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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
D.L.C.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0902-CV-56
	)	
S.C. n/k/a S.L.,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Elizabeth F. Tavitas, Special Judge
Cause No. 45D03-0708-DR-818

September 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Donald C. ("Father") appeals the order by the trial court as to his obligations for child support, health insurance premiums, medical treatment expenses, and college costs for his daughters A.C. ("A.") and C.C. ("C.").

We affirm.

ISSUES

1. Whether the trial court erred when it imputed income to Father.

2. Whether the trial court erroneously calculated Father's child support arrearage.

3. Whether the trial court erred when it considered Mother's petition for rule to show cause.

4. Whether the trial court erroneously considered the oral stipulations made by the parties in open court.

5. Whether the trial court erred when it did not find dispositive the medical testimony submitted by Father.

6. Whether the trial court erroneously placed the burden of proof on Father as to the reasonableness and necessity of various medical expenses.

7. Whether the trial court erred when it ordered Father to pay certain medical expenses incurred by A. and C.

8. Whether the trial court erred when it ordered Father to reimburse Mother for medical insurance premiums.

9. Whether the trial court erred when it ordered Father to contribute to college expenses for A. and C. as he had originally agreed.

10. Whether the trial court erroneously ordered Father to pay $5,000.00 toward Mother's attorney fees.

FACTS

Father and Shawn C. ("Mother") were married in 1985. There were two daughters of the marriage: A., born May 23, 1986; and C., born April 1989. The marriage was dissolved on September 27, 2000, and the trial court ordered the parties to comply with their negotiated agreement[1] regarding various matters of custody, support, college expenses, medical insurance, and medical expenses as to A. and C. As to "college expenses," the order specified that

> [Father] shall contribute up to $6,000 per year for four (4) consecutive years commencing within one year after high school graduation for each of the parties' children for college expenses. College expenses are defined as room, board, tuition, books, and miscellaneous fees. [Mother] shall pay other expenses incurred for the children's college expenses.

(App. 87). As to "medical expenses," the order provided that

> [Father] shall procure a medical insurance policy on the parties' minor children with a deductible not to exceed $1,000 per year. The policy shall include coverage for dental and eye care. [Mother] shall be provided with a prescription card and all necessary forms. [Mother] and [Father] shall equally pay the premium for such insurance, the deductible, and all uncovered medical expenses not covered by insurance.

(App. 87-88).

Within months, the parties began filing petitions for modification of support, of visitation, and for rule to show cause. Hearings were held. On October 27, 2003, the trial court entered an order modifying the amount of child support to be paid by Father[2]; finding that Father owed Mother more than $3,000 for payment of the children's medical

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[1] The agreement was "made a part of th[e] Decree" of Dissolution. (App. 84).

[2] Specifically, Father was ordered to pay $122.00 weekly, retroactive to May 22, 2003, for child support.

and orthodontic expenses; conditioning the circumstances for future communication by Father with C.; enjoining Father from the premises of Crown Point High School and from communicating with the daughters during their activities there; and deferring the matter of any child support arrearage.

On May 2, 2005, Father filed a petition asking that the trial court declare A. emancipated, and reduce his child support on that basis. On June 21, 2005, Mother filed a petition for rule to show cause regarding Father's failure to pay college expenses; and on October 21, 2005, Mother filed another petition to show cause. On January 8, 2007, Father filed a petition asking the trial court to modify the child support and college contribution orders, and to declare both A. and C. emancipated. On May 12, 2008, Mother filed another petition to show cause regarding Father's failure to pay child support, medical expenses, and college expenses.

The trial court held a series of hearings (December 21, 2007; January 30, 2008; May 30, 2008; August 7, 2008; and September 5, 2008).[3] The trial court heard testimony and received voluminous exhibits to address the issues of Father's arrearage for payment of medical expenses (including medical insurance premiums); his proper obligation for child support and his arrearage in that regard; his obligation for contributions to the college expenses of the daughters; and attorney fees. Both parties testified. A. testified

[3] The record reflects that a previous special judge had dealt with the parties' post-dissolution issues for many years (from June of 2001 forward), and it was only in May of 2007 that the instant trial judge was appointed in this matter. The record also reflects that the previous judge's enormous file in this regard had disappeared. At the current judge's request, the parties assembled a set of the earlier trial court orders for the use of the court; however, it seems that the absence of the original file resulted in many evidentiary submissions received by the previous judge not being available for the current judge's reference and use.

that after graduating from high school, she had completed cosmetology school and obtained a license in the field; then attended Indiana University Northwest for two years, and was currently enrolled in Columbia College in Chicago. C. testified that after her early graduation from high school in January of 2007, she had taken one college credit course at Purdue Calumet, and then became a full-time student at DePaul University in September of 2007. The parties stipulated that A. was legally emancipated for the purpose of child support on her 21st birthday, May 23, 2007.

Neither party requested findings of fact and conclusions of law. On December 1, 2008, the trial court issued its order – with 46 findings of fact consistent with the above.

With respect to the medical expense arrearage, the trial court found it was "uncontested" that Mother had "paid all of the children's medical expenses since 2003 without contribution from" Father. (App. 38). It further found that Father failed to provide medical insurance for the children; that his attempt in that regard was not until three years after ordered to do so and "just prior to the scheduled hearing"; and that he had "frustrated [Mother]'s efforts to get health care for the children." *Id.* It found that Mother had paid $43,667.87 in reasonable medical care and expense for the children, which did not include any medical expenses for A. subsequent to her 21st birthday but did include vision and dental expenses and the cost of insurance premiums. Finally, the trial court found that the "medical procedures for both girls were necessary and not cosmetic only," and that the "medical expenses were reasonable." (App. 29). It ordered Father to pay one-half of the expenses paid by Mother, *i.e.*, $21,833.44.

With respect to child support, the trial court first found that C. was not emancipated. It further found that Father was "underemployed," such that weekly income should be imputed to him. (App. 39) The trial court computed Father's child support for C. in an amount of $129.00 per week. After giving Father credit for the support he had paid, it held that Father was in contempt of court for failing to pay child support as ordered and was in arrears in the amount of $10,862.52.

Evidence was received that the parent-child relationship between Father and his daughters had deteriorated. In addressing Father's contention that his daughters' refusal to have a relationship with him should relieve him of being required to contribute to their college expenses, the trial court noted the provision of the October 23, 2003 order stating that if Father

> wished to establish communication or visitation with [C.], Father would have to
> "a. Arrange for a licensed family therapist who is convenient to [C.] in location;
> b. Be solely responsible for any costs associated with the therapy; and
> c. Strictly follow all instructions of the therapist";

and that Mother should "cooperate fully with the therapist and be responsible for [C.]'s participation and adhering to the therapists recommendations." (App. 34, quoting Oct. '03 order). It further noted that according to the transcript of a hearing[4] before the

[4] The trial court's order refers to "the transcript of the hearing held in May, 2003." (App. 34). Although the transcript reflects a hearing date of May 12, 2003, it is "on [Father]'s Motion to Correct Errors and [Mother]'s Response thereto," and reflects counsel for <u>both</u> parties offering "some stipulations . . . for the record." (Ex. 53, p. 3). Father's counsel then recites that the parties have "agreed and stipulated . . . that [Father] will select a <u>female</u> psychologist . . . ." *Id.* at p. 4 (emphasis added). Father personally confirmed "for the purposes of the record the agreement" recited by his counsel, *id.* at 5, 6, as did Mother.

previous trial judge, "the parties stipulated that [Father] would 'choose a female psychologist with a primary emphasis on child, adolescent issues concerning the family.'" (App. 34, quoting Ex. 53, p. 4). The trial court found that Father "did not make any attempts to comply with" the agreed provision for arranging a female psychologist to counsel C.; had "not complied with the Order or stipulation of the parties regarding parenting time with [C.]."; and "did not attempt to establish contact until these proceedings were filed." (App. 36, 34, 36). The trial court noted C.'s testimony that Father had last visited with her the summer before she began 7th grade, and that he had embarrassed her by trying to establish relationships with her girlfriends – giving them cards, money, parties and expensive gifts. It also noted Father's testimony that on September 5, 2008, he had approximately $400,000 in bank accounts and a small business enterprise; that his home was worth approximately $400,000 and unencumbered by any mortgage; and that "he lived off his bank interest." (App. 35). Finally, the trial court noted that the term of the dissolution decree ordering Father's contribution to the daughters' college expenses was "agreed" to by the parties. *Id.* It found that "[Father]'s conduct" and "repeated behavior" had led to his daughters becoming "estranged" from him. (App. 37). The trial court found such "conduct should not void his agreement to pay for their college expenses"; that Father had "sufficient funds available to pay" his agreed contribution toward his daughters' education; and that pursuant to the

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The CCS shows no hearing on May 12, 2003, but it reports a hearing on May 12, 2004 – after Father had filed a motion to correct error (on November 19, 2003, after the October 23, 2003 order) and Mother had filed a response.

We assume that the trial court's order meant to refer to the May 2004 hearing transcript.

"unambiguous and clear" language of the agreement, he "should pay what he agreed to pay." (App. 37). The trial court found this amount to be $36,000.00 (as of December 1, 2008).

In addition, the trial court found that Father "withheld the funds that should have gone toward child support, college expenses, and ha[d] caused [Mother] to incur considerable expense to obtain what was agreed upon and previously ordered." (App. 40). It found that given Father's testimony "that he has approximately $400,000.00 in bank accounts," a "lump sum payment from [Father]'s cash funds is appropriate." *Id.* It also found that Father was "in contempt of Court for his willful failure to pay child support, medical expenses, and college expenses" that he had basically agreed upon and subsequently been ordered by the court. *Id.* "As a sanction" for his contempt of court, Father was ordered to pay $5,000.00 of Mother's attorney fees. (App. 42).

On December 30, 2008, Father filed his notice of appeal. Subsequently, the trial court sua sponte directed the parties to recalculate child support and arrearage based upon the time that C. was living at college.

DECISION

When findings of fact are entered sua sponte, they control only as to the issues they cover, and a general judgment will control as to the issues upon which there are no findings. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). We will affirm a general judgment with findings if it can be sustained on any legal theory supported by the evidence. *Id.* We undertake a two-step review: first, we determine whether the evidence supports the trial court's findings of fact; and second, we determine whether those

findings of fact support the trial court's conclusions of law. *Id.* Findings are clearly erroneous only when the record contains no fact to support them either directly or by inference. *Id.* A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.* In order to determine that a finding or conclusion is clearly erroneous, our review must leave us with the firm conviction that a mistake has been made. *Id.*

1. Imputing Income to Father

Father argues that the trial court erred when it imputed income to him at a level of $45,570.00 annually "without any supporting evidence." Father's Br. at 18. He reminds us that there "must be a reasonable basis upon which income" is imputed. *Id.* (citing *Kondamuri v. Kondamuri*, 852 N.E.2d 939 (Ind. Ct. App. 2006)).

Father's 2007 income tax return was admitted into evidence. It reflected his interest income in the amount of $24,898.00; and a profit from his sausage sales business of $10,336.00. Mother asked the trial court to assume that Father could double his profit by working more. Such doubled profit would be $20,672.00. When the doubled profit income is added to Father's interest income, the total would be an annual gross income of $45,570.00 – the amount used by the trial court to determine the appropriate level of child support.

Indiana Child Support Guidelines define "'weekly gross income' as actual weekly gross income of the parent if employed to full capacity," including "potential income if unemployed or underemployed" – when the parent is "voluntarily unemployed." Ind. Child Support G. 3(A), 3(A)(3). Father testified that he was "self-employed"; he worked

"part time"; and that he did not work more because he could "live within" the interest income he received. (Tr. 489, 496). Such evidence supports the reasonable inference that Father was underemployed. Further, Father admitted that he worked less than twenty days a year in his business. This evidence and that of Father's 2007 gross income from his business provide a reasonable basis for the additional income imputed to Father by the trial court for the purpose of determining the appropriate level of child support.

2. Child Support Arrearage

Father next argues that the trial court erred in calculating the outstanding child support arrearage. His argument begins with the assertion that his "gross weekly income is $188.00 per week." Father's Br. at 19. However, when the trial court calculated the appropriate level of child support, it found his weekly gross income to be $876.35. The preceding analysis confirmed the use of that income figure.

Father's argument further relies on his contention that A. should have been declared emancipated when she received her cosmetology license in late 2005. He cites to no authority in this regard, but merely asserts that the fact of her licensure establishes emancipation. However, the evidence is undisputed that at that time, A. was living with Mother and intended further postsecondary education toward her career goals. Further, the trial court did not find that the evidence established A.'s emancipation in late 2005. *See* Ind. Code § 31-16-6-6 (duty to support child until age of twenty-one unless the trial court finds emancipation based on certain circumstances). Accordingly, this contention fails.

Finally, as briefly indicated in FACTS, the trial court apparently ordered a recalculation of Father's child support arrearage. According to Mother, this occurred on March 4, 2009, and the recalculation was ordered to reflect that C. had been "living on campus since August 27, 2007," and to apply "the new child support figure of $47.13 per week as of the 3/31/09 court date." Mother's Br. at 15. Father states that on March 4, 2009, the trial court sua sponte "reduced the child support to $60.00 per week retro-active to the date [C.] left home and went to college." Father's Br. at 20 n.1; Reply at 5 n.1. However, we have solely the assertions in the parties' briefs as to any recalculation.

The order appealed herein established an arrearage in child support by Father. We have found no error with respect to the income level for Father that the trial court used in calculating his child support, and no error in the fact that the trial court did not find that A. was emancipated in late 2005. Given the parties' mutual acknowledgement of a subsequent adjustment to the calculation of that arrearage, the record before us does not lead us to a firm conviction that a mistake was made in the order appealed as to the calculation of Father's child support arrearage. *Yanoff*, 688 N.E.2d at 1262.

3. Rule to Show Cause

Father argues that the trial court erred "when it considered Mother's various petitions for rule to show cause and have Father held in contempt of court when the petitions were not properly executed." Father's Br. at 20. Father does not, however, include in his Appendix any of the "various petitions" that he alleges "failed to comply with the statutory requirements." *Id.* at 20, 21. Rather, he includes his May 30, 2008 motion to strike "the Petition for Rule to Show Cause" on the basis that it was "not

verified as required" by law. (App. 245) (on its face appearing to challenge a single petition in this regard).

At the time Father filed his motion to strike, the trial court had already heard evidence at two hearings in this matter. When Father expressly argued his motion to the trial court at the fourth hearing, Mother's counsel noted that by then, she had "submitt[ed] her verification," and that during her previous testimony under oath, Mother had affirmed filing the petitions. (Tr. 410). The trial court denied Father's motion.

We find applicable Justice Hunter's oft-cited warning against blind adherence to technical rules.

> Although our procedural rules are extremely important, it must be kept in mind that they are merely a means for achieving the ultimate end of orderly and speedy justice. We must examine our technical rules closely when it appears that invoking them would defeat justice; otherwise we become slaves to the technicalities themselves and they acquire the position of being the ends instead of the means. This is e[s]pecially true in a case . . . where we prejudice no one by allowing the record to be corrected at this point.

American States Inc. Co. v. State ex rel. Jennings, 258 Ind. 637, 649, 283 N.E.2d 529, 531 (1972); *see also Turner v. Franklin County Four Wheelers, Inc.*, 889 N.E.2d 903, 905 (Ind. Ct. App. 2008); *Rueth Dev't Co. v. Muenich*, 816 N.E.2d 880, 884 (Ind. Ct. App. 2004); *D.D.K. v. State*, 750 N.E.2d 885, 888 (Ind. Ct. App. 2001); *Meredith v. Meredith*, 679 N.E.2d 1309, 1311 (Ind. 1997); *Clark v. Clark*, 404 N.E.2d 23, 34 (Ind. Ct. App. 1980).

Father does not deny that ultimately, the trial court received verified petitions. He also does not deny that Mother had affirmed, as a witness under oath, her filing of the

petitions. Further, he has never asserted – either to the trial court or on appeal – that he was unaware of Mother's allegations as to his failure to comply with existing trial court orders. In addition, the CCS reflects that he filed responses to her petitions. Based on the record before us, we can discern no prejudice in this regard. Accordingly, we find no reversible error.

4. Oral Stipulation

Father argues that the trial court erred when is considered oral stipulations made at the May 12, 2004 hearing. According to Father, because the stipulation to a female counselor was never reduced to writing, the order remained that of October 23, 2003 – an order that did not specify the gender of the counselor to be obtained by Father; thus, he concludes, the "trial court erred when it faulted Father for not obtaining a female therapist." Reply at 7. We cannot agree.

A stipulation is a "voluntary agreement between opposing parties concerning some relative point." BLACK'S LAW DICTIONARY, 1455 (8th ed. 2004); *see also Inland Steel Co. v. Pavlinac*, 865 N.E.2d 690, 697 (Ind. Ct. App. 2007). A stipulation is "conclusive," and "binding as to the matter it addresses." 26 I.L.E. Stipulations § 6 (2004) (citing *Hales & Hunter Co. v. Norfolk & W. Ry. Co.*, 428 N.E.2d 1225, 1227 (1981) (error for trial court to not honor stipulation)). "[O]nce the parties enter into a stipulation and the court approves it, the stipulation is binding on all involved." *Id.* at § 10.

As indicated above, at a hearing in May 2004, Father personally affirmed the stipulation read to the trial court by his counsel – a stipulation that he would arrange for a female psychologist to counsel C., toward the end of re-establishing his relationship with

her. Pursuant to *Hales & Hunter Co.*, the trial court would have erred had it not honored this agreement by the parties. 428 N.E.2d at 1277. Therefore, we do not find that the trial court erred when it considered Father's failure to "make any attempts to comply with" that stipulated provision, (App. 34), in its consideration of Father's arguments that he should be relieved of his agreed contributions to college costs for his daughters.

5. Father's Medical Expert

At the first two hearings, the trial court heard general assertions by Father's counsel indicating that medical expenses for the daughters were being challenged by Father. At the May 30, 2008 hearing, counsel expressly asserted that the "bulk" of the "medical bills [we]re cosmetic" and "elective." (Tr. 314). At the next hearing, Mother testified extensively as to the medical conditions, apparently one condition was inherited, for which the daughters had been treated and that both the treatments and medications were necessary. Thereafter, the trial court expressed concern for the daughters "[h]aving their personal medical conditions" aired, and that the "girls deserve some privacy" in that regard.[5] (Tr. 402).

At the final hearing, on September 5, 2008, Father proffered the deposition testimony of Dr. Brent Jacobus, D.O. for the purpose of "contest[ing] the reasonable and necessariness [sic]" of the medication being prescribed to the daughters. (Tr. 414). After the trial court had reviewed the deposition, and Mother had objected that Dr. Jacobus had not examined the daughters, "had not reviewed any medical records," had not "spoken

[5] We share the trial court's dismay in this regard. Further, our discussion reflects the fact that we do not think it necessary to detail either the conditions or the treatments in order to resolve the evidentiary issue raised by Father.

with their treating physician" or "done any tests," (Tr. 526), the trial court had admitted the deposition. It then noted that the deposition reflected the "opinion" by Dr. Jacobus "that in his practice, . . . he doesn't prescribe this medication for this ailment." (Tr. 528).

Father argues that the trial court "erred when it disregarded" the testimony of Dr. Jacobus. Father's Br. at 22. However, the trial court stated that it "ha[d] read" the deposition and would "consider it as evidence like any other evidence." (Tr. 532).

Father proffers no authority for the proposition that testimony of a physician who has not examined or tested an individual, not reviewed that individual's medical records, and not discussed the individual with the treating physician must be found dispositive. As recited above, Mother's testimony supported the trial court's conclusion that the medical treatments for the daughters was necessary. The weight to be given conflicting evidence is a matter for the trial court. *See, e.g., Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 406 (Ind. 2005). Accordingly, we are not left with the firm conviction that a mistake was made when the trial court so concluded. *Yanoff*, 688 N.E.2d at 1262.

6. Burden of Proof

Father next argues that the trial court erroneously "placed the burden of proof" on him "to disprove and determine the reasonableness and the necessity of" the daughters' medication and treatment. Father's Br. at 23. We cannot agree.

The trial court stated that "the standard" for whether medication and treatment were "necessary" was whether they were "in the child's best interest," including those treatments to make the "child . . . be comfortable and emotionally stable." (Tr. 395). The trial court later expressly held that it was "Mother's burden to prove" that the medical

expenses were reasonable and necessary. (Tr. 533). Hence, Father's arguments to the contrary must fail.

7. Medical Expense Obligations

Father argues that the trial court erroneously held him obligated to pay for certain medication and procedures when Mother failed "to present any expert testimony" to establish that such were "reasonable and necessary." Father's Br. at 24. He cites to *Tigner v. Tigner*, 878 N.E.2d 324 (Ind. Ct. App. 2007), as requiring Mother to prove these expenses were "reasonable and necessary," *id.*, but he cites no authority for the proposition that such requires expert testimony.

As noted above, Mother testified extensively as to why the medications and treatments were prescribed for the daughters. In addition, both A. and C. testified as to why their medication had been prescribed. In light of this testimony, we are not left with the firm conviction that a mistake was made when the trial court concluded that the medications and procedures were medically necessary. *Yanoff*, 688 N.E.2d at 1262.

8. Medical Insurance Premiums

Next, Father argues that the trial court erred by requiring him to reimburse Mother for one-half the cost of the premiums she paid for medical insurance. Specifically, Father argues that the dissolution order had directed him to obtain medical insurance coverage, and he had attempted to do so. Because there was no order for Mother to procure such insurance, he contends, the trial court's current order is an illegal modification of the existing order. We cannot agree.

The trial court heard testimony that Father did not attempt to obtain insurance for several years after having been ordered to do so; that when he made such efforts, he also failed to provide Mother with evidence of coverage for use with the daughters' treatment providers. Mother testified that after Father failed for several years to procure insurance, or "did get insurance and then never" provided the necessary documents for the daughters to use it, and "after many hearings" on the need for Father to help with the daughters' medical expenses, she "got her own insurance" to cover them. (Tr. 309).[6]

We note that it was Father's violation of the dissolution order – by not timely providing insurance coverage for the daughters – that resulted in Mother's obtaining the insurance. In other words, had he not failed to comply with the order in this regard, Mother would not have had to obtain the insurance coverage for which he is now being ordered to pay his one-half share. Further, the trial court expressly found that the insurance coverage obtained by Mother was at a "reasonable" rate, (Tr. 478), and Father does not argue to the contrary. Inasmuch as the insurance premium was reasonable, it may be inferred that Father would have incurred the same premium expense[7] had he obtained the insurance as ordered. Therefore, arguably, the order that Father reimburse Mother was <u>not in effect</u> a modification of the extant order.

9. <u>College Contributions</u>

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[6] The record appears to establish that Mother procured this insurance beginning in early 2004.

[7] The dissolution order provided that Father "procure" the medical insurance but that Mother and Father "equally pay the premium for such insurance." (App. 87, 88).

Father also argues that because A. and C.'s "testimony repudiate[ed] the parent-child relationship, indicating they did not want anything to do with Father," the trial court erred "when it found that the college contribution component" of the dissolution order "can not be modified." Father's Br. at 25. He cites to *McKay v. McKay*, 644 N.E.2d 164 (Ind. Ct. App. 1994), and then reminds us that orders to "pay post-secondary expenses may be modified – even" when there had been "an agreement between the parties" thereon, citing *Meehan v. Meehan*, 425 N.E.2d 157, 160 (Ind. 1981). He argues that modification is warranted due to the "substantial change in the circumstances," to wit: "a change in the . . . parent-child relationship" with his daughters. Father's Br. at 28.

As the trial court found, in *McKay*, there was a petition for college expenses filed by the custodial parent and the court in *McKay* had to make a determination whether the noncustodial parent had an obligation to contribute based upon the relationship with the child; and then, to what extent each parent would have contributed if the family unit was intact. As the trial court further found, in this case, the parties agreed in their custody and property settlement agreement that Father would contribute up to $6,000.00 per year for four consecutive years commencing within one year of high school graduation for each of the parties' daughters for college expenses. In fact, Mother testified that the parties "negotiated for weeks" before reaching agreement on this provision. (Tr. 259). The trial court also noted that by statute, Indiana "permits parties to enter into agreement" as to dissolution matters, and "expressly encourages the resolution of divorcing couples' differences by agreement." (App. 36).

In *Meehan*, 425 N.E.2d at 157, the dissolution order as to child support incorporated the parties' agreement in that regard. As to whether such an order of child support could be modified, our Supreme Court held that the statutory requirement for modification applied even when "a child support order has been entered pursuant to the terms of a settlement agreement." *Id.* at 160. Thus, modification required a showing of "changed circumstances so substantial and continuing as to make the terms unreasonable." *Id.* at 161. More recently, we applied this standard in *Hay v. Hay*, 730 N.E.2d 787, 791-92 (Ind. Ct. App. 2000).

There was no showing that the relative income of the respective parents had changed substantially.[8] As to his relationship with his daughters, the trial court found that Father had failed to make any attempt to comply with the stipulation that he arrange for a female psychologist for counseling, and the evidence supports this finding. Further, C. testified that this failure by Father demonstrated to her that Father "obviously wasn't" interested in a relationship with her; that it was her impression was that he "didn't want to visit with [her]"; and that he sent her and A. "many letters saying go to hell and that he wanted nothing to do with us, to change our last names." (Tr. 102, 108). A. testified that she "would have talked to him if he would put forth an effort, but he never did," that "he never made an effort to talk to [her]"; and that Father had "destroyed" the relationship with her. (Tr. 161, 165). A. further testified that Father "wrote . . . in a letter to [her]"

[8] The dissolution order reflected that child support payments were "in accordance with the Indiana Child Support Guidelines" based on Father's "gross income of $40,000" and "minimum wages of $210.00 per week . . . imputed to" Mother. (App. 87). The current order is based on the trial court's determination that income would be imputed to Father at a level of $45,570 and imputed to Mother at a level of $270.

that she should "go to hell," and that he "disowned" her, and "told [her] to change [her] name," that she "w[as]n't [his] daughter." (Tr. 166, 167). The evidence also supports the trial court's findings that both A. and C. were alienated by Father's "conduct with their friends." (App. 36). Hence, the evidence did not unequivocally establish that his daughters had repudiated him, and the evidence does support the trial court's finding that the estrangement of Father and his daughters was "[d]ue to [his] conduct." (App. 37). The trial court concluded that "Father's conduct should not void his agreement to pay" certain sums toward his daughters' college expenses, (App. 37), and we are not left with the firm conviction that it made a mistake in this regard. *Yanoff*, 688 N.E.2d at 1262.

10. Sanction

Finally, Father argues that the trial court erred when it ordered him to pay $5,000.00 as a sanction for failing to pay child support, medical expenses, and college expenses because Mother's affidavit of attorney fees failed to comply with the Lake County Rules of Family Law rule requirement that the attorney fee agreement be submitted therewith – "L.R. 45-F.L.00-7." Father's Br. at 28, Reply at 13.

Rule 45-F.L.00-7 requires that "within 60 days of the initial filing of an action for dissolution or separation, each party shall file a verified certification of their completion of the mandatory website work . . . and of any mandatory co-parenting class . . . ." Therefore, Father's argument must fail, inasmuch as the record does not reflect that Mother failed to comply with this rule.

We note that another rule, Rule 45-FL00-19, does require that a "copy of the written fee contract, if any, shall be attached to the affidavit" as to specific attorney fees

requested. At the outset of the first of the many hearings that led to the order appealed, Mother's counsel stated that the parties had "agreed that [she would] submit an updated fee affidavit with an itemized bill" with proposed findings of fact at the conclusion of the hearings. (Tr. 6). Father's counsel affirmed this agreement as to "attorney fee affidavits." (Tr. 7). Mother correctly notes that Father's counsel did not "request that the contract for services be provided to him along with" the affidavit of attorney fees. Mother's Br. at 25. Further, it has long been the law in Indiana that to prevail on appeal, the appellant "must affirmatively show that there is error prejudicial to his substantial rights." *Hebel v. Conrail, Inc.*, 475 N.E.2d 652, 659 (Ind. 1985); *see also Southern Ind. Gas & Elect. Co. v. Gerhardt*, 241 Ind. 389, 172 N.E.2d 204, 208 (1961) (appellant has burden of proving prejudicial error). Having agreed to allow Mother's counsel to submit her updated fee affidavit with an itemized bill as evidence of Mother's attorney fee expenses, Father has failed to demonstrate how he was prejudiced when the written fee contract thereon was not provided to the trial court.

Affirmed.

ROBB, J., and MATHIAS, J., concur.