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IN THE
COURT OF APPEALS OF INDIANA

YVONNE WILLIAMS,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 27A04-0901-CV-25
	)	
WESLEY W. WILLIAMS,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-9706-DR-305

September 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Yvonne Williams ("Yvonne") appeals the trial court's order requiring her to reimburse $11,582 to Wesley Williams ("Wesley") for his overpayment of child support. Yvonne raises a number of issues, which we consolidate and restate as follows:

I. Whether the trial court properly excluded Yvonne's Exhibit A from evidence; and

II. Whether the trial court's judgment is supported by sufficient evidence.

We affirm and remand.

FACTS AND PROCEDURAL HISTORY

Yvonne and Wesley were married, and during the marriage two children were born, Matthew, born on January 16, 1983, and Angela, born on August 23, 1985. Yvonne and Wesley's marriage was dissolved in 1987, and Yvonne was awarded custody of both children. Pursuant to the dissolution decree, Wesley was obligated to pay child support to Yvonne. After the dissolution, Yvonne moved to Arizona, where she received welfare payments from 1991 to 1995.

On December 30, 1997, Wesley filed a petition for modification of custody in which he sought custody of Matthew. On March 10, 1998, Yvonne and Wesley filed an agreed modification of custody with the trial court wherein they stated that Wesley should be awarded custody of Matthew and that Wesley's child support obligation should be abated "at the time the Order of Modification is granted as each party will have one child of the marriage." *Appellant's App.* at 9. The trial court issued an order granting Yvonne and Wesley's agreed modification of custody on March 13, 1998. Matthew began living with Wesley in June 1998.

On June 12, 2008, Wesley filed his Petition to Determine Overpayment of Support and Amount Due to Respondent. In the petition, Wesley alleged that there had been an overpayment of child support because "the state [sic] of Arizona has continued to seize [Wesley's] tax checks since June 1998." *Id.* at 7. The trial court held a hearing on Wesley's petition on July 18, 2008. Although Yvonne was not present at the hearing, her counsel did attend. During the hearing, Wesley testified that his child support obligation was abated in June 1998 when Matthew came to live with him and that, at that time, he had no child support arrearage. Wesley stated that since 1998, various states, including Arizona, had seized $11,582 from him as payment for child support-- $10,382 was from income tax refunds, while $1,200 was from a tax stimulus check.

Wesley also testified that Matthew entered the military when he turned eighteen in 2001, and that Angela got married in November 2005. Based on this testimony, Yvonne's counsel argued that Matthew was emancipated once he entered the military, and thereafter, Wesley should have paid Yvonne child support for Angela until 2005 when she got married. After the hearing, the trial court issued an order in which it found that Wesley's overpayment of child support totaled $11,582. The court ordered Yvonne to reimburse $11,582 to Wesley in monthly payments of $100.

Yvonne filed a motion to correct error, and the trial court held a hearing on the motion on September 29, 2008. Yvonne was present at this hearing, and during her testimony, her counsel attempted to introduce into evidence a document labeled Exhibit A. Yvonne testified that this document was a record that she had received from the State of Arizona. Wesley's counsel objected to the admission of Exhibit A arguing that it had

not been properly authenticated and was hearsay. Initially, the trial court allowed Exhibit A to be admitted into evidence.

Yvonne then testified as to the contents of Exhibit A. She noted that Exhibit A listed seven of Wesley's checks that Arizona had intercepted since 1998. The most recently intercepted check was for $196. Yvonne was in possession of this check and returned it to Wesley during the hearing. Two additional checks were intercepted in 2006. Yvonne testified that she kept one check in the amount of $1,012.74 and used that money to pay Angela's college tuition, but returned the second check for $994.83 to Wesley. In 2004, Arizona intercepted a fourth check, which was in the amount of $2,972, but Yvonne stated that she never received this check. Yvonne kept a 2003 check for $400 and a 2001 check for $600, both of which she used to support Angela. Yvonne testified that she returned to Wesley a check for $2,654 that was intercepted in 2000. Yvonne stated that Exhibit A indicated that Wesley had a child support arrearage totaling $12,708.12.

At the conclusion of this portion of Yvonne's testimony, Wesley's counsel again objected to the admission of Exhibit A. This time, the trial court sustained Wesley's objection and excluded Exhibit A from evidence. The court specifically noted that "[t]here's been no authentication, no sponsoring witness, no affidavit to it[;] it just flat out is hearsay." *Tr*. at 37.

Later during the hearing, Yvonne offered into evidence her Exhibit E, a document she had also obtained from the State of Arizona. This exhibit had a certification stamp from the agency in Arizona that had created the document. Exhibit E contained

substantially the same information found in Exhibit A. Specifically, Exhibit E listed the same seven checks found in Exhibit A that Arizona had intercepted from Wesley since 1998. Exhibit E indicated that Wesley's total child support arrearage was $10,673.47. Wesley objected to Exhibit E, but the trial court overruled the objection and admitted the exhibit into evidence.

Yvonne then testified that she had not received Wesley's $1,200 tax stimulus check. She further testified that her 1998 agreement with Wesley to modify custody did not specify that Wesley had no child support arrearage at that time. In fact, Yvonne testified that as of June 1, 1998, Wesley owed $4,648 in child support.

Wesley also testified during the hearing. He stated that as of June 1998, he had no child support arrearage. He acknowledged that Yvonne had returned certain intercepted checks to him, but stated that these checks were not included in his original calculation of his overpayment of child support and did not alter his determination that he had overpaid his child support by $11,582. Wesley, though, admitted that because $196 had been returned to him during the hearing, the amount Yvonne now owed him should be reduced to $11,386.

On September 30, 2008, the trial court issued an order in which it found that Wesley had overpaid his child support by $11,386. Despite this, the court ordered Yvonne to reimburse $11,582 to Wesley in monthly payments of $100. Yvonne now appeals.

DISCUSSION AND DECISION

I. Exclusion of Evidence

Yvonne first argues that the trial court erred in excluding Exhibit A from evidence. She does not explain how the trial court erred in excluding Exhibit A, nor does she support her argument with citation to authority as required by Indiana Appellate Rule 46(A)(8)(a). Therefore, this argument is waived. *Doughty v. Review Bd. of Dep't of Workforce Dev.*, 784 N.E.2d 524, 527 (Ind. Ct. App. 2003) (lack of cogent argument and citation to authority results in waiver of issue).

Waiver notwithstanding, the trial court excluded Exhibit A because it was not properly authenticated and because it was hearsay. Even assuming, *arguendo*, that Exhibit A was properly authenticated and was admissible pursuant to one of the exceptions to the hearsay rule, we note that "[g]enerally, errors in the admission or exclusion of evidence are to be disregarded as harmless unless they affect the substantial rights of a party." *Allen v. State*, 813 N.E.2d 349, 361 (Ind. Ct. App. 2004), *trans. denied*. Here, Yvonne was allowed to testify as to virtually the entire contents of Exhibit A. Additionally, Yvonne was permitted to introduce Exhibit E into evidence. Exhibit E contained substantially the same information found in Exhibit A. Given this, we cannot say that the exclusion of Exhibit A affected Yvonne's substantial rights. Therefore, the exclusion of Exhibit A was harmless error, if error at all.

II. Sufficiency of the Evidence

Yvonne argues that insufficient evidence was presented to support the trial court's judgment. "Indiana places a 'strong emphasis on trial court discretion in determining

child support obligations.'" *Carpenter v. Carpenter*, 891 N.E.2d 587, 592 (Ind. Ct. App. 2008) (quoting *Brown v. Brown*, 849 N.E.2d 610, 613 (Ind. 2006)). We will not reverse a trial court's decision regarding child support unless it is clearly erroneous. *Id.* "On appeal, we do not reweigh evidence or judge witness credibility. We will consider only the evidence and reasonable inferences from that evidence favorable to the judgment." *Id.* (citations omitted).

Yvonne first contends that there was insufficient evidence to support the trial court's judgment because Wesley did not introduce any documents or exhibits to support his testimony that he overpaid his child support by $11,582. During the July 18, 2008 hearing, Wesley testified that his child support obligation was abated in June 1998 when Matthew came to live with him and that, at that time, he had no child support arrearage. Wesley stated that since 1998, various states had seized $11,582 from him as payment for child support-- $10,382 was from income tax refunds, while $1,200 was from a tax stimulus check. Wesley's testimony was sufficient to support the trial court's judgment.

Next, Yvonne contends that Wesley's overpayment of child support should be considered a gratuity or a voluntary contribution for the support of Angela, and as such, Wesley may not recoup these funds. Generally, voluntary overpayments of child support are treated as gratuities. *Id.* at 600-01. However, this court has previously held that the overpayment of child support resulting from tax interception cannot be construed as a voluntary overpayment of child support or a gratuity and that the party claiming an overpayment of child support is entitled to reimbursement of those funds. *Matson v. Matson*, 569 N.E.2d 732, 734 (Ind. Ct. App. 1991). Here, because the overpayment of

child support was due to tax intercepts, the overpayment was involuntary and the trial court properly concluded that Wesley was entitled to reimbursement of the amount he overpaid in child support.

Yvonne makes several arguments in which she contends that the amount of the judgment entered against her should be reduced. First, she argues that as of June 1, 1998, Wesley had a child support arrearage totaling $4,680. She asserts that the $11,582 judgment should be reduced by this amount. However, Wesley testified that in June 1998 he had no child support arrearage. Yvonne's argument asks us to reweigh the evidence and judge witness credibility, which we will not do. *See Carpenter*, 891 N.E.2d at 592. Wesley's testimony was sufficient to permit the trial court to conclude that there was no child support arrearage as of June 1998.

Yvonne notes that Exhibit E, a document that was prepared by the State of Arizona, indicates that Wesley has a child support arrearage totaling $10,673.47. She contends that the trial court's judgment should be reduced by this amount. However, the child support order in this case was entered in Indiana, and Wesley made his child support payments in this State. As such, Arizona's calculation of Wesley's alleged child support arrearage is of minimal evidentiary value, especially since it is not clear that Arizona was aware that Wesley's child support obligation was abated in 1998 pursuant to the agreement to modify custody. Wesley's testimony was sufficient to permit the trial court to conclude that his child support obligation was abated in June 1998 and that he had no child support arrearage prior to that time. Thus, Yvonne was not entitled to a

reduction in the trial court's judgment based on Arizona's calculation of Wesley's alleged child support arrearage.

Yvonne next points out that pursuant to Indiana Code section 31-16-6-6(b)(1), Matthew was emancipated in April 2001 when he joined the military. She argues that Wesley owes child support in the amount of $82 per week for Angela from April 2001 until November 2005 when Angela got married and consequently was emancipated pursuant to Indiana Code section 31-16-6-6(b)(2). She calculates that for this period, Wesley owes $19,680 in child support. Based on this, Yvonne concludes that the trial court should have found that she owes Wesley nothing. The record, however, reveals that Yvonne never filed a petition to have Matthew emancipated or for modification of child support. What Yvonne in fact seeks here is a retroactive order modifying child support, which Indiana law prohibits. *See* Ind. Code § 31-16-16-6(a); *Drwecki v. Drwecki*, 782 N.E.2d 440, 447-48 (Ind. Ct. App. 2003) (noting that because retroactive modification of child support is prohibited, as a general rule, a court order modifying child support may only relate back to the date the petition to modify was filed and not an earlier date). The trial court properly declined Yvonne's request that it retroactively modify child support.

Lastly, Yvonne and Wesley both note that the trial court's September 30, 2008 order contains an error. During the September 29, 2008 hearing, Yvonne gave Wesley a check for $196, thus reducing the amount owed to Wesley to $11,386. The first numbered paragraph of the trial court's September 30 order acknowledged this payment by noting that "[Wesley] has made an overpayment in his child support payments to

[Yvonne] in the sum of $11,386." *Appellant's App.* at 5. Despite this, in the next paragraph, the trial court ordered Yvonne to reimburse $11,582 to Wesley. On remand, the trial court is instructed to correct its September 30, 2008 order to reflect that Yvonne is only obligated to reimburse $11,386 to Wesley in monthly payments of $100.

Affirmed and remanded.

NAJAM, J., and BARNES, J., concur.