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Monday, 06/25/07

Child-support suit challenges jail tactic

Dad says inability to pay is no crime

By SHEILA BURKE
Staff Writer

Bryan Cottingham insists he had no intention of trying to escape the \$37,000 he owed in back child support — he says he just didn't have the money to pay.

But that didn't stop a private collection agency working for the state from asking a Williamson County court to throw him in jail. Without a lawyer for much of the case, the freelance television producer and traffic reporter was sentenced to 170 days for criminal contempt of court. In 2002, he spent two days behind bars before making bail.

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After years of legal wrangling, the Tennessee Supreme Court unanimously overturned the convictions, ruling that no one proved Cottingham had the money and refused to pay.

Cottingham, now 60, is pushing a federal lawsuit, hoping to collect damages and prevent the state child-support collectors from improperly using the threat of jail to pressure people who can't afford to pay.

"I never tried to get out of paying child support. I never felt like I should get out of

it," he said, adding: "I can tell you that there was nothing lower in my life than when I was in that jail cell."

Company follows laws

Officials at Tennessee's Department of Human Services and the contractor involved, Policy Services Inc. of Denver, declined requests to discuss Cottingham's case, citing the pending lawsuit. But in separate statements, both noted the importance of making sure money gets to children and families who need it.

"PSI fully complies with all federal and state of Tennessee laws ...," the company said.

"We employ a range of civil and criminal measures made available to us by the state to collect unpaid child support payments, including civil and criminal contempt petitions.

"It is the responsibility of the court system to protect the rights of all parties affected by a legal action, including the children who have not received the child support to which they are legally entitled," the statement continued. "In the end, an individual who owes child



Bryan Cottingham of Nashville says his income plunged and he never intended to shirk his child-support duty. (RICKY ROGERS / THE TENNESSEAN)

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CHILD-SUPPORT COLLECTIONS

The number of child-support collection cases has increased 25 percent during the past five years, while the amount collected and disbursed rose nearly 50 percent.

FY | Collection cases | Amount disbursed

2006	178,090	\$478,039,699
2005	167,501	\$444,111,336
2004	159,386	\$412,657,363
2003	150,290	\$361,573,320
2002	142,947	\$318,941,555

SOURCE: Tennessee Department of Human Services

Sheila Burke can be reached at 664-2144 or sburke@tennessean.com

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support will not go to jail unless it is proved beyond a reasonable doubt that he or she committed a crime."

Collection cases abound

Mike Adams, assistant commissioner for child support at the Department of Human Services, said in a statement that "for many families, receiving regular support can be the difference between self-sufficiency or dependence on others or the state."

"Unfortunately, in spite of our best efforts, far too many parents are still walking away from their responsibility to provide financial support for their children," he said. "These absent parents often leave the custodial parent and children in a difficult situation, struggling to provide for the basic necessities of life."

Officials at the department, which oversees child-support collections, said they don't track how many of the nearly 258,000 current child-support collection cases involve someone going to jail.

But one Nashville lawyer who works in family law thinks Cottingham's case offers a window into the state's complex, half-billion-dollar-a-year world of child-support collections. The system affects vast numbers of Tennesseans and collects money under threat of sanctions that can lead to financial ruin or incarceration, attorney Mike Urquhart said.

"Just because someone didn't pay their child support does not mean that they are in contempt of a court order," he said.

Income dropped 80%

During the 1990s, Cottingham paid support based on the \$75,000 annual pay he earned at the time. But then his business tanked. "My income dropped about 80 percent," Cottingham said.

The payments were lowered, but he still couldn't keep up. The hole got deeper and deeper until he owed \$37,000 in back child support and \$36,000 in back alimony.

To put someone in jail for criminal contempt of court, the prosecution must prove that the person had the ability to pay and that nonpayment was deliberate.

PSI contracts to collect unpaid support in 11 counties, including Davidson, Williamson and Hickman. The work involves more than 35,000 cases and more than \$381 million in unpaid child support, the company said.

In May of 2002, PSI filed 17 counts of criminal contempt against Cottingham. Cottingham couldn't afford a lawyer and didn't have one for much of the trial. The state Supreme Court later ruled that Cottingham should have had a lawyer appointed for what became a criminal proceeding, or asked whether he wanted to waive his right to an attorney.

Urquhart said he often sees criminal contempt petitions used in a similar manner in Metro's Juvenile Court.

"It is a standard contempt petition," he said. "They allege the same thing almost in every petition. I think that there is no accountability on the contracting agency of how they behave."

The tactics of child-support collectors statewide seem to be working. During the past five years, the amount of child support disbursed through DHS collections increased 50 percent to \$478 million in 2006. That's about twice as fast as the growth in new collection cases.

Tony Gottlieb, of DAD of Tennessee, a fathers-rights organization, said he frequently hears claims that criminal contempt orders are being used improperly to collect child support.

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"This is not an unusual situation you're talking about," he said. "It happens all the time."

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The problem is being "in compliance" with a court order on arrears does not prevent DHS from taking other measures to collect the full amount as they see fit. This includes taking tax refunds and other seizures. This is a directive from federal law and I believe there is state statute backing. While it might seem like a mere technical difference, the actual liability between arrears and retro is substantial.

As I tried to explain to DHS, it makes no sense to continually provoke a parent who has demonstrated full compliance once an order has been established. You put those folks in the same category as those who have knowingly dodged a valid order for years. That didn't sink in and trying to take a tax refund (which wasn't going to exist anyway) is what brought matters to a head. They lost. Even after that they tried it again. I suppose due process and res judicata were just words to them but the court thought otherwise. The prospect of sanctions and contempt citations got that straightened out in a hurry. But they continue to try this on the unwary and I'm sure they get away with at times. Everything has a limit and this is one that doesn't need to be exceeded. Disrupting the finances of a fully compliant parent isn't even good business. I think the courts, at least, are beginning to catch on to this.

Posted: Fri Jun 29, 2007 1:23 pm

rk, I see your point and agree with you (somewhat). If I have a client standing before the court owing \$10K, I always let the court know that that amount originated as a retroactive judgment, not accruals of current payments. But once it's reduced to judgment form, it's treated the same.

A person with a huge balance can still easily be "compliance" by making payments (current and arrears). All people with balances owing are not delinquent or in contempt.

In the out-of-wedlock cases, no knowledge of the child is a defense to a retro award. If he can prove he didn't know about the baby (or she can't prove she told him), then there will be no retro. I've won a couple of cases like that - where the woman shows up years later and attempts to get back support back to the birth. The law says a resounding NO! on those cases. If she hid the child, she waives the retro.

Posted: Fri Jun 29, 2007 12:42 pm

I was referring to out-of-wedlock cases where the father is not aware the child exists. There are no court-ordered payments until paternity is established. This is where "retroactive to date of birth" awards originate. Arreages occur after an order is in place but payments are not made.

Posted: Fri Jun 29, 2007 8:16 am

If a parent "hides a child" then why doesn't the person paying the child support track down who is cashing the check?

Posted: Fri Jun 29, 2007 8:03 am

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