

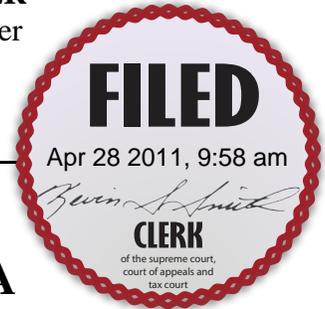
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**IN THE
COURT OF APPEALS OF INDIANA**

STEVE A. THOMAS,)
)
Appellant-Respondent,)
)
vs.)
)
PHYLLIS (THOMAS) BRIGGS,)
)
Appellee-Petitioner.)

No. 09A04-1007-DR-446

APPEAL FROM THE CASS CIRCUIT COURT
The Honorable Leo T. Burns, Judge
Cause No. 09C01-8904-DR-98

April 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Steven Thomas (Father) appeals an order that he pay a child support arrearage. He presents four issues for our consideration, which we consolidate and restate as whether the trial court abused its discretion when it determined he owed \$16,320 to Phyllis Briggs (Mother) for non-payment of child support from 2004 to 2009.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

Father and Mother were married in 1985. They had three children – S.T., born in 1986, W.T., born in 1987, and V.T., born in 1988. They divorced in May 1990, at which time Father received physical custody of the children, and Mother had visitation and paid child support. In 1994, the court modified custody at the Mother’s request, such that she had custody of V.T. and neither party was to pay child support.

In 2004, Mother obtained custody of all the children when Father went to prison. At that time, the court ordered Father to pay \$67 per week in child support. Between 2004 and 2009, when the last child became emancipated, Father paid \$5000 in support.

In 2010, Mother moved for judgment on the \$16,320 in child support arrearage that accumulated between 2004 and 2009. After a hearing, the court ordered Father to pay \$16,320 to satisfy the arrearage.

¹ Father also challenges the trial court’s decision to exclude certain evidence; however, he does not present a cogent argument explaining why the court’s exclusion was erroneous. Because we hold *pro se* litigants to the same standard as licensed attorneys, *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*, that argument is waived due to Father’s failure to comply with Ind. Appellate Rule 46(A)(8)(a): “The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning.” See *Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999) (failure to present a cogent argument results in waiver of the issue on appeal).

DISCUSSION AND DECISION

Decisions regarding child support matters are within the sound discretion of the trial court. *Hicks v. Smith*, 919 N.E.2d 1169, 1171 (Ind. Ct. App. 2010). An abuse of discretion occurs if the decision is clearly against the logic and the effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

Most of Father's argument focuses on alleged errors in the child support and custody orders entered in 1994 and 2004. These allegations are not reviewable. *Showalter v. Showalter*, 531 N.E.2d 538, 538 (Ind. Ct. App. 1988) (issues regarding earlier order of support not reviewable in appeal of later related order), *reh'g denied*.

To the extent Father argues the trial court abused its discretion when computing his child support arrearage in 2010, he seems to be asking that we retroactively modify his support obligation due to his incarceration and each child's emancipation.

For example, Father notes our Supreme Court held in 2007 that trial courts could not impute a pre-incarceration income level to an imprisoned parent when setting an initial order of child support. *Lambert v. Lambert*, 861 N.E.2d 1176, 1177 (Ind. 2007). Then, in 2009, our Supreme Court held incarceration may constitute a substantial change in circumstances such that modification of child support is warranted. *Clark v. Clark*, 902 N.E.2d 813, 817 (Ind. 2009). Based on these cases, Father asserts he was entitled to have his child support obligation reduced while he was in prison and, thus, his arrearage is smaller than found by the trial court in 2010.

We cannot agree because the same day our Indiana Supreme Court decided *Clark*, it

also decided *Becker v. Becker*, 902 N.E.2d 818 (Ind. 2009). Becker was incarcerated and sought to retroactively reduce his child support payments based on the holding in *Lambert*.

Our Indiana Supreme Court explained:

A trial court has discretion to make a modification of child support relate back to the date the petition to modify is filed, or any date thereafter. *Quinn v. Threlkel*, 858 N.E.2d 665, 674 (Ind. Ct. App. 2006) (citing *Carter v. Dayhuff*, 829 N.E.2d 560, 568 (Ind. Ct. App. 2005)). “The general rule in Indiana is that retroactive modification of support payments is erroneous if the modification relates back to a date earlier than the filing of a petition to modify.” *Donegan v. Donegan*, 605 N.E.2d 132, 133 n.1 (Ind. 1992) (citing *Reeves v. Reeves*, 584 N.E.2d 589, 594 (Ind. Ct. App. 1992), *trans. denied*). And Indiana courts have long held that, “after support obligations have accrued, a court may not retroactively reduce or eliminate such obligations.” *Whited v. Whited*, 859 N.E.2d 657, 661 (Ind. 2007). The modification of a support obligation may only relate back to the date the petition to modify was filed, and not an earlier date. . .

Nothing in *Lambert* or *Clark* suggests a contrary rule for modifications due to incarceration. We now hold that *Lambert* and *Clark* do not apply retroactively to modify child support orders already final, but only relate to petitions to modify child support granted after *Lambert* was decided. A trial court only has the discretion to make a modification of child support due to incarceration effective as of a date no earlier than the date of the petition to modify.

Id. at 820-821 (footnote omitted).

In the case before us, Father did not petition for modification during the time the order that he pay support was active. Instead, he is asking us to overturn an order that he pay the arrearage due. We cannot retroactively decrease that support order. *See id.* Thus, Father has not demonstrated the trial court abused its discretion when calculating and ordering him to pay his child support arrearage.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.