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IN THE
COURT OF APPEALS OF INDIANA

S. (M.) O. (Mother),	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 29A04-1104-DR-203
	)	
S. M.,	)	
	)	
Appellee.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
The Honorable William P. Greenway, Magistrate
Cause No. 29D01-0611-DR-1175

December 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

S.(M.)O. ("Mother") appeals the trial court's judgment ordering S.M. ("Father") to continue to provide health insurance for the parties' children.

We affirm.

ISSUE

Whether the trial court erred in ordering Father to continue to provide health insurance for the parties' children.

FACTS

Father and Mother were divorced in 2007. The parties' Property Settlement Agreement and Waiver of Final Hearing provided that Father would pay $225.00 per week in child support for his two children, nine-year-old S.M. and seven-year-old G.M. The Agreement further stated that Father would provide health insurance for the children. Father was granted the right of parenting time consistent with the Indiana Parenting Time Guidelines.

In 2010, Father filed a Verified Petition for Modification of Child Support and a Verified Motion for Contempt Regarding Parenting Visitation Order. He later filed a Verified Supplemental Petition to Show Cause and for Appointment of Guardian Ad Litem.

The trial court held a hearing on the petitions in January 2011. Testimony at the hearing revealed that Father lost his job in August 2010 when his plant closed. He was told that he was being switched to a voluntary leave type of insurance policy and his bills

might not get paid quickly. Concerned that his children might not be covered at all during this period, Father asked Mother if she could put the children on her health insurance until he found another job. Mother agreed to do this.

In September 2010, Father found a new job making less money than he made at his former job. The children remained on the health insurance from his former job until he started his new job. When Father asked Mother for the children's social security numbers so he could put the children on his new insurance, Mother told Father she could not find the numbers.

At the hearing, Mother asked the trial court to modify the dissolution decree and to order her to provide health insurance for the children. Mother explained that the premium for her health insurance was only $25.00 every two weeks compared to Father's $87.00 premium. Father objected to Mother's request because she did not have a stable employment history. Father wanted to make sure that the children had medical insurance. Mother's testimony revealed that she worked as a part-time instructor at ITT Technical Institute and IUPUI until her son with her new husband was born in August 2007. While her baby was young, she worked as a part-time instructor at Med Tech College and Brown Mackie College. In September 2009, she went to work full-time at Unique Home Solutions as an Event Manager. In September 2010, she got a job as an online student mentor at Western Governor's University.

In February 2011, the trial court issued an order denying Father's Motion for Contempt and granting his Verified Petition for Modification of Child Support.

Specifically, the court reduced Father's child support to $156.30 per week and ordered Father to continue to provide health insurance for the children. Mother appeals.

DECISION

At the outset, we note that Father has failed to file an appellate brief. When an appellee fails to file a brief, we may apply a less stringent standard of review and reverse the trial court's judgment if the appellant demonstrates prima face error. *Rendon v. Rendon*, 692 N.E.2d 889, 893 (Ind. Ct. App. 1998). However, we may also, in our discretion, decide the case on the merits. *Id.* Due to the nature of the issue involved in this appeal, we exercise such discretion here. *See id.*

The modification of a child support order requires a showing of "changed circumstances so substantial and continuing as to make the terms unreasonable." Ind. Code § 31-16-8-1. *See also* Ind. Child Support Guideline 4 ("The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances.") Modification of a child support order "involves a factual determination that substantial and continuing, changed circumstances render existing terms unreasonable." *Glass v. Oeder*, 716 N.E.2d 413, 416 (Ind. 1999) (quoting *Giselbach v. Giselbach*, 481 N.E.2d 131, 133 (Ind. Ct. App. 1985)).

Here, because Mother asked the trial court to modify the dissolution decree by ordering her to provide health insurance for the children, she has the burden of proof to establish the circumstances to support the modification of the insurance payments. *See Adams v. Adams*, 873 N.E.2d 1094, 1098 (Ind. Ct. App. 2007). She therefore appeals

from a negative judgment, which will be reversed only if there is no evidence to support the trial court's conclusion. *See id.*

Our review of the evidence reveals that Mother and Father entered into a Property Settlement Agreement which provided that Father would maintain health insurance for the children of the parties. Mother has not had stable employment over the prior three years. In 2007, she worked as a part-time instructor at ITT Technical Institute and IUPUI. She then worked as a part-time instructor as Med Tech College and Brown Mackie College. In September 2009, she worked full-time as an event manager at Unique Home Solutions, and one year later, she began working as an online mentor at Western Governor's University. Father explained that even though Mother's insurance premium was less than his, he wanted to continue to provide the children's health insurance to make sure that the children remain insured. This evidence supports the trial court's decision to order Father to continue to provide health insurance for the children, and we find no error.

Affirmed.

BAKER, J., and BAILEY, J., concur.