

Cape Coral attorney challenges child support rules

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Thomas Heidkamp has been arrested nine times for failure to pay child support to his ex-wife for their 7-year-old twins.

As of Friday morning, there was another warrant for his arrest. He didn't appear in court Feb. 26 because he was incarcerated after an earlier failure to appear.

"I'm depressed, I'm anxious," he said. "I don't have the money to pay. I just got out of jail after doing 48 hours, and pretty soon I'll have the cops back at my door again."

Heidkamp, 49, a former attorney who collects disability, is one of 261 people enrolled in the Pay or Appear program, put in place in 2002 as a way to keep deadbeat parents accountable.

Proponents say it's working.

But Heidkamp's Cape Coral attorney, Sam Assini, is challenging the constitutionality of the program for a second time, claiming defendants are denied due process.

Ultimately, it may be up to the state Supreme Court to decide.

"I think it would be a good program if they weren't netting 100 dolphins when they're looking for two sharks," Assini said. "For people who are deadbeat parents and just won't pay, it's a good thing. But most of these people are good parents who want to pay, but they simply can't due to the bad economy, and they're being thrown in jail for it."

Chief Judge Keith Cary insists the program is constitutionally sound.

"We've looked at it thoroughly, we have in-house counsel who have looked at it, and I think if there were any type of serious problem, we would have heard from the Second District Court of Appeal," Cary said.

In addition to Heidkamp, another Fort Myers man, Childs Roberts, 43, is challenging the program in a motion for a rehearing filed Feb. 22 in the Second District Court of Appeal. Roberts says he's been arrested 13 times for failure to comply with the program, which he says asks him to pay \$132 a week for his 4-year-old son – \$12 more than what he earns.

"It's nightmarish, and I constantly feel like I'm looking over my shoulder," Roberts said.

"I love my boy so much, and I do care for him half the week. But I've been arrested before when I was \$1.90 short."

Established in Lee first as a pilot program in 2002, Pay or Appear requires parents enrolled in the program – those determined to have fallen behind on monthly child support payments – to pay on a weekly basis. If they don't pay by 5 p.m. Wednesday, they must appear before a judge the following Friday to explain why. If they have no reason and the judge determines they have ability to pay, they can be jailed until they do.

Program coordinator Rita Heckler said most pay within 24 hours of being jailed. She said the program has collected almost \$7 million in support since 2002. More than 450 people have phased out of the program, and the court is collecting 80 percent of what is owed in back child support, where it was previously collecting 20 percent. Most of the program's participants – 254 of 261 – are men.

In 2009, Heckler noted, \$1.4 million was owed in back child support as of September and \$1.3 million was collected — a 91.5 percent success rate. She said more children are receiving the support they need, and the program saves court time.

"We can have 80 people who haven't paid that week, and the hearings are over in an hour or less," Heckler said.

But Roberts said that is part of the problem.

"If you have 80 cases you're deciding in an hour, how is anyone getting a fair hearing?" he asked.

Assini's argument is the program doesn't meet due process requirements because defendants are given insufficient notice of hearing, are incarcerated for a civil matter without issuance of a proper order with findings of fact and custodial parents are not required to appear, meaning the defendant can't face his or her accuser.

He pointed out a similar program in Miami was halted in 1983 because of constitutional violations.

In August, Assini was representing Roberts and filed a request to the appeals court asking Roberts' warrants be thrown out until the constitutionality of the program could be determined. The court then requested Cary file a response, which came the next month. Cary contended the program wasn't flawed, but through an administrative order amended the notice requirements and ruled the judge must issue an order for each arrest.

Assini and Roberts, who have motions pending, say that isn't enough, and the program should be shut down unless it is revamped.

But Belinda Warren, Heidkamp's former wife, said the program is the only means she has to obtain support from her ex.

"Mr. Heidkamp can pay, he just doesn't want to," Warren said. "Is it fair that the primary residential parent be forced to shoulder the financial burdens of raising children alone because the other parent has things they'd rather spend their money on?"

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Abstract (Document Summary)

[...] Heidkamp's Cape Coral attorney, Sam Assini, is challenging the constitutionality of the program for a second time, claiming defendants are denied due process. Assini's argument is the program doesn't meet due process requirements because defendants are given insufficient notice of hearing, are incarcerated for a civil matter without issuance of a proper order with findings of fact and custodial parents are not required to appear, meaning the defendant can't face his or her accuser.

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