ADVANCE SHEET HEADNOTE
June 17, 2024

2024 CO 44

No. 23SA332, *In re Marriage of Conners*—Civil Procedure—Contempt—Indirect Contempt—Service of Process—Direct Service.

In this original proceeding, the supreme court holds that the Colorado Rule of Civil Procedure 107, as amended in 1995, does not permit a party to serve process for indirect contempt by e-mail. The supreme court further holds that substituted service under Rule 4(f) is not permitted in contempt proceedings. Accordingly, the court makes the rule to show cause absolute and remands the case for further consistent proceedings.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 44

Supreme Court Case No. 23SA332
Original Proceeding Pursuant to C.A.R. 21
Larimer County District Court Case No. 19DR30568
Honorable Kandace Bradner Majoros, Magistrate

In re the Marriage of
Petitioner:

Amanda Wynell Conners,

and

Respondent:

Andrew Brian Conners.

Rule Made Absolute
en banc
June 17, 2024

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No appearance on behalf of Amanda Wynell Conners.

JUSTICE HOOD delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE HART specially concurred.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In this original proceeding involving an underlying domestic relations action, we consider Andrew Brian Conners's ("Father's") assertion that a party may not serve process for indirect contempt by e-mail. We agree. We therefore make the rule to show cause absolute.

I. Facts and Procedural History

¶2 Father and Amanda Wynell Conners ("Mother") are ex-spouses in a post-decree dissolution of marriage proceeding. Mother and Father have one minor child. In 2021, the Larimer County District Court ordered Father to pay monthly child support and a portion of the child's extraordinary medical expenses.

¶3 In 2023, Mother filed a motion for contempt of court, alleging that Father hadn't made the required payments. The motion requested both remedial sanctions ("[s]anctions imposed to force compliance with a lawful order," C.R.C.P. 107(a)(5)) and punitive sanctions (sanctions "for conduct that is found to be offensive to the authority and dignity of the court," C.R.C.P. 107(a)(4)).

¶4 The district court issued a citation to show cause, and Mother's representative twice unsuccessfully attempted to personally serve Father at his domicile in California. So, Mother asked the district court for permission to e-mail the contempt materials under C.R.C.P. 4(f), which allows for substituted service under certain circumstances.

¶5 Father countered that e-mail service was inconsistent with C.R.C.P. 107, which governs contempt proceedings in civil cases, but the district court agreed with Mother and allowed it.

¶6 Father then petitioned this court under C.A.R. 21, challenging the district court's decision. We issued a rule to show cause.[1]

II. Analysis

A. Original Jurisdiction Under C.A.R. 21

¶7 The decision to exercise original jurisdiction under C.A.R. 21 "is an extraordinary remedy limited in purpose and availability," over which we have sole discretion. *People v. Owens*, 2018 CO 55, ¶ 4, 420 P.3d 257, 258. We typically exercise our jurisdiction when "an appellate remedy would be inadequate, a party would suffer irreparable harm, or the petition raises issues of first impression that are of significant public importance." *In re Marriage of Green*, 2024 CO 24, ¶ 8, 547 P.3d 1095, 1097.

¶8 This case raises all three grounds. Father can't directly appeal the service issue until the district court adjudicates Mother's contempt motion, at which point Father's challenge will be moot (if he is *not* found in contempt) or he will face

[1] Father presented the following issue in his petition:

> Whether the magistrate erred by authorizing service by email of the initial documents in a contempt of court action.

incarceration (if he *is* found in contempt). If the district court erred in its contempt finding, Father may be wrongfully confined during the pendency of his appeal, a harm which can't be redressed by a reversal. *See People v. Maes*, 2024 CO 15, ¶ 9, 545 P.3d 487, 490. Finally, this court hasn't construed Rule 107's service requirements—requirements that apply beyond family law—since the Rule's amendment in 1995. Therefore, this case raises an issue of first impression that is of statewide public importance.

¶9 For these reasons, we choose to intervene now.

B. Standard of Review and Principles of Interpretation

¶10 We review interpretations of the Colorado Rules of Civil Procedure de novo. *Brown v. Walker Com., Inc.*, 2022 CO 57, ¶ 14, 521 P.3d 1014, 1018. In doing so, we "apply 'settled principles of statutory construction.'" *Id.* (quoting *Schaden v. DIA Brewing Co.*, 2021 CO 4M, ¶ 32, 478 P.3d 1264, 1270). We therefore "interpret the rules according to their commonly understood and accepted meanings," *id.*, looking to the language of the rule before relying on extrinsic aids of construction, *People v. Jones*, 2020 CO 45, ¶¶ 54–55, 464 P.3d 735, 746.

C. Threshold Issues

1. Service of Process and Personal Jurisdiction

¶11 As an initial matter, the Attorney General on behalf of the district court contends that Mother didn't need to personally serve Father with the contempt

motion because "a district court which has entered a decree of dissolution possesses continuing in personam . . . jurisdiction to enforce its child support orders by punishing a non-complying obligor for contempt of court." *Gonzales v. Dist. Ct.*, 629 P.2d 1074, 1075 (Colo. 1981). We are not persuaded.

¶12 Personal jurisdiction and proper service of process are interrelated but distinct concepts: "Proper service of process alone does not confer personal jurisdiction, nor does the existence of personal jurisdiction obviate the need for proper service of process." *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473, 476 (Colo. App. 1992) (quoting 4 Robert M. Hardaway & Sheila K. Hyatt, *Colorado Practice: Civil Rules Annotated* 108 (2d ed. 1985)). Rule 107 imposes service-of-process requirements even though most alleged contemnors are already subject to personal jurisdiction. Allowing initial service of process and continuing personal jurisdiction to satisfy the notice requirement for contempt would render meaningless significant portions of Rule 107, an outcome we strive to avoid. *See Bennett Bear Creek Farm Water & Sanitation Dist. v. City & Cnty. of Denver*, 928 P.2d 1254, 1262 (Colo. 1996) ("We must give effect to the meaning, as well as every word of a statute if possible.").

¶13 Proper service of the contempt motion was thus required here.

2. Applicability of the Rules of Civil Procedure

¶14 The parties next dispute whether the district court is bound by Rule 107. Father argues that the civil rules govern in civil cases, C.R.C.P. 1(a), and the underlying domestic relations case here is civil in nature, *In re Marriage of Wollert*, 2020 CO 47, ¶ 26, 464 P.3d 703, 710. The district court, however, responds that whether the civil rules are binding in a contempt proceeding depends on the nature of the sanctions contemplated: Contempt that is civil in nature is bound by Rule 107, but criminal contempt is governed by the Rules of Criminal Procedure, which include a provision that allows the court (when the criminal rules are silent) to "proceed in any lawful manner" and to "look to" the civil rules for guidance. Crim. P. 57(b). The district court suggests that the Rules of Criminal Procedure should control because the contempt motion requested incarceration in addition to a fine. Thus, the contempt sanction didn't need to be "served directly upon" the contemnor under Rule 107(c).

¶15 We agree with Father. Admittedly, there is some cause for confusion. Our case law and the prior version of C.R.C.P. 107 have referred to contempt as "civil" and "criminal." *See, e.g.*, *People v. Barron*, 677 P.2d 1370, 1372 (Colo. 1984); *People v. Razatos*, 699 P.2d 970, 974 (Colo. 1985); *see also* C.R.C.P. 107(e) (1994). But these authorities make it clear that these terms refer to the "purpose and character of the

sanctions," they don't describe which set of procedural rules applies to the action. *Razatos*, 699 P.2d at 974. For example, in *Razatos* we specifically noted:

> We recognize that C.R.C.P. 107 is entitled "Civil Contempt" and that subsection (e) of the rule could be interpreted to imply that criminal contempt proceedings are not governed by C.R.C.P. 107. Yet, the title of the rule is not fully descriptive of the rule's content, for C.R.C.P. 107 clearly includes a definition encompassing, and procedures governing, both civil and criminal contempt, as those terms are defined in [*Barron*, 677 P.2d at 1372 n.2].

699 P.2d at 974 n.1; *accord Kourlis v. Port*, 18 P.3d 770, 773 (Colo. App. 2000) ("[P]unitive contempt (formerly known as 'criminal contempt') is not a criminal offense."); *cf. In re Parental Responsibilities Concerning A.C.B.*, 2022 COA 3, ¶ 3, 507 P.3d 1078, 1081 (holding that the Sixth Amendment right to court-appointed counsel applied to remedial (formerly "civil") sanctions where jail sentences were available even though this right doesn't apply in civil cases).

¶16 In revising Rule 107 in 1995, however, we removed all references to criminal and civil contempt, replacing them instead with "Remedial Sanctions for Contempt" and "Punitive Sanctions for Contempt" to eliminate this confusion. *Compare* C.R.C.P. 107(a)(4), (5) (2023), *with* C.R.C.P. 107 (1994); *see also* Colo. Sup. Ct., Civ. Rules Comm., *Minutes of Meeting* (Jan. 24, 1992).

¶17 We therefore clarify that Rule 107 governs all contempt proceedings, whether punitive or remedial, that arise out of an underlying case that is civil in

nature (like this case). With these threshold issues resolved, we now address what the plain language of Rule 107 requires.

D. The Plain Meaning of C.R.C.P. 107(c)

¶18 Father's alleged conduct, if true, would constitute indirect contempt—"[c]ontempt that occurs out of the direct sight or hearing of the court." C.R.C.P. 107(a)(3). The contempt proceeding here is therefore governed by Rule 107(c). In considering Rule 107(c)'s meaning, some context is helpful. Until 1995, Rule 107(c) provided that, with respect to service of process, "[t]he citation and a copy of the motion and affidavit shall be served upon such person a reasonable time before the time designated" for the contemnor to appear. C.R.C.P. 107(c) (1994). Colorado courts have interpreted this rule to permit indirect forms of service, including service on a contemnor's coworker, *see People in Int. of S.C.*, 802 P.2d 1101, 1104 (Colo. App. 1989), and service on a contemnor's counsel, *see Bd. of Water Works of Pueblo v. Pueblo Water Works Emps. Loc. 1045*, 586 P.2d 18, 22–23 (Colo. 1978).

¶19 But when we revised Rule 107(c) in 1995, we added the word "directly." The rule now states in relevant part that "[t]he citation and a copy of the motion, affidavit and order shall be served *directly* upon such person at least [twenty-one] days before the time designated for the person to appear." C.R.C.P. 107(c) (2023) (emphasis added).

¶20 So, how does our addition of "directly" change the Rule's requirements? Dictionaries consistently define "directly" and "direct" in terms of a lack of deviation, interruption, or influence. *See, e.g.*, *Direct*, Black's Law Dictionary (11th ed. 2019) (defining "direct" as "[f]ree from extraneous influence"); *Direct*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/*direct* [https://perma.cc/2LBE-JY5N] (defining direct as "from point to point without deviation," "from the source without interruption or diversion," and "without an intervening agency"); *Directly*, Black's Law Dictionary (11th ed. 2019) (defining "directly" as "[i]n a straight line or course"). These dictionaries note that this lack of interruption can be either physical or temporal. *See, e.g.*, *Directly*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/*directly* [https://perma.cc/9K5H-VWBW] (defining "directly" both as "in immediate *physical* contact" and "without delay," with the second definition being exemplified by the sentence "the second game followed *directly* after the first" (first emphasis added)). Rule 107(c) already contains a temporal restriction that *doesn't* require a lack of interruption—the required documents need only be served at least twenty-one days before the designated hearing. Thus, "directly" as used here imposes a physical restriction, not a contradictory temporal one. *See Edwards v. New Century Hospice, Inc.*, 2023 CO 49, ¶ 15, 535 P.3d 969, 973 ("[W]e look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect

to all of its parts." (quoting *Chirinos-Raudales v. People*, 2023 CO 33, ¶ 13, 532 P.3d 1200, 1203)). These definitions thus lead us to conclude that Rule 107(c) unambiguously requires physical service on the specific individual accused of contempt without any intermediate intervention. To the extent pre-amendment cases, such as *S.C.* and *Board of Water Works of Pueblo* (or any other Colorado cases), hold otherwise, we overrule them.

¶21 E-mail service doesn't satisfy Rule 107(c)'s requirements. First, it's not physical service. It's digital. Nor is it delivered directly to the contemnor. E-mails are sent to a *third-party server* housed on the recipient's computer (in the case of client-based e-mail server systems like Microsoft Outlook) or on the internet (in the case of web-based e-mail server systems like Gmail, the system Father uses). Scott Rose et al., *NIST Special Publication 800-177 Revision 1: Trustworthy Email*, Nat'l Inst. of Standards & Tech. (2019), https: //nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-177r1.pdf [https://perma.cc/EXJ9-YZFJ]. To access the e-mail, the recipient must log on to the third-party server. The recipient doesn't receive direct notice.

¶22 We therefore hold that e-mail service is improper under Rule 107(c).

E. Application of C.R.C.P. 4(f)

¶23 But what about Rule 4(f), which provides that if a party fails to effectuate personal service and future attempts would be to no avail, a court shall order

substitute service by "(1) authoriz[ing] delivery to be made to the person deemed appropriate for service, and (2) order[ing] the process to be mailed to the address(es) of the party to be served by substituted service"? Remember, this case comes to us in response to a substituted service motion.

¶24 We hold that substituted service is inappropriate in contempt proceedings. Rule 4(f), like all other provisions of Rule 4, "applies to all process except as otherwise provided" in the Colorado Rules of Civil Procedure. C.R.C.P. 4(a). And Rule 107(c) provides otherwise. By stating that "[t]he citation . . . shall be served directly upon such person," Rule 107(c) makes direct service on the contemnor mandatory. *See Walton v. People*, 2019 CO 95, ¶ 13, 451 P.3d 1212, 1216 ("'Shall' is mandatory unless there is a clear indication otherwise."). Rule 4(f) doesn't satisfy this requirement: It allows for service on a different person "deemed appropriate for service." C.R.C.P. 4(f)(1). Rule 107(c)'s mandatory language thus operates as a rejection of Rule 4(f) substituted service in contempt proceedings.

¶25 Because e-mail service is impermissible in contempt actions, the district court erred in letting Mother serve Father's contempt documents by e-mail.

III. Conclusion

¶26 We make the rule to show cause absolute and remand the case for further proceedings consistent with this opinion.

JUSTICE HART specially concurred.

JUSTICE HART, specially concurring.

¶27 I fully join the majority's opinion, as it correctly applies the current law. I write separately to suggest that we amend C.R.C.P. 107(c) to permit substituted service of process in accordance with C.R.C.P. 4(f).

¶28 In this family dispute, both parents submitted to the jurisdiction of the Larimer County District Court for the dissolution of their marriage. Both agreed to the court's jurisdiction to enter permanent orders in February 2021, awarding Amanda Wynell Conners ("Mother") full custody of the child and directing Andrew Brian Conners ("Father") to pay a certain amount in monthly maintenance and child support.

¶29 Entry of permanent orders in this dissolution did not end the litigation. In February 2022, Mother filed her first contempt motion, asking the court to enforce its orders for payment of maintenance and child support. She served it personally on Father at his last known address. Litigation continued and another motion for contempt, filed August 10, 2023, is the subject of this dispute.

¶30 Mother attempted to serve this motion on Father twice, again at his last known address. The process server was told that Father no longer resided at that address. Between the two efforts to serve this motion for contempt, Mother's lawyer communicated with Father's lawyer, who said that she was not aware that her client had moved and, as far as she knew, the address was current. Father's

lawyer refused to accept substituted service on behalf of her client. She did, however, include her client on some of the e-mail exchanges about the contempt motion, and Father continued to litigate other issues in the dispute. Under our current rules, Father was able to communicate with his attorney about the contempt motion, continue to litigate other matters in the case, and still evade the jurisdiction of the court regarding contempt.

¶31 Importantly, Mother exercised due diligence in attempting to serve process on Father. She twice sought to serve Father at his last known address, which his lawyer believed was still his address. She asked the lawyer to accept service, and the lawyer declined. Finally, she asked to serve Father by e-mail as a form of substituted service. I agree with the majority that our rules do not permit this alternative. But I also recognize a good faith effort to effectuate service, and I think we should examine the possibility that our rules should provide a safety valve in a situation like the one we confront here.

¶32 Several other jurisdictions permit substituted service of process in family law contempt proceedings. *See, e.g.*, A.R.S. Rules Fam. Law Proc., Rule 92(b)(2) (providing that, in contempt proceedings, the petition and order to appear must be personally served as provided in Arizona Revised Statutes Rule of Family Law Procedure 41(l), which permits substituted service if personal service is otherwise "impracticable"); Fla. Fam. L.R.P. Rule 12.615(b) (noting that, under the Florida

Family Law Rules of Procedure, if notice is "reasonably calculated to apprise the alleged contemnor of the pendency of the proceedings," then service is based on Florida Rule of General Practice and Judicial Administration 2.516, which requires service by e-mail in the first instance); MI Rules MCR 2.107(B)(1)(b) ("When a contempt proceeding for disobeying a court order is initiated, the notice or order must be personally delivered to the party, *unless the court orders otherwise*.") (emphasis added); *Koons v. Crane*, 853 S.E.2d 524, 530–32 (Va. Ct. App. 2021) (finding that a contemnor was properly served with a contempt citation when the contemnee sought and executed substituted service at the contemnor's "usual place of abode"). These jurisdictions have recognized that family disputes may require some flexibility. We should do the same.

¶33 This is particularly the case in light of the different technological reality that we live in today as compared to 1995—the year we amended Rule 107(c) to require that process be served "directly" upon the contemnor. E-mail was a novelty in 1995. The modern ubiquity of e-mail, text messaging, and other forms of notification provide strong reason for this court to reconsider rules—like Rule 107(c)—which require in-person service.

¶34 Technological changes aside, Rule 4(f)'s procedures are well-suited to provide notice and prevent evasion of service. In almost all civil cases in Colorado, Rule 4(f) permits parties to petition the court for substituted service when a party

"is unable to accomplish service, and service by publication or mail is not otherwise permitted." Contempt proceedings carry the potential for imprisonment, which makes them uniquely different from the penalties faced by other civil litigants. *See* C.R.C.P. 107(d). However, it is unclear why that difference necessitates unique forms of service. I agree that contemnors should be on notice of contempt proceedings against them, and I think Rule 4(f)'s contemplation of alternative forms of service is well-suited to serve that goal while also preventing those who would evade the jurisdiction of our courts from doing so.

¶35 For these reasons, while I fully agree with the majority, I write separately to suggest that we reexamine our rules.