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APPELLANT PRO SE:

MARY K. WALLSKOG
Portage, Indiana

IN THE
COURT OF APPEALS OF INDIANA

MARY K. WALLSKOG,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 64A03-0906-CV-261
	)	
STEVEN R. WALLSKOG,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE PORTER SUPERIOR COURT
The Honorable James A. Johnson, Magistrate
Cause No. 64D01-8405-DR-679

December 8, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Mary K. Wallskog appeals the trial court's order granting appellee-petitioner Steven R. Wallskog's petition to terminate his child support obligation with respect to their children, Ke. and Ka., and the corresponding wage withholding order. We summarize and restate Mary's arguments as follows: the trial court erroneously (1) denied her motion to continue the hearing on Steven's petition; (2) granted Steven's petition; and (3) denied her requests for college expenses, continuing support based on Ka.'s alleged disability, and for an order finding Steven in contempt for his alleged failure to comply with court orders. Finding no error, we affirm.

FACTS

Mary and Steven were married and two children were born of their relationship: Ke., born in May 1981, and Ka., born in April 1987. The marriage was dissolved on July 19, 1984. Steven was eventually ordered to pay child support in the amount of $178 per week and was also ordered to pay a portion of the children's medical expenses. In August 1995, Steven signed a voluntary wage assignment, pursuant to which the amount of his child support obligation was automatically deducted from his wages. In 1996, Steven's child support obligation was modified to $226 per week and the wage withholding order was amended accordingly. No further changes were made.

On January 21, 2009, Steven filed a petition to terminate his child support obligation and the wage withholding order because both children had reached the age of majority. Specifically, Ke. was twenty-seven years old and Ka. was twenty-one years old. Pursuant to the wage withholding order, the amount of Steven's child support

obligation had continued to be withheld from his paychecks even after the children had reached the age of majority. His employer rightfully refused to terminate the wage withholding in the absence of a court order, which is why Steven asked that the court enter such an order.

On February 23, 2009, Mary filed a petition for rule to show cause and a motion for college expenses, alleging that Steven had failed to (1) release bonds in the children's names to the children as ordered in the dissolution decree; (2) reimburse Mary for some of Ka.'s medical expenses; (3) contribute to Ka.'s college expenses; and (4) pay child support as ordered. On March 31, 2009, Mary filed a pro se letter with the court, terminating the services of her attorney and requesting a continuance of the hearing on Steven's petition that was scheduled to take place three days later. Additionally, she alleged that Ka. is disabled and, consequently, Steven should have continuing support obligations notwithstanding her age.

On April 3, 2009, the trial court held the scheduled hearing. Mary did not appear. The trial court explained that she had called the court and spoken to a court employee, who explained to her that her motion for a continuance would be addressed at the hearing. Steven's attorney informed the trial court that "on at least three separate occasions, this very thing has happened; a situation where, at the last minute, she either dismisses an attorney or she gets sick and she can't show up." Tr. p. 6. The trial court denied her motion for a continuance and proceeded to consider the merits of Steven's petition in Mary's absence.

Steven testified that the wage withholding order had been in effect since 1995; thus, the specified amount had been withdrawn from his paycheck regularly since that time. Steven also testified that, in fact, he had complied with everything he was required to do by court order, including payment of child support, payment of his share of the children's medical expenses, and release of the bonds in the children's names. He also testified that he had kept the children on his medical insurance and that Mary had not asked him to pay for any medical expenses for over ten years—in that time, he had never seen a medical bill for either child. Mary had also never asked that he contribute to Ka.'s college expenses.

As for Mary's contention that Ka. is disabled, Steven explained that he believed the alleged disability stemmed from a car accident Ka. sustained in March 2003. Ka. broke her back as a result of that accident and was in a wheelchair for her junior year of high school. But by the following year, she was out of the wheelchair and walking. She graduated from high school and attended Indiana University in Bloomington; as far as Steven was aware, she was set to graduate shortly after the hearing. The last time Steven saw Ka. was in 2007, and she was walking normally, without a limp, and was not disabled. He has never seen a doctor's report describing Ka. as disabled and has never received an inquiry from Social Security for benefits for her based on a disability. Steven does not believe his daughter to be disabled.

Steven's attorney explained to the trial court that the clerk's office holds child support payments received from a wage withholding order in trust automatically when

the child turns twenty-one. Therefore, although the funds had continued to be withdrawn from Steven's checks after the children reached the age of twenty-one, the funds had not been remitted to Mary. The clerk's office was holding $4,503 that had been collected from Steven's paychecks throughout the years since the children had reached the age of twenty-one. Therefore, Mary's belief that Steven had failed to pay child support likely stemmed from this situation.

On April 6, 2009, the trial court entered an order granting Steven's petition. Specifically, Steven's child support obligation for both children was terminated because the children were both over the age of twenty-one and Ka. was not disabled. Additionally, the wage withholding order was terminated and the court ordered that the sums being held by the clerk's office be returned to Steven. Furthermore, the trial court denied Mary's request for college expenses because it was filed after Ka. turned twenty-one and, therefore, untimely. On April 29, 2009, Mary filed a motion requesting that the trial court reconsider its denial of her motion for a continuance; the trial court denied the motion on May 6, 2009. On May 7, 2009, Mary filed a motion to correct error; the trial court denied the motion the same day. Mary now appeals.

DISCUSSION AND DECISION

To the extent that we are able to glean the substance of Mary's arguments from her brief, we summarize and restate them as follows: the trial court erroneously (1) denied her motion to continue the hearing on Steven's petition; (2) granted Steven's petition; and (3) denied her requests for college expenses, continuing support based on

Ka.'s alleged disability, and for an order finding Steven in contempt for his alleged failure to comply with court orders.

We note that Steven did not file a brief herein. This "circumstance in no way relieves us of our obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required." Blunt-Keene v. State, 708 N.E.2d 17, 18 (Ind. Ct. App. 1999). Opposing the arguments made for reversal, however, is an obligation that properly remains with the appellee. Id. Accordingly, when an appellee fails to submit a brief, the appellant may prevail by making a prima facie case of error. Bovie v. State, 760 N.E.2d 1195, 1197 (Ind. Ct. App. 2002). Prima facie error means error at first sight or appearance. Blunt-Keene, 708 N.E.2d at 19.

I. Motion to Continue

We review a trial court's decision to grant or deny a motion for continuance for an abuse of discretion. Trinity Baptist Church v. Howard, 869 N.E.2d 1225, 1230 (Ind. Ct. App. 2007), trans. denied. To establish that the trial court abused its discretion, the party appealing the ruling must show both that good cause existed to grant the motion and that it was prejudiced by the denial of the motion. Troyer v. Troyer, 867 N.E.2d 216, 219 (Ind. Ct. App. 2007).

Here, Mary has never confirmed the actual reason she desired a continuance. In her letter to the court—sent a mere three days before the hearing was to take place—she stated that she needed more time because she was terminating the services of her attorney. When she called the court and spoke to a court employee, the employee

informed her that her motion would be argued on the date of the scheduled hearing. At that time, she "indicated that she was physically unable to appear . . . ." Tr. p. 5. Attached to her pro se letter to the court was a handwritten note from a doctor asking that she be excused "from jury trial in April 2009" based on "chronic pain syndrome, carpal tunnel syndrome, and generalized osteoarthritis." Appellant's App. p. 40. She does not offer a specific reason in her appellate brief as to why a continuance of three months would have helped her if, in fact, she has physical disabilities, she does not explain why those disabilities would have prevented her from appearing in court, nor does she explain why, if the problem was her lack of an attorney, she did not appear at the hearing to argue for a continuance. Under these circumstances, we do not find that she established that good cause existed to grant the motion. Therefore, the trial court did not abuse its discretion by denying the motion and proceeding in her absence.

II. Steven's Petition

Mary also argues that the trial court erred by terminating Steven's child support obligation and the wage withholding order. A parent's obligation to pay child support typically terminates when the child reaches twenty-one years of age and is then emancipated. Liddy v. Liddy, 881 N.E.2d 62, 66 (Ind. Ct. App. 2008), trans. denied. Indiana Code section 31-16-6-6(a) provides as follows:

> The duty to support a child under this chapter ceases when the child becomes twenty-one (21) years of age unless any of the following conditions apply:
>
> ***

> (2) The child is incapacitated. In this case the child support continues during the incapacity or until further order of the court. . . .

This court has held that "the burden rests with the party seeking the termination of support of a child over the age of twenty-one to prove the child's age. Thereafter, the burden shifts to the party opposing the termination of the obligation of support to prove that the adult child is incapacitated." Liddy, 881 N.E.2d at 67.

Here, there is no dispute that when Steven filed his petition, both children were over the age of twenty-one. In fact, less than two months after the hearing was held, Ke. turned twenty-eight and Ka. turned twenty-two years old. Thus, Steven has met his burden of proving the children's age, and the burden shifts to Mary to prove that Ka. is incapacitated.

This court has defined "incapacity" as "the 'quality or state of being incapable; want of capacity; lack of physical or intellectual power, or of natural or legal qualification; inability; incapable; disability; incompetence.'" Id. (quoting Bole v. Civil City of Ligonier, 130 Ind. App. 362, 161 N.E.2d 189, 194 (1959)). Here, Mary has offered no evidence that Ka. is incapacitated. She has never explained to the court what Ka.'s alleged disability is, nor has she offered evidence of her bald contention that Ka. is incapacitated.

Because Mary failed to appear at the hearing, the only evidence in the record on this issue is Steven's testimony. Steven testified that although Ka. sustained a severe injury in 2003, the last time he saw her—in 2007—she was walking normally. He has

never seen a doctor's report describing Ka. as disabled and has never received an inquiry from Social Security for benefits for her based on a disability. He does not believe her to be disabled. Given this record, we cannot find that Mary sustained her burden of establishing that Ka. is incapacitated. Therefore, the trial court did not err by terminating Steven's child support obligation and the income withholding order based on the children's emancipation.

III. Mary's Petition

Mary also contends that the trial court erred by refusing to order Steven to contribute to Ka.'s college expenses and by refusing to find Steven in contempt for his alleged failures to comply with court orders.

As for college expenses, it is well established that "'a trial court may not first make an order for educational needs when the petition seeking such relief is filed after the child's emancipation.'" Jenkins v. Jenkins, 687 N.E.2d 256, 259 (Ind. Ct. App. 1997) (quoting Donegan v. Donegan, 605 N.E.2d 132, 134 (Ind. 1992)), trans. denied. Here, it is undisputed that Mary did not request that Steven contribute to Ka.'s college expenses until Ka. was nearly twenty-two years old. By that point, it was too late. Given that Mary's request was untimely, the trial court properly denied it.

Turning, finally, to Mary's contention that the court should have held Steven in contempt for his alleged failures to release bonds to the children, pay for a portion of their medical expenses, and pay child support as ordered, we note that there is no support for these allegations in the record. Steven testified that he did release the bonds to the

children, that he has paid all of the medical expenses he's been asked to pay but that Mary has not asked for such costs in over ten years, and that the amount of his child support obligation has been withheld from his paychecks since the wage withholding order was first entered in 1995. Mary has offered no evidence to the contrary. And in any event, it has been established that a trial court no longer has authority to hold a party in contempt for child support arrearages after the children covered by the support order are emancipated. Jenkins, 687 N.E.2d at 259. Therefore, the trial court did not err by denying Mary's rule to show cause.[1]

The judgment of the trial court is affirmed.

DARDEN, J., and MAY, J., concur.

[1] To the extent that Mary argues that the prosecutor's office should have been involved in some fashion, we find that she has waived this argument by failing to appear at the hearing.