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**IN THE
COURT OF APPEALS OF INDIANA**

LEONARD J. LARAWAY,)
)
Appellant-Respondent,)
)
vs.) No. 29A05-1007-DR-430
)
CATHY A. (LARAWAY) FISHER,)
)
Appellee-Petitioner.)

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pflieger, Judge
The Honorable William P. Greenaway, Magistrate
Cause No. 29D02-9311-DR-428

April 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

The marriage of Leonard J. Laraway (“Father”) and Cathy A. (Laraway) Fisher (“Mother”) was dissolved in 1994 and the parties executed a Dissolution Settlement Agreement (“Agreement”). Father appeals the trial court’s denial of his motion to correct error of an order (“Order”) that found Father in arrears for child support and college expenses pursuant to the Agreement and in contempt for failure to make such payments. Father raises the following restated issues for our review:

- I. Whether the trial court erred when it calculated Father’s child support arrearage as of the date of March 19, 2010;¹
- II. Whether the trial court erred when it found that Father had paid \$6,000.00 in child support during the time period from August 2007 through March 19, 2010;
- III. Whether the trial court erred when it found Father in contempt of court for failure to pay support as ordered;
- IV. Whether the trial court erred when it determined that Father owed “\$15,939.04 plus \$403.18 less \$1,200.00”² in college expenses for L.L.’s 2008-2009 academic year;
- V. Whether the trial court erred by failing to offset funds owed to Father from Mother for uninsured medical expenses against any arrearage due to Mother; and
- VI. Whether the trial court erred when it calculated Father’s weekly gross income at \$2,211.04, and incorporated that amount into its Order.

We vacate the trial court’s order and remand with instructions.

¹ Although the trial court refers to the date of March 19, 2010, the CCS reveals that the final hearing was actually held on March 18, 2010. *Appellant’s App.* at 5, 8. For ease of reference, however, we use the March 19, 2010 date to address Father’s issues.

² *Appellant’s Br.* at 1.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of two children who were born to their marriage, namely, L.L. and P.L. The parties' marriage was dissolved and their Agreement was approved on October 26, 1994. The language in the Agreement that is relevant to this appeal: (1) required Father to pay child support in the amount of \$231.00 per week; and (2) required the parties to "contribute equally to the children's college tuition at a state college/university, after all grants, loans, and scholarships have been applied for by each child." *Appellant's App.* at 17. Each child was required to "maintain a 'C' average for said contribution to continue." *Id.* The Agreement also provided that the parties were to "equally divide any unreimbursed medical, dental and optical expenses." *Id.* at 16.

In May 2008, Mother filed a petition for modification of the Agreement. *Id.* at 3; *Appellant's Br.* at 3. One month later, Mother filed a petition for contempt contending that Father had failed to pay support as ordered by the Agreement. Thereafter, Father filed a petition for contempt, contending that Mother had failed to pay "uninsured³ medical expenses." *Appellant's Br.* at 3. The parties presented evidence at a series of hearings, which were held over a fifteen-month period. *Appellant's App.* at 4, 5. In April 2010, the Hamilton Superior Court issued its Order finding Father had a child support arrearage of \$25,185.00, owed \$15,142.22 for college expenses,⁴ was in contempt for failing to pay

³ While the language of the Agreement provided for each party to "equally divide any unreimbursed medical, dental and optical expenses," the petition for contempt, which is not a part of the record before us, apparently referred to "uninsured" medical expenses. *Appellant's Br.* at 3; *Appellant's App.* at 16.

⁴ The Order provided that Father owed college expenses for the academic year 2008-2009 in the amount of \$403.18 plus \$15,939.04 less \$1,200.00. *Appellant's App.* at 10.

support as ordered, and was responsible for payment of Mother's attorney fees in the amount of \$3,715.00.⁵ *Appellant's App.* at 8-11. Thereafter, Father filed a motion to correct error, which the trial court denied in June 2010. *Id.* at 23, 33, 37. Father now appeals. Additional facts will be added as necessary.

DISCUSSION AND DECISION

Initially, we note that Mother did not file an appellee's brief. When an appellee fails to submit a brief, we apply a less stringent standard of review with respect to the showing necessary to establish reversible error. *Wolverine Mut. Ins. Co. v. Oliver*, 933 N.E.2d 568, 570 (Ind. Ct. App. 2010), *trans. denied* (2011). In such cases, 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.* Moreover, we will not undertake the burden of developing legal arguments on the appellee's behalf. *Id.*

Neither party asked the trial court to enter findings under Indiana Trial Rule 52. Although not titled as such, the trial court's order contained findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52(A). We review such findings and conclusions with a two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. *Leever v. Leever*, 919 N.E.2d 118, 122 (Ind. Ct. App. 2009). We consider only the evidence most favorable to the judgment and all reasonable inferences to be drawn therefrom. *Id.* We do not reweigh the evidence or assess the credibility of the witnesses. *Id.* When the trial court enters findings sua sponte, the specific findings control

⁵ Father does not appeal the trial court's finding concerning attorney fees.

only as to the issues they cover. *Id.* A general judgment standard applies to any issue upon which the trial court has not made a finding and may be affirmed upon any legal theory supported by the evidence. *Id.*

I. Arrearage Date of March 19, 2010

Father contends that the evidence did not support the trial court's finding regarding Father's child support arrearage "as of March 19, 2010." *Appellant's App.* at 10. We agree. Here, the issue of Father's child support payments and arrearage were addressed during three hearings over a period of fifteen months. At the December 5, 2008 hearing, Mother and Father introduced exhibits that reflected Father's child support payments and arrearage calculated through November 28, 2008.⁶ *Tr.* at 12, *Pet'r's Exs.* 1, 2; *Resp't's Exs.* O, P. At the August 14, 2009 hearing, both parties updated their previous exhibits and introduced evidence that showed Father's support payments and arrearage through the date of August 14, 2009. *Tr.* at 122, 236-37; *Pet'r's Exs.* 13-16; *Resp't's Exs.* T, U. Although the trial court held a final hearing in March 2010, no additional evidence was submitted regarding child support payments and arrearage.

Here, the evidence before the trial court was sufficient to calculate Father's arrearage through August 14, 2009. The trial court also could have calculated the child support owed by Father through March, 19, 2010, however, since there was no evidence regarding whether Father made child support payments from August 14, 2009 through March 19, 2010, the trial

⁶ Mother introduced *Petitioner's Exhibit 2*, which showed Father's payments through September 27, 2008. However, Mother did not object when Father introduced *Respondent's Exhibit O*, which contained a record of Father's payments through November 28, 2008. *Tr.* at 106-07.

court's finding as to Father's arrearage through March 19, 2010 was not supported by the evidence. Father has established prima facie error that the evidence does not support the trial court's findings regarding arrearage owed through March 19, 2010. We vacate the trial court's determination on this issue and remand with instructions that the trial court recalculate the arrearage only through the date of August 14, 2009.

II. Child Support

Father next contends that the evidence does not support the trial court's finding that he had paid only \$6,000.00 in child support during the time period from August 2007 through March 19, 2010.⁷ The Order provided:

13. The Court finds that by Petitioner's admission, Respondent was current in his child support up to August 2007. Since that time (up to March 19, 2010) a total of $135 \times \$231.00 = \$31,185.00$ has become due. During this time, Respondent has paid \$6,000 (per Petitioner's Exhibit 2). Thus, as of March 19th, 2010 a child support arrearage of \$25,185.00 exists. Respondent shall repay the same at the rate of \$50.00 per week. The Court authorizes the issuance of an Income Withholding Order.

Appellant's App. at 10. The trial court noted that Father's \$6,000.00 payment was calculated using information found in Petitioner's Exhibit 2—an exhibit that reflected Father's payments only through September 27, 2008. Exhibits introduced by both parties at the August 14, 2009 hearing, however, reflect thousands of dollars in payments made by Father after September 27, 2008. *See Pet'r's Ex. 13; Resp't's Ex. T.* Here, Father has established prima facie error that the evidence does not support the trial court's findings that Father had

⁷ L.L. turned twenty-one on November 3, 2008. Therefore, the child support payments at issue pertain to P.L. and to L.L. only until November 3, 2008; the date she was emancipated by operation of law.

paid only \$6,000.00 in child support. We vacate the trial court's determination on this issue and remand with instructions that the trial court recalculate the amount of child support Father has paid through August 14, 2009—the latest date reflected in the exhibits.

III. Contempt Finding

Father next contends that the trial court erred in finding him in contempt for “failing to pay support as ordered.” *Appellant's App.* at 10. To be held in contempt, a party must have willfully disobeyed a court order. *Hamilton v. Hamilton*, 914 N.E.2d 747, 755 (Ind. 2009). Because the trial court's determination of the amount of unpaid child support has been vacated and because the contempt order is based upon that determination, we vacate the contempt finding and remand with instructions that the trial court re-consider the issue after it recalculates the amount, if any, of the unpaid child support.

IV. College Expenses

Father also contends that the evidence does not support the trial court's finding regarding college expenses he owed to Mother pursuant to the terms of the Agreement.⁸ In paragraph 14 of the Order, the trial court found:

Respondent [Father] owes a balance on net college expenses for 2008-2009 of \$403.18 for books, art supplies, and parking based upon Petitioner's Exhibit “16,” for fees, books, parking, and room and board per Petitioner's Exhibit “9,” for fees/tuition, books and room and board of \$15,939.04, less payments by Respondent of \$1,200.00, for [L.L]. The same shall be paid within 90 days.

Appellant's App. at 10. Father maintains that these findings were not supported by the

⁸ Because P.L.'s grades did not meet the requirements set forth in the Agreement, the college expenses at issue pertain only to L.L.

evidence. We agree.

The trial court added up the numbers provided on Petitioner's Exhibit 9 and concluded that Father owed \$15,939.04 for fees, tuition, books, parking, and room and board.⁹ Father contends that Mother's summary of L.L.'s college expenses for 2008-2009 includes a \$7,560.00 fee to cover room and board, but the attached documentation contains no information about the cost of on-campus room and board and reveals that L.L. leased an apartment for \$340.00 a month. *Pet'r's Ex. 9*. Father contends that, at most, L.L.'s expense for renting the apartment during the ten-month school term would have been \$3,400.00. Additionally, Father argues that, in the absence of a college bursar statement, receipt, or credit card statement reflecting the amount paid for L.L.'s education during the 2008-2009 school year, there is insufficient evidence to support Mother's claim of college tuition totaling \$6,531.00. Father also maintains that the charges listed on Petitioner's Exhibit 9 for books and parking are not supported by the evidence. Mother listed L.L.'s book fee as being \$875.60; however, the accompanying receipts add up to approximately \$440.00.

Father also contends that the charges listed in Petitioner's Exhibits 9 and 16 contain double charges. Specifically, Father alleges that he was overcharged for parking when the

⁹ On Petitioner's Exhibit 9, the following fees were listed:

Undergrad fees	\$6,531.00
Additional fees req.	\$ 828.04
Books	\$ 875.60
Parking	\$ 145.00
Room & Board	\$7,560.00

The trial court did not include Mother's request for a transportation fee in the amount of \$1,800.06. We calculate this amount to be \$15,939.64—about sixty cents more than \$15,939.04 found by the trial court.

trial court included an annual parking fee of \$145.00 on Petitioner's Exhibit 9, and also charged \$72.25 for a half year of parking on Petitioner's Exhibit 16.

Finally, Father asserts that, under the terms of the Agreement, it was clear error for the trial court to charge Father with the full college expense of \$15,939.04. While the Order modified the manner by which college expenses would be paid, that change did not take effect until the 2009-2010 school year. *Appellant's App.* at 9. The pertinent terms of the Agreement in effect for the 2008-2009 school year provided:

The parties will contribute equally to the children's college tuition at a state college/university, after all grants, loans, and scholarships, have been applied for by each child. If a child is in a position academically to attend a private school, and is able to obtain scholarships and loans to assist in the cost of tuition, the parties agree to contribute toward that tuition also. (*"Tuition" includes room and board*).¹⁰ Each child must maintain a "C" average for said contribution to continue.

Appellant's App. at 17. As such, the trial court erred in (1) assigning all expenses to Father rather than apportioning only tuition "after all grants, loans, and scholarships [had] been applied," and charging Father for more than his half share. *Id.* Based on our review of the record before us, we conclude that there is prima facie evidence that the facts do not support the trial court's findings regarding the amount Father owes in college expenses. As such, we vacate the trial court's determination on this issue and remand with instructions for the trial court to recalculate Father's one half of the "college tuition."¹¹ *Id.*

¹⁰ This italicized language was stricken and initialed by both parties. *Appellant's App.* at 17.

¹¹ While the term "tuition" was not defined by the Agreement, we again note that the following language, which was in the original version, was specifically crossed out: "'Tuition' includes room and board." *Appellant's App.* at 17.

V. Offset of Medical Expenses against Arrearage

Father asserts that the trial court erred by failing to make a finding regarding what, if anything, Mother owed him in unreimbursed medical payments. The Agreement provided in pertinent part, “Husband shall maintain health, dental, and optical insurance on the minor children. The parties shall equally divide any unreimbursed medical, dental and optical expenses. . . .” *Appellant’s App.* at 16. During the hearing, Father introduced Respondent’s Exhibit V, which included a list of medical payments, and accompanying receipts, for which Father claimed he had not been reimbursed.¹² Mother did not testify regarding the charges being invalid nor did she claim that she had paid any of the unreimbursed expenses.

The trial court made no finding on the issue of whether Father had incurred unreimbursed medical expenses on behalf of the children. Father has made a prima facie showing that the trial court should have made a finding regarding whether Mother owed Father for unpaid medical expenses. We remand with instructions for the trial court to calculate the amount, if any, of unreimbursed medical expenses that Mother owes to Father and, if appropriate, to credit that amount against other payments Father may owe.

VI. Calculation of Father’s Weekly Salary

Finally, Father argues that the trial court erred in determining that his weekly gross income was \$2,211.04, when Petitioner’s Exhibits 5 (Father’s pay stubs) and 6 (Father’s Verified Financial Declaration) reveal that his income was \$1,953.20. *Appellant’s App.* at

¹² We note, however, that this court is unable to match all of the admitted receipts with Father’s claimed charges.

39-44. As such, Father contends that his weekly child support payments for P.L. should have been \$195.00 instead of \$219.60 as determined by the trial court. “We cannot review a support order to determine if it complies with the guidelines unless the order reveals the basis for the amount awarded.” *Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 728 (Ind. Ct. App. 2009). “Such revelation could be accomplished either by specific findings or by incorporation of a proper worksheet.” *Cobb v. Cobb*, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992). Here, the trial court erred by basing its child support order on an unverified and unsigned child support worksheet. *Appellant’s App.* at 12; *see also Cobb*, 588 N.E.2d at 575 (basing child support order on unverified and unsigned worksheet was error because use of such a worksheet “has no sanction under either the child support guidelines or the rules of evidence and trial procedure.”). We therefore vacate the trial court’s findings on this issue and remand with instructions that the trial court provide more specific findings on this issue or base its determination regarding Father’s salary and child support obligation on a signed and verified child support obligation worksheet.

Vacated and remanded with instructions.¹³

CRONE, J., and BRADFORD, J., concur.

¹³ In this appeal, Father does not challenge the trial court’s order that Father pay Mother’s attorney fees. Because the attorney order rests upon the trial court’s finding of contempt based upon arrearages for support and educational expenses and because we vacate that finding, we also vacate the order for attorney fees. On remand, the trial court should reconsider this issue after it recalculates the amount, if any, of unpaid support and educational expenses.