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IN THE
COURT OF APPEALS OF INDIANA

LAVEDA DREW,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 82A01-1106-CT-282
	)	
JIM GALLOWAY,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D03-1012-CT-7102

OCTOBER 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

Plaintiff-Appellant Laveda Drew appeals the trial court's denial of her denominated "Motion for Relief from Order." That order denied her Information for Contempt. We affirm.

Drew is over eighty years old. On September 2, 2010, Defendant-Appellee Jim Galloway promised to patch Drew's roof in exchange for $1000. On the same day, Drew gave Galloway a check for $1000. On September 3, Galloway told Drew that the entire roof needed to be replaced. They entered into a contract whereby Galloway would replace Drew's roof and complete related work for $9700. All materials were included in the contract price. That day, Drew gave Galloway a check for $7100, and on September 14, Drew gave Galloway a check for $1600, the balance of the contract price. On September 17, Galloway told Drew that he needed an additional $3900 to buy the shingles for the roof. Drew gave Galloway a check for $3900 the same day. Galloway never performed the work. Despite numerous requests from Drew, Galloway refused to refund any of the $13,600 she gave him.

In December 2010, Drew filed a complaint against Galloway in Vanderburgh Superior Court for violation of the Indiana Home Improvement Fraud Statute and breach of contract, seeking treble damages and attorney's fees. Drew later filed a Motion for Default Judgment. The trial court entered default judgment against Galloway in the amount of $42,275.75, plus interest. Drew then filed a Verified Motion for Proceedings Supplemental. At the hearing on March 3, 2011, the trial court entered a "personal order of garnishment" ordering Galloway to pay Drew $1750 each month and set the matter for

a progress report on June 15, 2011. Appellant's App. p. 3. Galloway only completed his first two payments. He further failed to appear for the progress hearing.

On June 20, 2011, Drew filed an Information for Contempt:

> The Plaintiff, Laveda Drew ("Plaintiff"), moves the Court to order the Defendant, Jim Galloway ("Defendant"), to show cause as to why he should not be punished for contempt of Court, and in support states as follows:
>
> 1. On March 3, 2011, a Personal Order of Garnishment was entered against Defendant.
> 2. Pursuant to the Personal Order of Garnishment, Defendant was to pay $1,750.00 on or before the 20th of each month to [Plaintiff's attorney].
> 3. Defendant has failed and refused to make his monthly payment in May, 2011.
> 4. Plaintiff's counsel is of the belief that Defendant is employed and capable of continuing payments.
>
> WHEREFORE, Plaintiff respectfully requests the Court to Order Defendant to show cause why he should not be found in contempt of court, to find Defendant in contempt, to award reasonable costs and attorney's fees for the prosecution of this matter, and for all other relief just and proper.

Id. at 21. The trial court denied the Information the same day. The chronological case summary entry for the denial states, "Pursuant to Carter vs. Grace W[h]itney Properties (2010), Court denies [the Information for Contempt]." Id. at 2. In Carter v. Grace Whitney Properties, 939 N.E.2d 630, 635 (Ind. Ct. App. 2010), this Court noted that Article 1, Section 22 of the Indiana Constitution prohibits imprisonment for debt, except in case of fraud. Two days after the trial court denied her Information for Contempt, Drew filed a denominated "Motion for Relief from Order." In the motion, Drew asserted for the first time that contempt was appropriate since judgment had been entered against Galloway for fraud and requested that the court set aside its denial of her Information for Contempt. The trial court denied the motion. Drew now appeals.

Drew presents one issue, which we restate as: whether the trial court abused its discretion by denying her Motion for Relief from Order.

We give no determinative significance to the nomenclature used by Drew to designate her request for relief from the ruling denying her Information for Contempt. Compare Stonger v. Sorrell, 776 N.E.2d 353, 358 (Ind. 2002) (reviewing ruling on motion for relief from judgment for abuse of discretion), with Paragon Family Rest. v. Bartolini, 799 N.E.2d 1048, 1055 (Ind. 2003) (reviewing ruling on motion to correct error for abuse of discretion). Suffice it to say that the issue presented was first raised at the trial court level only two days after the ruling being challenged. We therefore choose to consider the argument presented.

As an initial matter, we note that Galloway did not file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing arguments for him, and we apply a less stringent standard of review with respect to showings of reversible error. Ferguson v. Stevens, 851 N.E.2d 1028, 1031 (Ind. Ct. App. 2006). 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.

Drew filed her Motion for Relief from Order two days after the trial court denied her Information for Contempt. In the motion, she asked the trial court to set aside the denial of her Information for Contempt because the money judgment was based on fraud.

The underlying question Drew presents on appeal is whether the trial court properly denied her Information for Contempt. Whether a person is in contempt of a court order is a matter left to the trial court's discretion, and we will reverse only where

an abuse of discretion has been shown. Richardson v. Hansrote, 883 N.E.2d 1165, 1171 (Ind. Ct. App. 2008). As noted above, Article 1, Section 22 of the Indiana Constitution prohibits imprisonment for debt, except in case of fraud:

> The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted: and there shall be no imprisonment for debt, except in case of fraud.

(Emphasis added). In her Information for Contempt, Drew made no allegation of fraud.[1] The trial court was thus warranted in relying on the general rule prohibiting imprisonment for debt. That is, although there is a fraud exception to the general rule prohibiting imprisonment for debt, Drew did not make an allegation of fraud in her Information for Contempt but waited until her Motion for Relief from Order to raise the issue. We cannot say that the trial court abused its discretion by denying her Information for Contempt.

Drew asked the trial court to set aside its order denying her Information for Contempt because: (1) there is a fraud exception to the general rule prohibiting imprisonment for debt and (2) the money judgment entered against Galloway was for fraud. Drew did not allege fraud in her Information for Contempt but raised it for the first time in her motion addressed to the denial of her Information for Contempt. Her claim of fraud was thus waived. We therefore conclude that the trial court did not abuse its discretion by denying Drew's Motion for Relief from Order.

[1] We do not view Drew's assertion that Galloway has the ability to make continued payments as an allegation of fraud in failure to make such payments.

Affirmed.

KIRSCH, J., and CRONE, J., concur.