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FILED
Sep 08 2011, 9:42 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
SAMUEL D. GRAY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 33A05-1102-DR-89
	)	
ANGEL L. GRAY,	)	
	)	
Appellee-Petitioner.	)	
	)	

APPEAL FROM THE HENRY CIRCUIT COURT
The Honorable Richard D. Culver, Special Judge
Cause No. 33C01-0212-DR-0230

September 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Samuel Gray ("Father") appeals the trial court's decision in favor of his ex-wife, Angel Gray ("Mother"). Father contends that the trial court erred in increasing his child support obligation, requiring him to pay post-secondary education and orthodontic expenses for two of the parties' children, and in finding him in contempt for failure to satisfy a monetary judgment. We affirm in part and reverse in part.

Facts and Procedural History

Father and Mother divorced in April 2003. According to the dissolution decree, Mother was awarded custody of their four children and Father was ordered to pay child support in the amount of $300 per week. In addition, the parties agreed that Father would retain a truck and a Harley Davidson motorcycle, and in return, would pay Mother $10,000.

In November 2009, in response to ongoing disputes between the parties, the trial court found that orthodontic procedures were reasonable and necessary for the parties' children. The court also apportioned the cost of uninsured medical expenses between the parents, holding Mother responsible for the first $1185 of the children's uninsured medical expenses annually. Father was ordered to pay 67% of uninsured expenses in excess of that amount. In the same order, the trial court found that Father had fraudulently transferred his Harley Davidson motorcycle to avoid his financial obligations to Mother. The court ordered Father to pay Mother $8000, the sale price of the motorcycle, in a lump sum.

In May 2010, Mother filed an information for contempt, alleging that Father had failed to pay her the price of the motorcycle as the court ordered, had failed to pay $950 in child support, and had not paid his share of the orthodontic bills. The same day, Mother also filed a petition to modify Father's child support obligation, alleging a change of circumstances so substantial and continuing as to make the current child support decree unreasonable. Specifically, Mother argued that her loss of employment, the fact that the children had grown older, and the parties' eldest child's college enrollment amounted to a substantial and continuing change in circumstances.

In July 2010, the court held a hearing on the issues of child support, orthodontic and post-secondary educational expenses, and contempt. At the hearing, Mother's counsel reiterated that Father had failed to satisfy the judgment pertaining to the Harley Davidson motorcycle. Father did not dispute the fact that he had not paid.

On the issue of child support, the parties contended that their respective incomes had changed. Mother's counsel stated that while Mother earned $27,000 in 2009, she lost her job in 2010 and as a result, her income consisted solely of child support payments, $312.00 from a job at Ball State lasting four months, and unemployment assistance. Tr. p. 8-9. Father's attorney stated that while Father earned $82,000 in 2009, he earned only $24,805.41 in approximately half of 2010, though he collected unemployment during weeks he did not work. *Id.* at 10-11, 13.

Evidence of post-secondary educational expenses was also presented at the hearing. Mother's attorney stated that the parties' oldest daughter was attending IU East in Richmond, Indiana, paying $250 per month to live in an apartment with another

student, and that the child's other living expenses were being paid by Mother. *Id.* at 10. At the end of the hearing, the court inquired as to additional evidence of college expenses. Specifically, the following exchange occurred:

> THE COURT: Mr. Tanner do you have anything in terms of what the tuition is at IU East?
>
> MR. TANNER [Mother's Counsel]: Yes I thought I handed it to you earlier.
>
> COURT: Maybe you did.
>
> MS. GRAY: I did. I gave you a paper that's got the total estimate and breakdown for quarters. It says Ball State University at the very top or I mean IU East.
>
> MR. TANNER: I must have handed it to you earlier.
>
> (RECORDING STOPPED, NO FURTHER HEARING RECORDED)
>
> ***

Id. at 13-14.

In November 2010, the trial court issued an order pertaining to contempt, orthodontic and post-secondary educational expenses, and child support. The order provides in relevant part:

> And the Court finds that the Respondent was ordered on December 11, 2009 to immediately pay the value of the Ford truck and Harley Davidson motorcycle, but the Defendant failed to pay the value of the motorcycle and the Court finds him in Contempt and he is sentenced to ninety (90) days in jail and ordered to pay $500.00 attorney's fees to the attorney for the Petitioner, but the Court will stay the 90 days jail sentence on condition that the Respondent pay $8,500 to the Clerk of Henry Circuit Court in ten (10) days of this order.
>
> The court further finds that the orthodontic bill for Sierra, minor child, was $3,950.00 and that the Petitioner is responsible for the first $1,185.00, leaving a balance of $2,765.00 and the Respondent is

> responsible for 67%, which he should be ordered to owe $1,742.00 and he should be ordered to pay this at the rate of $100.00 per month.
>
> Further, the Court finds that the parties' oldest child, Shayna Gray, born April 27, 1992 is attending college at I.U. East in Richmond, Indiana, that her tuition was $6,054.72 and room and board is $7,200.00, that books fees are $1,000.00 per year, making a total of $13,700.72 and that she has $1,000 in scholarships, $5,550.00 in pell grant and loans of $5,500.00 which is more than her share.
>
> The Court finds that the parents share is $2,250.00 of which the Respondent would owe $1,935.00 and the Petitioner would owe $315.00, (See attached sheet) and the Respondent shall pay 1/2 within 60 days and the balance beginning of the second semester.
>
> The Court further finds that child support for the three remaining children is $429.00 per week as set out in the attached worksheet.

Appellant's App. p. 59. The court also attached a child support obligation worksheet and post-secondary education worksheet to its order. Father filed a motion to correct error, challenging each of the four orders. The motion was denied. Father now appeals.

Discussion and Decision

Father contends that the trial court erred in increasing his support obligation, requiring him to pay post-secondary education and orthodontic expenses, and in finding him in contempt for failing to satisfy the monetary judgment in Mother's favor.

We initially note that Mother did not file an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for her, and we apply a less stringent standard of review with respect to showings of reversible error. *Julie C. v. Andrew C.*, 924 N.E.2d 1249, 1255 (Ind. Ct. App. 2010). That is, we may reverse if the appellant establishes prima facie error, which is an error at first sight, on first appearance, or on the face of it. *Id.*

I. Modification of Child Support

Father first contends that the trial court erred in granting Mother's petition to modify his child support obligation. Specifically, he argues that there was no evidence to support the court's order to increase his support obligation by $49 per week. In reviewing a decision regarding a petition to modify child support, we will reverse if there is a showing that the trial court abused its discretion. *Meredith v. Meredith*, 854 N.E.2d 942, 947 (Ind. Ct. App. 2006). We consider the evidence most favorable to the judgment without reweighing the evidence or judging the credibility of the witnesses. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances that were before the trial court, including any reasonable inferences to be drawn therefrom. *Id.*

Generally, a child support order may be modified only:

> (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
>
> (2) upon a showing that:
>
> > (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
> >
> > (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Ind. Code § 31-16-8-1.

Father properly argues that the modification of his support obligation would not be justified according to the twelve-month, twenty-percent deviation criteria in subsection (2). However, Mother did not proceed under this analysis. Rather, Mother alleged a

substantial and continuing change in circumstances as a basis for seeking an increase in child support under subsection (1). Specifically, Mother argued that her loss of employment, the fact that the children had grown older, and the parties' eldest child's college enrollment amounted to a substantial and continuing change in circumstances.

Changes in employment and financial resources have been held to constitute a substantial and continuing change in circumstances. *Walters v. Walters*, 901 N.E.2d 508, 511 (Ind. Ct. App. 2009); *Burke v. Burke*, 809 N.E.2d 896, 898 (Ind. Ct. App. 2004); *Harris v. Harris*, 800 N.E.2d 930, 938 (Ind. Ct. App. 2003), *trans. denied* (2004). The record shows that Mother's income was drastically reduced when she lost her job in 2010. Though she pursued other work, she was only able to obtain employment at Ball State University for a few months' time, for which she earned $312. After being laid off from Ball State, Mother received unemployment assistance. Mother's only source of income at the time she sought modification was unemployment assistance and child support from Father.

The record further shows that at the time Mother sought modification of Father's support obligation, the parties' daughter had recently enrolled in college at IU East. We have held that a child's enrollment in college may constitute a substantial and continuing change in circumstances where the parties have not made provision for college expenses or have been unable to reach an agreement. *Hay v. Hay*, 730 N.E.2d 787, 793 (Ind. Ct. App. 2000). Here, Mother and Father had made no arrangements to pay for their daughter's college expenses and were unable to reach an agreement regarding this issue.

Where this is the case, we have held that the trial court may require the parents to pay such expenses upon a petition to modify a support order. *Id.*

Accordingly, we find these undisputed facts and circumstances, specifically Mother's loss of employment and the parties' daughter's enrollment in college, sufficient to constitute a substantial and continuing change in circumstances that made the previous child support decree unreasonable. We conclude that the trial court did not abuse its discretion in modifying Father's child support obligation.

II. College Expenses

Father next contends that the trial court abused its discretion in ordering him to pay post-secondary educational expenses. We review decisions to order the payment of post-secondary educational expenses for an abuse of discretion. *Snow v. Rincker*, 823 N.E.2d 1234, 1237 (Ind. Ct. App. 2005), *trans. denied*. A multitude of considerations impact a decision to order an award of post-secondary educational expenses. *Quinn v. Threlkel*, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006). An educational support order must take into account the child's aptitude and ability; the child's reasonable ability to contribute to educational expenses through work, obtaining loans, and obtaining other sources of financial aid reasonably available to the child and each parent; and the ability of each parent to meet these expenses. Ind. Code § 31-16-6-2(a)(1); *Knisely v. Forte*, 875 N.E.2d 335, 341 (Ind. Ct. App. 2007), *reh'g denied*.

Father again argues that the court's order was unsupported by evidence in the record. Indeed, there is limited evidence in the record regarding these factors. However, we find that there is sufficient evidence to establish the aptitude and ability of the parties'

daughter, as well as her ability to contribute to educational expenses. The child enrolled in courses at IU East, where she received $1000 in scholarships. She financed more than eighty percent of the remaining expenses through grants and loans. The trial court attached a post-secondary educational support worksheet to its order, detailing these expenses and apportioned costs between Mother and Father after noting their daughter's share. We also note that the transcript indicates additional documents regarding college expenses were provided to the court.

The record before us reveals sufficient evidence from which the trial court could have properly determined the child's aptitude and ability; ability to contribute to educational expenses through work, obtaining loans, and obtaining other sources of financial aid reasonably available to the child and each parent; and the ability of each parent to meet these expenses. We therefore find that the court did not abuse its discretion in ordering Father to pay $1935 of those costs.

III. Medical Bills

Father contends that the trial court erred in ordering him to pay uninsured orthodontic expenses. Pursuant to a November 2009 order, Mother was required to pay the first $1185 of the children's uninsured medical expenses annually. Father was required to pay 67% of uninsured expenses in excess of that amount. The total expense of orthodontic services was $3950. The court ordered Mother to pay the first $1185 of that amount. The court then apportioned the remaining balance between Mother and Father, holding Father responsible for $1742, or 67% of the remainder.

Father correctly states that the commentary to Indiana Child Support Guideline 7 requires Mother to pay her portion of uninsured medical bills before he is required to contribute. However, Father attempts to manipulate the commentary in arguing that Mother's financing of the orthodontic bill alters his responsibility. The court's order requires Mother to pay her portion of the orthodontic bill at a rate of $100 per month. The fact that Mother's required total contribution of $1185 will be met is a certainty. In essence, her contribution has already been exhausted by the court's order. This is true despite the fact that the amount will be paid in monthly installments. Father cannot avoid his financial responsibility by arguing that his contribution does not come due until Mother makes her last monthly payment. We find the trial court did not abuse its discretion in requiring Father to pay $1742 toward orthodontic expenses now.

IV. Contempt

Finally, Father argues that the trial court erred in holding him in contempt because the order at issue was a monetary judgment. A trial court enjoys discretion in determining whether a party is in contempt of court, and its decision will be reversed only for an abuse of discretion. *Williamson v. Creamer*, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). As with other sufficiency matters, when reviewing a trial court's determination on contempt matters, we will neither reweigh evidence nor judge witness credibility. *Id*. We will affirm unless, after a review of the entire record, we have a firm and definite belief that a mistake has been made by the trial court. *Id*.

Judgments requiring one party to pay the other party a fixed amount of money are not enforceable by contempt. *Mitchell v. Mitchell*, 871 N.E.2d 390, 395 (Ind. Ct. App.

2007). If a final money judgment—one requiring a person to pay a fixed sum of money to the other party—is entered, contempt is not an available remedy for noncompliance. *Id.* The situation here involves a judgment requiring Father to pay a fixed sum of money to Mother; specifically a sum of $8000, the sale price of Father's Harley Davidson motorcycle.[1] This payment was ordered to remedy Father's fraudulent transfer of the motorcycle. We hold that the order requiring Father to pay Mother the price of the motorcycle constituted a money judgment requiring one party to pay a fixed sum of money to the other; therefore, the trial court was barred from using its contempt powers to enforce compliance with the order. The trial court abused its discretion in finding Father in contempt, sentencing him to ninety days in jail, and requiring him to pay $500 of Mother's attorney's fees. We reverse the trial court's order as it pertains to the contempt finding and instruct the amount paid by Father to Mother's attorney be credited toward the judgment balance.

Affirmed in part and reversed in part.

KIRSCH, J., and MATHIAS, J., concur.

[1] In arguing that the trial court's contempt finding was in error, Father also relies on the fact that Mother filed a partial release of judgment in 2004. However, this release pertained only to real estate and does not further Father's argument in this context. *See* Appellant's App. p. 31.