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FILED
Dec 04 2009, 8:23 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

Jeremiah W.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 32A01-0907-CV-321
	)	
Jenny W.,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Karen M. Love, Judge
Cause No. 32D03-0610-DR-163

December 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jeremiah W. ("Father") appeals an order that he pay child support and the attorney's fees incurred by his ex-wife, Jenny W. ("Mother"). We affirm.

Issues

Father presents two issues for review:

I. Whether the trial court abused its discretion by modifying Father's child support obligation from zero to $61.22 weekly; and

II. Whether the trial court abused its discretion by ordering that he pay Mother's attorney's fees.

Facts and Procedural History

The parties were married on July 11, 1998 and subsequently had two children. They separated in October of 2006. On December 8, 2006, they entered into a settlement agreement providing for joint physical and legal custody of the children and further providing that no child support would be payable by either party. On December 27, 2006, the trial court approved the settlement agreement and dissolved the parties' marriage.

On December 5, 2008, Mother filed a petition to modify child support. Father filed a motion to dismiss and a request for a protective order, both of which were denied by the trial court. Father then filed a motion for a more definite statement of Mother's claim, which motion was not specifically ruled upon by the trial court. On April 9, 2009, a hearing was conducted. On May 11, 2009, the trial court ordered Father to pay child support of $61.22 per week, as well as Mother's attorney's fees of $800. Father now appeals.

Discussion and Decision

I. Child Support

Decisions regarding child support are generally within the sound discretion of the trial court. Naggatz v. Beckwith, 809 N.E.2d 899, 901 (Ind. Ct. App. 2004), trans. denied. An abuse of discretion will not be found, and an order modifying child support will not be set aside unless it is clearly erroneous. Lea v. Lea, 691 N.E.2d 1214, 1217 (Ind. 1998). When a trial court enters a general judgment, as is the case here, the judgment will be affirmed if it is sustainable upon any legal theory consistent with the evidence. Borum v. Owens, 852 N.E.2d 966, 969 (Ind. Ct. App. 2006).

The modification of a child support order is governed by Indiana Code Section 31-16-8-1, which provides in relevant part:

> Except as provided in section 2 of this chapter, modification may be made 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.

The foregoing statute is written in the disjunctive. A party seeking modification must show that the existing order is unreasonable or show a 20% deviation and that twelve months have passed since the existing order was issued. Ind. Code § 31-16-8-1. Father implicitly concedes that a 20% deviation exists between the original child support order of zero and the

current guideline-based order, but argues that Mother waived any claim of entitlement under this statutory subsection by failing to plead or present evidence in support of the same. We disagree. Mother testified as follows:

> Question: [T]he previous child support obligation order that was filed with the Court uh was filed in December 2006 is that correct?
>
> Mother: Correct.
>
> Question: Um so it would be more than a year passed, under the statute um it would be more than a year that was passed since uh you've last had a child support obligation modification is that correct?
>
> Mother: Correct.
>
> Question: Uh and again just for the record just to clean up what we just did, there, there, you did agree the first time around that there's no child support ordered because of the joint custody issues. But if there would have been it would have been roughly seventy-five dollars ($75.00) right?
>
> Mother: Correct.
>
> Question: And uh what are you asking the Court for today uh in regards to the child support obligation?
>
> Mother: The amount?
>
> Question: Right.
>
> Mother: Um two nineteen ninety-six ($219.96).
>
> Question: And uh that's for the substantial change in the father's income is that correct?
>
> Mother: Correct.
>
> Question: Now, has there also been a change in your income?
>
> Mother: Yes.

(Tr. 17-19.) Additionally, Mother submitted pay check stubs and child support worksheets disclosing the parties' respective incomes. After all applicable credits, the amount of child support payable from Father to Mother was $61.22 weekly. As such, Mother offered evidence with respect to the relevant statutory criteria, sufficient to permit the trial court to conclude that the original order of zero child support differed by more than 20% from a guideline-based order and at least twelve months had elapsed since the order requested to be modified was issued. Father has demonstrated no abuse of discretion in the trial court's modification of child support.

II.Attorney's Fees

Father contends that he should not be required to pay Mother's attorney's fees because she "should not be rewarded by requiring the party who should have prevailed to pay the attorney fees." Appellant's Brief at 11.

The trial court may order a party to pay a reasonable amount for attorney fees. Ind. Code § 31-16-11-1(a)(2). In proceedings to modify a child support award, a determination regarding attorney's fees is within the sound discretion of the trial court and will be reversed only upon a showing of a clear abuse of that discretion. Whited v. Whited, 859 N.E.2d 657, 665 (Ind. 2007). The trial court is in the best position to consider the parties' respective resources, economic condition, and ability to engage in gainful employment. Id. The trial court need not specify the reasons for its determination. Saalfrank v. Saalfrank, 899 N.E.2d 671, 682 (Ind. Ct. App. 2008). In this case, it appears that the trial court considered Father's

superior earnings abilities and lack of a meritorious defense when ordering him to pay attorney's fees. Father has not established that the trial court abused its discretion.

Conclusion

Father has demonstrated no abuse of discretion in the trial court's order for modification of child support and the payment of attorney's fees.

Affirmed.

BAKER, C.J., and ROBB, J., concur.