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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD GLORIOSO,)

Appellant-Respondent,)

vs.)

No. 64A03-1012-DR-620

CARLA GLORIOSO,)

Appellee-Petitioner.)

APPEAL FROM THE PORTER SUPERIOR COURT

The Honorable David L. Chidester, Judge

Cause No. 64D01-0201-DR-134

July 18, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald Glorioso (“Father”) appeals the trial court’s order finding him in contempt of court in this dissolution matter. Father presents a single issue for our review, namely, whether the trial court abused its discretion when it concluded that he willfully failed to pay child support, medical expenses, and college expenses for his children.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father and Carla Glorioso (“Mother”) were married and have three children. Following the dissolution of their marriage in 2002, the parties agreed and the trial court ordered that Mother would have custody of the children and Father would pay child support in the amount of \$166.27 per week. In 2006, the trial court modified Father’s child support obligation and ordered him to pay \$200 per week. And in 2008, without any order subsequently modifying Father’s child support obligation issued by the dissolution court, the Title IV-D prosecutor¹ submitted an Amended Order/Notice to Withhold Income for Child Support to Father’s employer, Southlake Lift Truck LLC.² That Amended Order stated that Southlake was to withhold \$166.27 per week from Father’s income. Father did not make up the difference in child support owed between the \$200 per week, as ordered, and the \$166.27 per week being held from his paychecks. Accordingly, Father fell behind in his child support obligation.

¹ A “Title IV-D agency means (1) the child support bureau created within the division of family and children as the single state agency to administer the child support provisions of Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669). . . .’ Ind.Code § 31-9-2-130(1) (1998).” Collier v. Collier, 702 N.E.2d 351, 354 n.3 (Ind. 1998).

² There is no evidence in the record on appeal regarding whether Father’s child support obligation was paid through paycheck deductions prior to 2008.

In August 2009, Mother filed a petition for rule to show cause why Father should not be found in contempt for: his child support arrearage; lack of health insurance for the children; failure to pay uninsured medical expenses for the children; and failure to pay his share of the oldest child's college expenses. Following a hearing, the dissolution court found Father in contempt and ordered him to pay to Mother \$1,093.41 per month until his total arrearage of \$13,120.97 (including unpaid support, uninsured medical expenses, and college expenses) is paid in full. The dissolution court also ordered Father to pay \$2,250 of Mother's attorney's fees. Father filed a motion to correct error, which the dissolution court denied. This appeal ensued.

DISCUSSION AND DECISION

Whether a person is in contempt of a court order rests within the trial court's discretion, and we review the trial court's finding for an abuse of discretion. Mitchell v. Mitchell, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). An abuse of discretion is shown only when the trial court's decision is against the logic and effect of the facts and circumstances before the trial court. Id. We do not reweigh the evidence or judge the credibility of witnesses, and we will affirm the trial court's contempt finding unless review of the record leaves us with a firm and definite belief that a mistake has been made. Emery v. Sautter, 788 N.E.2d 856, 860 (Ind. Ct. App. 2003), trans. denied. We have further stated that we will reverse the trial court's contempt finding only if there is no evidence to support it. Williamson v. Creamer, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000).

Initially, we note Mother did not file an appellee's brief. When the appellee fails to file a brief, we need not undertake the burden of developing an argument for the appellee. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant presents a case of prima facie error. Id. "Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it." Id. (quotation omitted). Where an appellant does not meet this burden, we will affirm. Id.

Father first contends that the trial court's determination that he willfully failed to satisfy his child support obligation is against the logic and effect of the facts and circumstances. In particular, he asserts that it was Mother's obligation to submit the 2006 modification order to the IV-D prosecutor's office, which she failed to do. Thus, he maintains that he should not be penalized for the fact that the wrong amount was being deducted from his paycheck, which resulted in the support arrearage.

First, while the undisputed evidence shows that Mother is responsible for providing copies of court orders to the IV-D office, see Appellant's App. at 44, the evidence is conflicting regarding whether Father had contacted the IV-D office to modify his child support obligation in contravention of the 2006 modification order.³ Moreover, regardless of whether Mother's error resulted in the reduced withholding from Father's paychecks, Father remained responsible for making sure that he was paying \$200 per week pursuant to the 2006 modification order. Father contends that he did not learn until

³ The separate opinion discounts Mother's testimony on this issue because it is not based on Mother's personal knowledge. But whether Mother's testimony was based upon first-hand or second-hand information goes to the weight of that evidence, and we will not reweigh the evidence on appeal. The evidence was admitted without objection.

June 16, 2009, that the full amount was not being deducted from his paychecks.⁴ But Father could have reviewed his paystubs to make sure that there was no error prior to that date. Because the evidence is undisputed that Father had a child support arrearage, and because there is evidence to support that Father willfully failed to pay child support, the dissolution court did not abuse its discretion when it found Father in contempt for nonpayment of support.

Father next contends that he should not be responsible to reimburse Mother for any of the college expenses for their child L.G. because, he maintains, L.G.'s education "was fully subsidized through National Guard Scholarship funds and Pell Grant monies." Brief of Appellant at 8. But Father does not support that contention with citation to the appendix. Regardless, we will not reweigh the evidence on appeal. Mother submitted documentation of the amount she spent towards L.G.'s college expenses, and the evidence supports the dissolution court's finding on this issue.

Finally, Father asserts that he should not have to reimburse Mother for various medical and prescription expenses. However, in support of those contentions, Father refers to evidence he obtained after the contempt hearing, which is not included in the record on appeal, and which we cannot consider. In addition, on appeal, Father maintains that "he is entitled to a full accounting of all payments made by Medicaid for medical expenses on behalf of the minor children of the parties." *Id.* at 9. But he did not make any such request to the dissolution court, and Father has pointed to no evidence in the

⁴ The separate opinion notes that Father "testified that he did not know the difference between the two types of orders and that he relied on the June 2008 withholding order as reflecting the correct amount." But the trial court did not find Father credible, and we will not reweigh evidence or reassess the credibility of a witness on appeal.

record on appeal to support his argument on this issue. Father's contentions on these issues are waived.⁵

Father has not demonstrated that the dissolution court's order finding him in contempt for nonpayment of child support and other financial obligations is against the logic and effect of the facts and circumstances. The dissolution court did not abuse its discretion when it found Father in contempt.

Affirmed.

CRONE, J., concurs.

ROBB, C.J., concurs in result with separate opinion.

⁵ Mother's exhibit regarding the children's medical expenses included an ambulance bill in the amount of \$1592. Also in that exhibit, Mother stated that she had submitted the bill to Medicaid and that if Medicaid paid the bill, she "agree[d] to reimburse [Father] for his share of the payment(s) made." Petitioner's Exhibit 4. As the separate opinion points out, Father has included in the appendix a copy of an agreed order approved by the trial court on November 15, whereby Father was awarded a credit of \$1,137.09 towards the medical expenses he owes due to a Medicaid payment towards the ambulance bill. Because Father's motion to correct error was deemed denied on November 8, the agreed order is not a part of the record on appeal. Regardless, the issue regarding the ambulance bill appears to be moot.

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ROBB, Chief Judge, concurring in result

I concur in the result reached by my colleagues to affirm the trial court’s contempt citation, but write separately because I respectfully disagree with the majority’s analysis of the child support issue.

I would hold the evidence does not support the trial court’s finding that Father willfully underpaid his child support obligation. There is no dispute that Father actually owed \$200 per week by the terms of the trial court’s 2006 modification order. Yet, in June 2008, partly because Mother never forwarded the 2006 order to the IV-D prosecutor, the prosecutor issued an “[a]mended” income withholding order to Father’s business for only \$166.27 per week, the amount ordered in the 2002 dissolution decree. Appellant’s Appendix at 39.

The majority states there is evidence that “Father had contacted the IV-D office to modify his child support obligation in contravention of the 2006 modification order.” Slip op. at 4. This is a strained reading of the record. Father denied ever contacting the IV-D office. Mother’s testimony on cross-examination was as follows:

A. My understanding after the fact was that [Father] had gone to the Prosecutor’s Office to have child support lowered.

Q. How would you – why would you come to that understanding?

A. This is what the understanding that transpired after everyone looked into why child support was coming in at a lesser amount.

Transcript at 21. Mother’s own testimony indicates she did not have personal knowledge of Father contacting the IV-D office to reduce his support obligation and he never admitted doing so. The letter from the IV-D prosecutor shows the IV-D office “according to its administrative powers . . . amended the income withholding order” because, due to not receiving the 2006 modification order, its records showed a balance of overpayments. Appellant’s App. at 44. Without reweighing the evidence or judging the credibility of Mother and Father, the evidence supports only the inference that the IV-D office issued the amended withholding order sua sponte and was not requested to do so by Father. This conclusion is not a reweighing of the evidence because there is no direct conflict in the testimony. Mother never testified that Father did, in fact, go to the IV-D office to have support lowered. She testified only to what others thought and told her “after the fact.” Tr. at 21; cf. Segar v. State, 937 N.E.2d 917, 920 (Ind. Ct. App. 2010) (distinguishing between testimony that a fact was “believed to be” true and testimony, crucially absent from that case, that the alleged fact was, in fact, true).

We cannot reasonably hold Father, a layperson, responsible for a trained legal understanding of the difference in authority between a trial court order for support and a withholding order issued by the prosecutor that purports to be “based on the support or withholding order from Indiana.” Id. at 39. Father testified that he did not know the difference between the two types of orders and that he relied on the June 2008 withholding order as reflecting the correct amount. Tr. at 61-62.

In these circumstances, the onus was on Mother to have a correct withholding order issued or otherwise notify Father, prior to filing a contempt petition, that he was paying the wrong amount. The record is silent as to whether she did so, and absent clear notice to Father that he was paying the wrong amount, the trial court could not reasonably find that his underpayment of support was willful. This case is thus akin to In re G.B.H., 945 N.E.2d 753 (Ind. Ct. App. 2011), where we held the father’s underpayment of child support was not willful, in part because no advisement was given regarding his obligation to make up the shortfall between the support owed and the amount withheld from his paychecks. Id. at 756.

However, regarding Father’s obligation to reimburse Mother for medical expenses, in the 2002 dissolution decree, the trial court ordered Mother to pay the first \$736.32 per year of uninsured health expenses for the minor children and ordered Father to pay 74% of all remaining health expenses. Mother’s contempt petition stated that Father was given a list of outstanding medical bills yet failed to pay his portion thereof. Mother testified that at least two or three times prior to filing the contempt petition, she

provided Father a list of unpaid medical bills. Based on this evidence, the trial court did not err in finding that Father willfully failed to pay his share of medical expenses.

Regarding Father's obligation to reimburse Mother for educational expenses, in the 2006 modification order, Father was required to pay 50% of expenses incurred for L.G.'s education at Purdue North Central. The record includes Mother's credit card statement showing a June 2009 payment of \$3,272.93 by Mother to Purdue North Central, which Mother testified was owing for the Fall 2008 semester. This evidence refutes Father's contention that L.G.'s education was entirely paid for through National Guard scholarships and Pell Grant monies. In addition, Mother testified she provided documentation of this educational expense to Father and his attorney. As a result, the trial court did not err in finding that Father willfully failed to pay his share of \$1,636.47 toward L.G.'s tuition and fees.

Because Father willfully failed to pay his court-ordered share of medical and educational expenses, I concur in the majority's result to uphold the trial court's contempt citation and resulting award of attorney fees to Mother.

Finally, despite the deemed denial of Father's motion to correct error, the trial court did grant Father relief, pursuant to an agreed order, as to certain issues raised in that motion and the overall amount of his arrearage. Specifically, the trial court signed an agreed order providing, *inter alia*, that: 1) Father's child support arrearage as of August 2010 is \$3,466.00, not the \$4,332.67 referenced in the trial court's original order on Mother's contempt petition; 2) Father owes Mother \$213.06 for L.G.'s college books, not the \$333.67 referenced in the trial court's original order; and 3) Father is entitled to a

credit of \$1,137.09 toward medical expenses, “due to the ambulance bill being paid by Medicaid.” Appellant’s App. at 59. Thus, notwithstanding footnote 5 of the majority opinion, I believe our affirmance of the trial court’s judgment must be read as leaving in place the trial court’s grant of relief to Father on those issues.