Decree. M had primary care and F visitation. F filed third petition for contempt for M's alleged violation of F's visitation rights. M contended F's motions were equivalent to change of custody filed less than one year after Decree and violated A.R.S. § 25-332(B).</p>	<p>M was not found in contempt, but had not obeyed visitation schedule. F was granted primary care. No change in custody.</p>	<p>Affirmed. Change in visitation and primary care was not a change in custody. F was not required to wait one year before seeking modification of visitation or primary care.</p>	<p>Distinguished by <i>Owen v. Blackhawk</i>, 206 Ariz. 418, 79 P.3d 667 (App. 2003)</p>
<p><i>Solomon v. Findley</i>, 167 Ariz. 409, 808 P.2d 294 (1991)</p>	<p>Parties entered into PSA for payment of post-minority college expenses incorporated into default Decree. F failed to pay. M filed enforcement action in family court which was dismissed for lack of jurisdiction. M and child then filed breach of contract action in civil court. F argued merger precluded action.</p>	<p>F's motion to dismiss granted on grounds that PSA was merged into Decree. Court of Appeals reversed and held M could pursue breach of contract action.</p>	<p>Affirmed. A contract for post-majority support should be enforced in a separate contract action. The divorce court only has jurisdiction to enforce child support provisions until the child reaches majority. Supreme Court recognized a growing majority of states that permit enforcement of post-majority support provisions by contempt.</p>	<p>Declined to extend by <i>In Re Marriage of Abrams v. Abrams</i>, 2009 WL 4547920 (Memo.)</p>
<p><i>In Re Marriage of Crawford</i>, 180 Ariz. 324, 884 P.2d 210 (App. 1994)</p>	<p>In Decree W was awarded 32-1/2% of H's military retirement benefits. H retired early, took a lump sum benefit and bought a house. H paid nothing to W. W filed Petition for OSC.</p>	<p>W received judgment for her percentage of H's lump sum payment which was secured by lien on H's home. Also found H in contempt for failing to comply with subpoena <i>duces tecum</i>.</p>	<p>Affirmed. A.R.S. § 25-318(C) allows the Court to impress a lien on separate property to secure the payment of "any interest" in the property or to enforce the division of community property.</p>	<p>Practice Tip: Put the legal description of the property in the lien.</p>

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<p><i>Little v. Superior Court</i>, 180 Ariz. 328, 884 P.2d 214 (App. 1994)</p>	<p>Dissolution. H, based on advice of counsel, took W's van, left her his truck, and sold W's vehicle for less than market value. H then used the funds to pay his attorney's fees and buy a less expensive vehicle. W argued contempt in violation of Preliminary Injunction. H argued that payment for legal services in a divorce was a necessity of life.</p>	<p>Found both H and his counsel in contempt and ordered restitution to W of \$9,350. H and counsel filed Special Action.</p>	<p>Relief denied. Attorney's fees are not normally a necessity of life. There are other statutes that address attorney's fees in domestic relations cases. H could have requested relief from the Court before resorting to self-help.</p>	<p>Reasonable Attorney's fees are now included in Preliminary Injunction as a permissive use of community property.</p>
<p><i>Steiner v. Steiner</i>, 179 Ariz. 606, 880 P.2d 1152 (App. 1994)</p>	<p>Before divorce H and W entered into separation agreement which required H to pay child support, spousal maintenance, and several post-majority expenses of their daughter. The agreement was incorporated into the Decree. H failed to pay. W sought contempt. H argued that trial court had no jurisdiction for child support and other expenses after daughter reached majority.</p>	<p>Entered judgment against H, but denied contempt.</p>	<p>Reversed and remanded. Court had no jurisdiction to award post-majority child support arrearages and other obligations. W should have initiated a contract action.</p>	
<p><i>Muchesko v. Muchesko</i>, 191 Ariz. 265, 955 P.2d 21 (App. 1997)</p>	<p>H was awarded house in Prescott after dissolution trial. W filed a <i>lis pendens</i> and claimed the dissolution action constituted an action affecting title to real property because in post-trial motions she asked the court to award her the house. H filed a motion to quash the <i>lis pendens</i>.</p>	<p>Motion to Quash the <i>Lis Pendens</i> denied.</p>	<p>Reversed and remanded. A contested issue in dissolution regarding award of marital residence is not "an action or suit which directly affects the title." Therefore, the <i>lis pendens</i> was improper.</p>	

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<p><i>Johnson v. Johnson</i>, 195 Ariz. 389, 988 P.2d 621 (App. 1999)</p>	<p>H and W entered into PSA which gave W an interest in H's military retirement funds of \$200 per month indefinitely with an allotment to receive the funds directly. H failed to pay. W first sought enforcement after four years, but then waited 15 more years to collect again. W did not seek contempt. W did not renew judgment. H argued payments more than five years prior were uncollectable.</p>	<p>Granted judgment for all amounts owing with allotment for future payments due by date certain.</p>	<p>Modified the judgment to include only those payments due within five years. The five-year renewal period begins to run as each installment becomes due. This applies to support orders as well as division of property rights. Court noted that W did not seek contempt, but did not state whether result would be different had she done so.</p>	<p>Practice Tip: Judgments for money must be renewed every five years or they expire.</p>
<p><i>Danielson v. Evans</i>, 201 Ariz. 401, 36 P.3d 749 (App. 2001)</p>	<p>After special master proceedings, W was awarded percentage of H's future military retirement. Later, H sought disability benefits which reduced the retirement benefit. W filed petition for contempt and judgment, or alternatively, spousal maintenance. H argued trial court had no jurisdiction to find contempt and judgment violated federal law.</p>	<p>Found H in contempt for both failure to pay retirement benefits and attorney's fees and entered judgment against H for reduction in retirement benefit.</p>	<p>Affirmed judgment but denied contempt for reduction in benefit. Affirmed contempt for failure to pay attorney's fees. Appellate courts lack jurisdiction for appeal of civil contempt adjudication. However, it may be addressed by Special Action and Court treated it as Special Action. Trial court lacked jurisdiction to order contempt for failure to make retirement payments, as property settlement payments. But, trial court could enforce orders for payment of attorney's fees and costs through civil contempt (citing <i>Korman, Masta, Johnson</i>).</p>	

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<p><i>Hays v. Gama</i>, 205 Ariz. 99, 67 P.3d 695 (2003)</p>	<p>During divorce proceedings M was ordered to take daughter to specific male therapist regarding custody, visitation and sexual abuse allegations. M took child to female therapist instead. F requested sanctions.</p>	<p>Found M in contempt and ordered four sanctions: (1) pay female counselor's fees; (2) pay F's attorney's fees and costs; (3) disallowed female counselor's opinions; and (4) prohibited custody evaluator and other professionals from using female counselor's records as evidence or as basis for opinions.</p>	<p>M filed Special Action. Court of Appeals declined jurisdiction. Supreme Court granted Petition for Review and held that two monetary sanctions were well within the discretion of the trial court. However, the evidentiary sanctions conflicted with the best interests of the child, a "very important third party," and were vacated. The Court stated that any contempt sanction excluding evidence in a child custody dispute necessarily conflicts with the trial court's duty to consider all relevant factors. These sanctions were not necessary to vindicate the court's authority and other sanctions, such as community service penalties, could have been imposed.</p>	

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<p><i>Birt v. Birt</i>, 208 Ariz. 546, 96 P.3d 544 (App. 2004)</p>	<p>Decree allocated property and debts between parties, without spousal maintenance, but with child support. H filed bankruptcy and discharged his portion of certain debts. W filed Rule 60 motion (ARCP) to set aside Decree and enter new orders based on: (1) newly discovered evidence; (2) prospective enforcement; and (3) substantial injustice.</p>	<p>Denied W's motion.</p>	<p>Reversed and remanded. Filing of bankruptcy was not newly discovered evidence or prospective enforcement. However, under Rule 60(c)(6) the filing of bankruptcy was a "reason justifying relief from the operation of the judgment." The Court's equitable division of community debts was effectively and immediately destroyed when H's obligation to pay those debts was discharged, leaving W liable for those debts. Such a result is contemplated by A.R.S. § 25-327(A).</p>	
<p><i>Munari v. Hotham</i>, 217 Ariz. 599, 177 P.3d 860 (App. 2008)</p>	<p>M had history of denial of court-ordered grandparent visitation with contempt, fines and attorney's fees. M petitioned to relocate the child and step-father was joined in the action. Court ordered some visitation as a condition of relocation. M failed to allow visitation. Grandparents filed for contempt.</p>	<p>Court found M and step-father in contempt, imposed daily monetary sanctions until visitation was restored, and ordered M to pay grandparents attorney's fees. M and step-father filed Special Action.</p>	<p>Contempt orders are not appealable. But, Special Action relief was accepted. M's orders affirmed. Step-father's orders vacated. Although grandparents may not contest a relocation, they may seek contempt for denial of visitation. Sanctions could be entered against M but not step-father because he was not subject to the visitation orders.</p>	

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<i>Hurd v. Hurd</i> , 223 Ariz. 48, 219 P.3d 258 (App. 2009)	During dissolution M sought sole legal custody and permission to relocate to Wisconsin with the children. F had history of physical abuse with Order of Protection and was granted supervised parenting time three times a week. F sought contempt for M failing to bring the children to supervised parenting time and failing to bring the children to F's church.	Found M in contempt for not taking children to F's church, but not in contempt for any other orders and no sanctions were granted. Court eventually awarded M sole custody and permitted the relocation. F appealed.	Affirmed sole custody to M, but remanded to trial court for additional findings of fact on relocation, including the likelihood that M would comply with parenting time orders.	Distinguished in <i>Charepoo v. Dahnad</i> , 2014 WL 185 1884 (Memo.)
<i>Thompson v. Corry</i> , 231 Ariz. 161, 291 P.3d 358 (App. 2012)	Trial court appointed a TI in case involving two children and ordered each parent to pay a share of the fees. F did not pay. M, represented by Community Legal Services, sought contempt and award of attorney's fees. F argued court had no authority to award legal fees for <i>pro bono</i> services.	Found F in contempt and ordered him to pay M's legal fees at prevailing market rate of \$175/hr.	Affirmed A.R.S. § 25-324 and rule 92(E)(2), A.R.F.L.P., authorized court to award M attorney's fees for <i>pro bono</i> counsel at prevailing market rate.	Distinguished in <i>City of Tempe v. State</i> , 237 Ariz. 360, 351 P.3d 367 (App. 2015)

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<p><i>In Re Marriage of Dougall</i>, 234 Ariz. 2, 316 P.3d 591 (App. 2013)</p>	<p>W filed post-decree contempt petition against H for failure to pay spousal maintenance. H argued that trial court could not consider VA disability benefits as income in determining the payment on arrears.</p>	<p>Held H in contempt with purge clause that H pay current amount plus \$200/mo. on arrears. Court also entered separate IWO directing that \$200/mo. be withheld from H's VA disability benefits. H appealed.</p>	<p>Affirmed in part and vacated in part. Trial court may properly consider VA disability benefits in determining the payment on arrears for spousal maintenance. A.R.S. § 25-530 only precludes such consideration in determining whether to award spousal maintenance or the amount of an award, not payment of arrearages. However, the IWO was prohibited by federal law and vacated.</p>	
<p><i>Natale v. Natale</i>, 234 Ariz. 507, 323 P.3d 1158 (App. 2014)</p>	<p>W filed a post-decree petition for enforcement and contempt on the grounds H had not completed various steps necessary for the division of marital assets. W also requested an award of attorney's fees for prior and current proceedings.</p>	<p>Resolved several issues regarding the division of marital property and accounts and later awarded W attorney's fees. The Court did not find contempt, but found H took a number of unreasonable positions. H appealed after all orders were entered.</p>	<p>Held appeal was timely. Issued separate Memo Decision affirming trial court's rulings. (2014 WL 1758308, 4/16/14). Trial court did not abuse its discretion in attorney's fees award.</p>	

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<p><i>Jensen v. Beirne</i>, 241 Ariz. 225, 386 P.3d 411 (App. 2016)</p>	<p>In the decree and subsequent orders, W was ordered to sell certain real properties. W did not cooperate in the sale. H filed for enforcement of orders.</p>	<p>Ordered W to sign Quit Claim Deed to one property and ordered H to refinance the other by removing W's name from it. Later, court vacated relief and dismissed H's petition on the grounds that neither party had renewed the judgment within 5-year limitations period under A.R.S. § 12-1551. H appealed.</p>	<p>Reversed and remanded. The statute of limitations does not apply to real property distributions and directions made in a divorce decree that are not judgments for payments of sums certain or judgments enforcing property liens. Court noted that enforcement of dissolution decrees, typically through contempt, are generally predicated upon the equitable power of the family court to do full and complete justice between the parties. The Court then retains jurisdiction to enforce a dissolution decree until such justice is achieved. In this pursuit, the court here may either grant relief in accordance with the original decree, or if such relief will no longer achieve full and complete justice between the parties, it may alternatively make new orders consistent with the parties' property interests, to accomplish that end. Moreover, if A.R.S. § 12-1551 were applicable, the sale of the properties or W's expressed refusal to sell them were pre-conditions to H having a right to sue for their proceeds, if necessary.</p>	