

Reconsidering Wilfulness as an Element of Civil Contempt

By Daniel J. Klau*

I. Introduction

How did wilfulness become an essential element of civil contempt under Connecticut law? Should it be an element? Should proof of wilfulness be required for certain types of contempt remedies, e.g., coercive penalties, such as fines and incarceration, but not other remedies, such as compensatory damages and attorney's fees?

This article addresses these questions in light of the Connecticut Supreme Court's 2017 decision in *O'Brien v. O'Brien*.¹ In *O'Brien*, the court reaffirmed that a formal finding of civil contempt "requires the court to find that the offending party wilfully violated the court's order; failure to comply with an order, alone, will not support a finding of contempt."² At the same time the court reminded the bench and bar of a well-established, but oft neglected, legal proposition: "[e]ven in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order. . . . Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation *even if the violation was not willful*."³

Critically, *O'Brien* also breathes new life into a 1984 Supreme Court case—*DeMartino v. Monroe Little League, Inc.*⁴ *O'Brien*'s reliance on *DeMartino* is significant for three reasons.

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¹ 326 Conn. 81, 96, 161 A. 3d 1236 (2017) [hereinafter *O'Brien*].

² *Id.* 98.

³ *Id.* 98-99 (emphasis added; citations omitted).

⁴ 192 Conn. 271, 471 A.2d 638 (1984) [hereinafter *DeMartino*].

First, relying on longstanding U.S. Supreme Court precedent, *DeMartino* teaches that civil contempt doesn't require proof of wilfulness. Second, it instructs that courts have the inherent authority to award compensatory damages to parties injured by non-wilful violations of court orders. Third, it holds that compensatory damages for non-wilful violations may include attorney's fees. But by indicating that *DeMartino* remains good law, *O'Brien* also creates a tension in the law of civil contempt in Connecticut: is wilfulness an element or isn't it? *O'Brien* expressly states that wilfulness is an element; *DeMartino* says otherwise.

After *O'Brien*, the scope of the Superior Court's inherent power to award compensatory damages for non-wilful violations of court orders is largely coextensive with the court's power to remedy civil contempts. However, one key difference remains: a finding of wilfulness is still required before a court can impose conditional penalties, such as fines or incarceration, which are intended to *coerce* a defiant party's future compliance with court orders, not to punish the party for a past violation.

Only the Connecticut Supreme Court can conclusively answer the questions this article addresses. But the impact of *O'Brien* on the law of civil contempt and the scope of the Superior Court's inherent power to enforce its orders warrants thoughtful analysis and discussion. The author hopes that this article accomplishes those objectives.

I. Civil Contempt in Connecticut: An Historical and Comparative Review.

Even as it held in *O'Brien* that proof of wilfulness is not required for orders intended to compensate a party for harm resulting from a violation of a clear order, the Supreme Court reaffirmed that, "to constitute contempt, a party's conduct must be willful."⁵ By contrast,

⁵ *O'Brien*, 326 Conn. at 98 (citing *Eldridge v. Eldridge*, 244 Conn. 523, 529, 710 A.2d 757 (1998)). The Connecticut Supreme Court has defined wilfulness as follows: "A wilful and malicious injury is one inflicted intentionally without just cause or excuse. It does not necessarily

wilfulness is *not* a requirement of civil contempt under federal law. The United States Supreme Court has long held that

[t]he absence of wilfulness does not relieve from civil contempt. Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance. . . . Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act. The decree was not fashioned so as to grant or withhold its benefits dependent on the state of mind of respondents. It laid on them a duty to obey specified provisions of the statute. An act does not cease to be a violation of a law and of a decree merely because it may have been done innocently.”⁶

The [McComb](#) decision remains the law in the federal courts, including the Second Circuit.⁷

In the Connecticut Supreme Court’s 1984 decision in *DeMartino*, which discussed the differences between civil and criminal contempt at length, the court cited *McComb* with approval and quoted its statement that “[t]he absence of wilfulness does not relieve from civil contempt.”⁸ In other words, *DeMartino* teaches that proof of wilfulness is not a requirement of civil contempt.

So how did wilfulness become an essential element of civil contempt in Connecticut?

A search of the Westlaw database of all Connecticut cases dated before 1981 reveals not one in which a court squarely held that wilfulness was an essential element of civil contempt,

involve the ill will or malevolence shown in express malice. Nor is it sufficient to constitute such an injury that the act resulting in the injury was intentional in the sense that it was the voluntary action of the person involved. *Not only the action producing the injury but the resulting injury must be intentional.* A wilful or malicious injury is one caused by design." *Markey v. Santangelo*, 195 Conn. 76, 77, 485 A. 2d 1305 (1985) (emphasis added; internal quotations omitted).

⁶ [McComb v. Jacksonville Paper Co.](#), 336 U.S. 187, 191, 69 S. Ct. 497, 93 L.Ed. 599 (1949) [hereinafter *McComb*].

⁷ See, e.g., *Canterbury Belts Ltd. v. Lane Walker Rudkin, Ltd.*, 869 F.2d 34 (2d Cir. 1989) (“We note, however, that sanctions for civil contempt can be imposed without a finding of wilfulness.”) (quoting *McComb*).

⁸ *DeMartino v. Monroe Little League, Inc.*, supra, 193 Conn. 279.

and only several cases in which the wilfulness requirement was at best suggested or implied.⁹

The earliest case is *Lyons v. Lyons* (1851), wherein the Supreme Court of Errors stated,

[t]he disobedience of the defendant to the decree of that court, in this instance, is palpable, wilful, and utterly inexcusable; and therefore constitutes, beyond a doubt, what is termed a *contempt*, which is well described, by an eminent jurist, (Judge *Swift*,) who defines it to be “a disobedience to the court, by acting in opposition to the authority, justice and dignity thereof,” and adds, that “it commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order or decree of the court; in all which cases, the party disobeying is liable to be attached and committed for the contempt. 2 *Sw. Dig.* 358.¹⁰

Yet *Lyons* says only that the particular defendant's “palpable, wilful and inexcusable” violation of a court order was a contempt; it does not hold that wilfulness is a “but for” requirement of all civil contempts.

Between 1981 and 1990, only 28 cases in the Westlaw Connecticut database contain the words contempt and wilful in the same sentence.¹¹ One of those cases is *DeMartino*. Several others involve criminal contempts or are otherwise not relevant. Two cases in particular are significant. The first is *Connolly v. Connolly*.¹² The Supreme Court held,

[t]he trial court's adjudication of contempt was premature. *The defendant's conduct cannot be reasonably viewed as wilful disobedience of a court order.* He had

⁹ See *Lyon v. Lyon*, 21 Conn. 185, 199 (1851); *Walden v. Seibert*, 102 Conn. 353, 128 A. 702 (1925); *Piacquadio v. Piacquadio*, 22 Conn.Supp. 47, 159 A.2d 628 (1960 (citing *Lyon v. Lyon*); *Papa v. New Haven Fed'n of Teachers*, No. 146164, 1976 WL 24924, at *1 (Conn. Super. Ct. Apr. 13, 1976), *judgment set aside*, 186 Conn. 725, 444 A.2d 196 (1982) (trial court recognizing claim for civil contempt “where that defendant is fully aware of the injunction and wilfully violates it).

¹⁰ 21 Conn. 185, 199 (1851).

¹¹ The author employed the following search query: “contempt /s (wilful! willful!). This query captures the two conventional spellings of the verb, as well as noun forms, e.g., wilfulness. Changing the query to search for cases in which the term appears within 50 words of “contempt,” rather than the same sentence, changes the search results only marginally. No doubt there are countless more cases which include the words “contempt” and “wilful.” However, limiting the search to opinions in which the terms appear in the same sentence is a reasonable way to isolate those cases in which the court actually discusses wilfulness as an element of civil contempt.

¹² 191 Conn. 468, 483, 464 A.2d 837 (1983).

adequately demonstrated a willingness to make the requisite payments once the court concluded he was legally bound to do so. This willingness to purge himself of the contemptuous behavior should have been acknowledged.”¹³

Notably, *Connolly* was decided one year before *DeMartino* and did not cite any authority for the implied holding that civil contempt requires wilful disobedience of a court order.¹⁴

The second notable case is *Marcil v. Marcil*, wherein the Appellate Court stated, “[a] civil contempt can involve a wilful failure to comply with a then outstanding court order.”¹⁵ This statement is obviously correct, but just as obviously does not stand for the proposition that wilfulness is a necessary element of civil contempt. The statement is also perfectly consistent with *DeMartino*.¹⁶

A search of the Westlaw database after 1990 reveals a dramatic increase in the number of cases in which the words contempt and wilful appear in the same sentence. Between 1991 and 2000, there are 221 cases; between 2001 and 2010, there are 655 cases; and between 2011 and the present, there are 722 cases. A substantial number of cases directly cite either *Connolly* or *Marcil*, or cite cases that rely on them. For example, in *O’Brien* the Supreme Court cites its 1998 decision in *Eldridge v. Eldridge*.¹⁷ *Eldridge*, in turn, cites *Connolly*. Interestingly, although some courts have discussed the difference between Connecticut law and federal law,¹⁸ none appear to

¹³ Id. at 483 (emphasis supplied).

¹⁴ Id. at 468.

¹⁵ 4 Conn.App. 403, 405, 494 A.2d 620 (1985).

¹⁶ See *Brickley v. Waste Management of Connecticut, Inc.*, No. CV920060522, 1998 WL 7099, *4 (Superior Ct. Jan. 6, 1998)

¹⁷ 244 Conn. 523, 529, 710 A.2d 757 (1998) (quoting *Connolly v. Connolly*, 191 Conn. 468, 483, 464 A.2d 837 (1983)); accord *Gabriel v. Gabriel*, 324 Conn. 324, 333-34, 152 A.3d 1230 (2017).

¹⁸ See, e.g., *AvalonBayCommunities, Inc. v. Orange Plan and Zoning Com’n*, No. CV98492246, 2000 WL 1872087 (Superior Court, Dec. 6, 2000) (citing *Connolly* and *McComb* and noting the difference between Connecticut and federal law)

have discussed the intra-state tension between *Connolly* and *Marcil* on the one hand, and *DeMartino* and *McComb* on the other hand.

Based on these research results, the author proposes that wilfulness slowly became an element of Connecticut civil contempt law by accident, i.e., not wilfully, pun intended. Much as life on earth evolves through a process of random genetic mutations passed on to successor generations, the law occasionally evolves through random mutations—accidents—in the judicial opinion writing process. A passing statement in one case can take on a life of its own as it is cited as black letter law in subsequent opinions. The correct statement of the law of civil contempt in *DeMartino* (and *McComb*) was eventually forgotten and replaced by cases like *Connolly* and *Marcil* and their progeny.

DeMartino, however, was never expressly overruled. Its statement that civil contempt does not require proof of wilfulness lay dormant in the shadows of *Connolly*, etc. for nearly 33 years—until the Supreme Court brought it out of the shadows in *O'Brien*.

II. *O'Brien* and the Superior Court's Inherent Authority to Enforce Its Orders.

While the reader may well disagree with the author's assessment of how the law of civil contempt evolved in Connecticut, it is hard to disagree with the import of the Supreme Court's decision in *O'Brien*.

The pertinent issue in *O'Brien* is how the Supreme Court treated the plaintiff husband's alleged violation of the automatic orders under Practice Book § 25-5(b) (1). That section provides that neither party in a divorce “shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.”

While the divorce was pending the plaintiff exercised certain stock options and sold stock he owned. He deposited all of the proceeds of the sale, net of taxes, in a bank account, which was fully disclosed during the divorce and divided when the court entered final judgment. The defendant did not challenge the stock sale in any way.

The plaintiff successfully appealed the judgment on unrelated grounds. The Appellate Court reversed and remanded the case for a new trial on all financial matters. On remand the defendant moved to hold the plaintiff in contempt. She argued that the plaintiff's stock transactions before the first trial violated the automatic orders because it was done without her consent or the court's permission.¹⁹ She argued further that the transactions caused her financial harm because the value of the stock and stock options had significantly increased over time, i.e., by the date of the retrial. That is, she contended that the total value of the parties' marital assets available for equitable distribution would have been substantially greater, but for the stock sales. The plaintiff denied that he violated the automatic orders. He testified that he exercised the options on the advice of counsel and because he believed the value of the stock and stock options was going to drop. That is, he was attempting to preserve the value of marital assets.

The trial court credited the plaintiff's testimony about the reasons for these financial transactions and declined to find him in civil contempt. However, the court accepted the defendant's argument that the transactions violated the automatic orders. To remedy the violation, the court made a significant adjustment to the final property division orders, highly favorable to the defendant, to compensate her for the financial damages she allegedly suffered from the transactions.

¹⁹ The defendant also challenged another stock sale that occurred while the first appeal was pending.

The plaintiff appealed again, raising several distinct grounds for his appeal, including that the trial court erred in punishing him for the stock transactions through its property division orders.²⁰ The Appellate Court held that, absent a finding of contempt, the trial court lacked the authority to afford the defendant a remedy for the plaintiff's violation of the automatic orders.²¹

The Supreme Court granted the defendant's certification to appeal and rejected this legal ruling. Initially, the Court reaffirmed that a finding of civil contempt requires proof of wilfulness.²² But the Court proceeded to explain why the absence of wilfulness did not really matter in this case:

Civil contempt . . . is not punitive in nature but intended to coerce future compliance with a court order. . . . A civil contempt finding thus permits the court to coerce compliance by imposing a conditional penalty, often in the form of a fine or period of imprisonment, to be lifted if the noncompliant party chooses to obey the court.

. . .

But a trial court in a contempt proceeding may do more than impose penalties on the offending party; it also may remedy any harm to others caused by a party's violation of a court order. When a party violates a court order, causing harm to another party, the court may "compensate the complainant for losses sustained" as a result of the violation. (Internal quotation marks omitted.) *DeMartino v. Monroe Little League, Inc.*, supra, 192 Conn. at 278, 471 A.2d 638. A court usually accomplishes this by ordering the offending party to pay a sum of money to the injured party as "special damages. . . ."

Unlike contempt penalties, a remedial award does not require a finding of contempt. Rather, "[i]n a contempt proceeding, even in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Emphasis omitted; internal quotation marks omitted.) . . . Because the trial court's power to compensate does not depend on the offending party's intent, the court may order compensation even if the violation was not wilful. . . . cf. *DeMartino v. Monroe Little League*,

²⁰ Before becoming a judge, the author represented the plaintiff in his second appeal.

²¹ *O'Brien v. O'Brien*, 161 Conn.App. 575, 591, 128 A.3d 595 (2015).

²² *O'Brien*, 326 Conn. 81, 98, 161 A. 3d 1236 (2017).

Inc., supra, 192 Conn. at 279, 471 A.2d 638 ("[s]ince the purpose is remedial, it matters not with what intent the [offending party] did the prohibited act.").²³

Having explained the scope of a trial court's inherent power to order compensation for damages suffered due to a non-wilful violation of a court order, the Supreme Court reversed the Appellate Court. The Supreme Court held that the stock transactions plainly violated the automatic orders.²⁴ The Court then ruled that the trial court acted within its legal authority to divide the parties' marital assets in a way that compensated the defendant for the financial loss she allegedly suffered due to that non-wilful violation.²⁵

III. *DeMartino* Revitalized.

O'Brien is significant not so much for breaking new legal ground on the scope of a court's inherent powers to vindicate its orders—it really didn't—but for giving renewed life to some older precedents that had fallen by the way side. Chief among those is *DeMartino v. Monroe Little League*. As the block quote above shows, *O'Brien* relied on *DeMartino* for two key legal propositions: (1) the Superior Court has the inherent power to compensate a complainant for losses suffered as the result of a violation of a court order; and (2) the court's inherent authority to award compensation does not depend on whether the violation was wilful (citing *McComb v. Jacksonville Paper Co.*).

By affirming that *DeMartino* remains good law, the *O'Brien* decision creates a tension in Connecticut civil contempt law. *O'Brien* says wilfulness is an element of civil contempt; *DeMartino*, relying on *McComb*, says wilfulness is not required. Only the Connecticut Supreme Court can resolve this tension conclusively. Until it does so, a finding of wilfulness apparently is

²³ *Id.* at 99.

²⁴ *Id.* at 102.

²⁵ *Id.* at 102-112.

still required before a court can formally find a party in civil contempt and impose civil contempt penalties, i.e., fines or incarceration. Such penalties are not intended to punish a party for violating a court order, but to coerce a recalcitrant party to comply with the order in the future. However, wilfulness is not required for a court to issue remedial orders intended to compensate a party for harm caused by a violation of a court order.

The revival of *DeMartino* is significant for another reason, which was not discussed in *O'Brien*. Under the so-called “American Rule,” parties generally must bear their own attorney’s fees.²⁶ There are both statutory and common law exceptions to this rule. One exception is that a court may award a reasonable attorney’s fee to a party who successfully prosecutes a civil contempt motion.²⁷ But success in prosecuting a civil contempt motion requires a finding of

²⁶ E.g., *Total Recycling Services of Connecticut, Inc. v. Connecticut Oil Recycling Services, LLC*, 308 Conn. 312, 326, 63 A.3d 896 (2013) (“Connecticut adheres to the ‘American rule’ . . . [which reflects the idea that] in the absence of statutory or contractual authority to the contrary, a successful party is not entitled to recover attorney’s fees or other ‘ordinary expenses and burdens of litigation. . . .”

²⁷ E.g., General Statutes § 46b-87. Section 46b-87 authorizes a court to award reasonable attorney’s fees “when any person is found in contempt of an order of the Superior Court. . . .” See also *Dobozy v. Dobozy*, 241 Conn. 490, 499, 697 A.2d 1117 (1997) (“Once a contempt has been found, § 46b-87 establishes a trial court’s power to *sanction* a noncomplying party through the award of attorney’s fees.”) (Emphasis in original). The Supreme Court has held that § 46b-87 “merely recognizes the court’s common-law contempt power and provides that the court may award attorney’s fees to either party in contempt proceedings related to orders issued under the specified statutes.” *AvalonBay Communities, Inc. v. Plan & Zoning Commission*, 260 Conn. 232, 243, 796 A.2d 1164 (2002).

Another exception is General Statutes § 46b-62, which authorizes a court to award attorney’s fees in certain family matters absent a finding of contempt. Section 46b-62 provides in relevant part that “[i]n any proceeding seeking relief under the provisions of this chapter [pertaining to dissolution of marriage] . . . the court may order either spouse . . . to pay the reasonable attorney’s fees of the other in accordance with their respective financial abilities and the criteria set forth in [General Statutes] section 46b-82. . . .” In *Dobozy*, supra, the Supreme Court held that § 46b-62 authorizes a trial court to award attorney’s fees to a party who proves a violation of a child support order even if the obligor is not found in contempt. *Dobozy v. Dobozy*, 241 Conn. 499.

wilfulness. Yet *DeMartino* upheld an award of attorney's fees as part of the compensation awarded to the party injured by the non-wilful violation of a court order. Accordingly, a more extensive examination of *DeMartino* is warranted.

In *DeMartino*, the plaintiffs alleged that the defendants violated an injunction which imposed certain restrictions on little league play at baseball fields in the Town of Monroe. The defendants relied on the advice of counsel in engaging in the activities that allegedly violated the injunction. Notwithstanding this fact, the trial court found that the defendants had violated the injunction, held them in civil contempt and ordered them to pay court costs and a reasonable attorney's fee.

On appeal, the defendants argued that the trial court's remedy was punitive in nature and not justified based on a finding of civil contempt. The Supreme Court disagreed:

The trial court's memorandum of decision indicates that it determined this was a civil contempt, and in fashioning its remedial order it was correctly concerned about compensating the plaintiffs *for having been put to the expense of this proceeding because of the contumacious actions of both defendants*. The trial court properly awarded the plaintiffs their court costs *plus reasonable attorney's fees* and, in doing so, confined its 'compensation' to them to their actual losses."²⁸

Significantly, the Supreme Court also stated, "[t]he United States Supreme Court aptly has observed that the absence of wilfulness does not relieve from civil contempt. . . . Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act."²⁹ Thus, the Connecticut Supreme Court indicated its agreement with the U.S. Supreme Court that wilfulness is not an essential element of a finding of civil contempt. Nor is it required before a court may award attorney's fees.

²⁸ *DeMartino*, 192 Conn. 271, 280, 471 A.2d 638 (1984) (emphasis supplied).

²⁹ *Id.* 279 (citing *McComb*).

In sum, *DeMartino* recognizes a Superior Court’s inherent authority (but not obligation) to award a reasonable attorney’s fee as part of the compensation for injuries resulting from a non-wilful violation of a court order. The state Supreme Court’s repeated citations to *DeMartino* in *O’Brien* confirm that the earlier decision remains not only valid but sound precedent.³⁰ Notably, the weight of federal law, including in the Second Circuit, holds that wilfulness is not a prerequisite to an award of attorney’s fees in the civil contempt context.³¹

Once again, only the Connecticut Supreme Court can provide a definitive position on whether proof of wilfulness is a necessary requirement under Connecticut law for an award of attorney fees when a court exercises its inherent authority to remedy violations of court orders. The author’s position, however, is that the Second Circuit’s view expressed in *Weitzman v. Stein*, *supra*, n.31—i.e., wilfulness is a consideration weighing in favor of an award of attorney’s fees,

³⁰ It is reasonable to ask whether §§ 46b-62 and 46b-87, discussed above, limit or constrain a Superior Court’s inherent powers as described in this article. The Supreme Court expressly declined to address this question in *Dobozy v. Dobozy*, 241 Conn. 494, and n.4. Again, only the Supreme Court can answer this question definitely. However, nothing in the text of either statute or their legislative histories suggests that the General Assembly intended to constrain the Superior Court’s ancient, common law authority to enforce its own orders through the award of compensatory damages which, according to *DeMartino*, may include a reasonable attorney’s fee.

³¹ See *Weitzman v. Stein*, 98 F.3d 717, 719 (2d Cir. 1996) (“while willfulness may not necessarily be a prerequisite to an award of fees and costs, a finding of willfulness strongly supports granting them”). Accord *John Zink Co. v. Zink*, 241 F.3d 1256, 1261 (10th Cir. 2001) (showing of wilfulness not required in Second, Third, Fifth, Sixth, Seventh, Ninth, Eleventh, and District of Columbia Circuits). But see *King v. Allied Vision Ltd.*, 65 F.3d 1051, 1063 (2d Cir. 1995) (holding, one year before *Weitzman v. Stein*, that “[i]n order to award fees, the district court had to find that [the defendant’s] contempt was willful”); *N. Am. Oil Co. v. Star Brite Distrib., Inc.*, 14 F. App’x 73, 75 (2d Cir. 2001) (noting but declining to resolve apparent conflict between *Weitzman* and *King*).

but it is not an absolute precondition to an award—seems most consistent with *O'Brien* and *DeMartino*.³²

IV. Conclusion

Contrary to longstanding federal law, Connecticut law has evolved to require proof of wilfulness as an essential element of civil contempt. But the Connecticut Supreme Court's decision in *O'Brien* is an important reminder that the Superior Court has the inherent power to award compensatory damages for non-wilful violations of court orders. Yet by relying on *DeMartino*, which followed federal law on civil contempt, the *O'Brien* decision creates a tension in Connecticut law concerning the relevance of wilfulness. The Supreme Court's reliance in *O'Brien* on *DeMartino* is also significant because *DeMartino* supports the argument that the Superior Court's inherent power to award compensation for non-wilful violations of court orders includes the authority to award attorney's fees.

Even if *O'Brien* and other “wilfulness” cases after *Connolly* and *Marcil* overruled *DeMartino* sub silentio on the issue of wilfulness to civil contempt, the normative question remains: *should* wilfulness be an element of civil contempt under Connecticut law? It wasn't for most of our state's legal history, and it appears to have become an element by accident. Federal law doesn't require wilfulness. What purpose does this requirement truly serve in the civil contempt context, where the objective of the law is to compensate, not punish? If a party has notice of a clear and unambiguous court order, if the party has the ability to comply with the order, and if the party lacks a legally valid justification or defense for failing to comply, why should the law demand inquiry into the party's state of mind?

³² See *McDaniel v. McDaniel*, NNH FA144064115S, 2019 WL 5549569 (Super. Ct., Sept. 23, 2019) (court may award attorney's fees as part of compensation for non-wilful violation of court order).

It also bears noting that parties and courts spend considerable resources, in terms of time and money, arguing and resolving disputes over whether a violation was wilful. These scarce resources are conserved in federal civil contempt proceedings.

Of course, wilfulness should be required before a court imposes civil contempt *penalties*, such as fines or incarceration, to coerce future compliance with court orders. In general, a court will only impose a coercive sanction *after* the court (1) has already determined that a party violated a clear and unambiguous court order, and (2) the party still refuses to comply with that court order. Thus, what matters for the imposition of coercive penalties is not whether the initial non-compliance was wilful, but whether the party continues to defy the court order in the face of an initial finding of noncompliance. Continued defiance is, by definition, wilful.

One final observation. *O'Brien* is a point on a line of cases, including [*AvalonBay Communities, Inc. v. Plan & Zoning Commission*](#),³³ which suggest the Superior Court's civil contempt power is somehow distinct from its inherent power to enforce and vindicate its own orders and judgments. This distinction strikes the author as odd. The historical common law power of a court to enforce its orders through civil contempt is the very manifestation of the court's inherent power to enforce its judgments. The distinction in the *AvalonBay/O'Brien* line of cases only exists, however, if wilfulness is an element of civil contempt. Remove that element and the Superior Court's civil contempt power collapses into its inherent power to vindicate its orders.

³³ 260 Conn. 232, 796 A.2d 1164 (2002) (equitable power to vindicate judgments “does not derive from the trial court's contempt power, but, rather, from its inherent powers”).