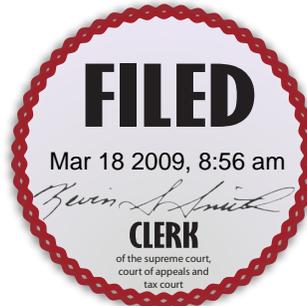


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHICOTTA COAN,)
)
 Appellant-Petitioner,)
)
 vs.) No. 49A02-0801-CV-55
)
 JEREMY BORITZKI,)
)
 Appellee-Respondent,)
)
 RAMONA WARD,)
)
 Appellee-Intervenor.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Gary L. Miller, Judge
Cause No. 49D05-0004-DR-525

March 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Shicotta Coan appeals the trial court's order denying her motion for relief from judgment, finding that Jeremy Boritzki owes a child support arrearage of \$6,273.00, and denying her motion to dismiss a petition for grandparent visitation rights. For our review, Coan raises three issues, which we restate as: 1) whether the trial court erred when it denied her motion for relief from judgment; 2) whether the trial court erred when it calculated the amount of child support arrearage; and 3) whether the trial court erred when it denied her motion to dismiss the petition for grandparent visitation rights. Concluding the trial court did not err in denying Coan's motion for relief from judgment but that we are unable to find support in the record for the trial court's calculation of child support arrearage, we affirm in part and remand for further consideration of the child support arrearage, but we retain jurisdiction over this appeal. In addition, we dismiss Coan's appeal of the trial court's denial of her motion to dismiss for lack of jurisdiction because Coan failed to raise the issue as an interlocutory appeal.

Facts and Procedural History

Coan previously appealed the trial court's order transferring custody of her child, C.B., to Boritzki and determining child support. This court affirmed the transfer of custody and the calculation of Coan's child support payments but reversed the trial court's determination that Boritzki owed nothing in child support arrearage. Coan v. Boritzki, No. 49A04-0602-CV-56, slip op. at 12 (Ind. Ct. App. Sept. 26, 2006). This court then remanded the case to the trial court to recalculate Boritzki's child support arrearage. Id.

On January 1, 2007, Coan filed a motion for relief from judgment requesting that the trial court vacate its prior custody order and return C.B. to her custody. In her motion, Coan alleges fraud, misconduct, and misrepresentation committed by the trial court, Boritzki, Boritzki's counsel, and her own counsel. On April 12, 2007, the trial court held a hearing on the issue of the amount of Boritzki's child support arrearage and took the issue under advisement. On October 26, 2007, the trial court held a hearing on Coan's motion for relief from judgment. At the hearing, Coan presented a certified child support payment history, a self-created summary of Boritzki's child support obligations and payments, and her own testimony regarding the alleged fraud, misconduct and misrepresentation.

On October 24, 2007, C.B.'s maternal Grandmother filed a petition for grandparent visitation rights. On November 11, 2007, Coan filed her response and motion to dismiss Grandmother's petition. The trial court issued an order on January 2, 2008, denying Coan's motion for relief from judgment, stating:

having reviewed the Motion for Relief from Judgment filed by [Coan], heard evidence in the matter and reviewed the entire file in this cause, now finds that there is an arrearage owed by [Boritzki] to [Coan] after all consideration of child care costs and credits in the amount of Six Thousand Two hundred Seventy Three (\$6,273.00) and no cents. Said sum is to be paid to Petitioner at a rate of at least \$75.00 per week effective Jan. 4, 2008. The Motion to dismiss is denied at this time.

Appellant's App. at 116. On January 7, 2008, Coan filed a motion to clarify the trial court's order, which the trial court denied without written order.¹ Coan now appeals.

¹ In her motion to clarify, Coan points out that the trial court's order does not directly address her motion for relief from judgment. We recognize that the trial court does not explicitly deny Coan's motion for relief from judgment in its order. While such an explicit denial would be preferable, the implicit denial of Coan's motion is clear from the lack of any order transferring custody to Coan as well as the trial court's denial

Discussion and Decision

I. Motion for Relief from Judgment

Coan first appeals the trial court's denial of her motion for relief from judgment. A trial court has discretion to grant or deny a motion for relief from judgment. Minnick v. Minnick, 663 N.E.2d 1226, 1228 (Ind. Ct. App. 1996). Accordingly, we will reverse the trial court's decision only for an abuse of discretion, which occurs when the trial court's decision is clearly against the logic and effect of the facts and inferences supporting the judgment. Id. When reviewing a trial court's denial of a motion for relief from judgment, we will not reweigh the evidence. Beike v. Beike, 805 N.E.2d 1265, 1267 (Ind. Ct. App. 2004).

The only evidence Coan presented during the hearing on her motion for relief from judgment regarding her allegations of fraud, misconduct, and misrepresentation was her own testimony. In essence, then, Coan asks us to reweigh her testimony, which we will not do. Coan bears the burden of demonstrating that relief is necessary and just, Minnick, 663 N.E.2d at 1228, and she has failed to meet this burden. Therefore, the trial court did not abuse its discretion when it denied her motion for relief from judgment.

II. Calculation of Child Support Arrearage

Coan next appeals the trial court's calculation of Boritzki's child support arrearage. "Generally, decisions regarding child support rest within the sound discretion of the trial court. We will reverse a trial court's decision in child support matters only for an abuse of discretion or if the trial court's determination is contrary to law." Painter v. Painter, 773

of her motion to clarify.

N.E.2d 281, 282 (Ind. Ct. App. 2002). In reviewing orders modifying child support, we consider only the evidence and reasonable inferences favorable to the judgment. Gilbert v. Gilbert, 777 N.E.2d 785, 790 (Ind. Ct. App. 2002).

The trial court initially determined that Boritzki did not owe any child support arrearage. However, this court reversed that determination and remanded for further proceedings regarding the arrearage. Upon remand, the trial court entered an order finding that Boritzki owes \$6,273.00 in child support arrearage. Although the trial court's order indicates that it considered "child care costs and credits," the trial court did not enter specific findings indicating how it reached the amount of the arrearage. Appellant's App. at 116. The trial court was not required to enter findings of fact. See Kanach v. Rogers, 742 N.E.2d 987, 989 (Ind. Ct. App. 2001). However, such findings offer this court valuable insight into the trial court's rationale for its decision and facilitate our appellate review. Estate of Troxal v. S.P.T., 851 N.E.2d 345, 347 (Ind. Ct. App. 2006), trans. denied.

We are unable to discern from the record what evidence the trial court considered in arriving at the \$6,273.00 figure for Boritzki's child support arrearage. Coan submitted a certified payment history along with a self-created summary indicating an arrearage of \$10,232.29. In response, Boritzki testified that he owed no arrearage. Neither party submitted prior child support orders indicating the weekly amount of child support due or the periods for which various weekly amounts applied; as a result, we are unable to compare Boritzki's payment history with the total amount of child support he should have paid. Therefore we remand this issue to the trial court for further action, but we retain jurisdiction.

On remand, the trial court shall either: 1) enter specific findings of fact demonstrating how it calculated an arrearage of \$6,273.00; 2) recalculate the arrearage based upon the evidence already before the trial court and enter specific findings to support the calculation; or 3) conduct further proceedings to obtain sufficient evidence to allow it to definitively calculate the amount of the arrearage.

III. Motion to Dismiss

Finally, Coan appeals the trial court's denial of her motion to dismiss Grandmother's petition for grandparent visitation. Generally, the denial of a motion to dismiss is not a final appealable order. School City of Gary v. Continental Elec. Co., 158 Ind. App. 132, 140, 301 N.E.2d 803, 808 (1973). At the time this appeal was filed, a hearing on Grandmother's petition was pending before the trial court. Therefore, no final judgment yet exists over which this court might have jurisdiction. See Ind. Appellate Rule 5(A). Rather, the proper method of appealing the denial of a motion to dismiss is through an interlocutory order. Rainey v. National Check Bureau, Inc., 849 N.E.2d 776, 778 n.2 (Ind. Ct. App. 2006) (“[Party] could not have appealed from the denial of her motion to dismiss unless she had perfected a discretionary interlocutory appeal.”). The failure to comply with the requirements of Appellate Rule 14 to preserve an issue for interlocutory appeal results in waiver of the issue on later appeal. See In re K.B., 793 N.E.2d 1191, 1198 n. 4 (Ind. Ct. App. 2003).

Coan has not properly preserved this issue for appeal; she neither moved the trial court to certify its denial of her motion to dismiss for interlocutory appeal nor did she

move this court to accept jurisdiction over an interlocutory appeal. Therefore, we dismiss Coan's appeal of this issue for lack of jurisdiction.

Conclusion

The trial court did not abuse its discretion when it denied Coan's motion for relief from judgment, and we affirm with respect to this portion of the trial court's order. However, we are unable to discern the evidentiary basis for the trial court's calculation of Boritzki's child support arrearage. Therefore, we remand this issue for further action by the trial court, but we retain jurisdiction over the appeal. In addition, we dismiss the appeal of the denial of Coan's motion to dismiss for lack of jurisdiction.

Affirmed in part, dismissed in part, and remanded.

CRONE, J., and BROWN, J., concur.