MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Damian Profancik,
Appellant-Respondent,

v.

Leah Profancik,
Appellee-Petitioner

January 31, 2024

Court of Appeals Case No. 23A-DR-1232

Appeal from the Johnson Superior Court

The Honorable Marla K. Clark, Judge

Trial Court Cause No. 41D04-1509-DR-545

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

[1] Damian Profancik (Father) entered into a child support agreement in 2016 that required him to pay 70% of his base salary and 10% of any other income to Leah Profancik (Mother). Father quickly fell behind on his child support obligation, and after about four years of missed payments, the trial court calculated his arrearage at over a quarter million dollars. On appeal, Father alleges that the trial court erred: (1) in calculating the amount of his arrearage and in setting the schedule for repayment; (2) in enforcing the 2016 agreement; and (3) in requiring that he obtain a life insurance policy for the full amount of the arrearage. After reviewing the record, we find the trial court properly used the evidence it had to determine Father's arrearage, but that it erred in calculating Father's 2018 income. Thus, we remand to correct this error and affirm on all other grounds.

Facts

[2] Mother and Father divorced under a settlement agreement in 2016. The settlement agreement was intended to be comprehensive as to all issues raised by the divorce. Among other things, it provided for the custody arrangements over Mother and Father's four children, governed how the marital property would be distributed, and laid out a framework by which Father's child support obligations would be determined. Under the agreement, Father was required to pay 70% of his base salary plus 10% of any side income to Mother as child support. The agreement also specified that Father could not request a

modification of his child support obligations until 2020, when Mother planned to graduate from college.

[3] Father worked several jobs following the divorce. The timeline of his employment and compensation, based off offer letters from each employer, is as follows:

- From February 2016 to February 2018 Father worked for NCC Group and received an annual salary of $145,000.00 along with bonuses of an unspecified amount.
- From February 2018 to June 2018 Father worked for LARES and received an annual salary of $155,000.00 per year and bonuses of $45,000.
- From June 2018 to January 2020 Father worked for iLab and received an annual salary of $155,000.
- From January 2020 until the date he petitioned to modify his child support obligation, Father worked at IBM and received a $240,000 annual salary with the possibility of bonuses.

[4] Father paid child support to Mother by transferring money directly into a joint banking account. As proof that he was abiding by the agreement, Father was required to provide Mother with paystubs showing his earnings. But Father never did so. In total, Father paid $323,490.00 in child support from 2016 to 2020. At the earliest allowable date under the settlement agreement, Father moved to modify his child support obligation.

[5] Mother and Father came to a new agreement. In the 2020 settlement agreement, instead of the original child support formula, Father's obligation was set at $654.00 per week. But the parties disagreed over how much child

support Father should have paid under the 2016 agreement. And when the two could not agree upon the amount, Mother requested a hearing for the trial court to resolve the matter.

[6] Father testified about his finances at the hearing. He provided offer letters from his various employers listing his expected compensation and three out of five years of tax returns, without accompanying W-2s. But Father provided no other documents as evidence of his income, like bank records or paystubs. When Mother's counsel asked Father why he never provided Mother with any paystubs or other financial documentation, as required by the 2016 agreement, Father had no answer. Father also revealed that he had recently been laid off and suffered from health conditions that prevented him from easily regaining employment. Ultimately, Mother requested that the trial court both calculate Father's arrearage based on the limited financial information he provided and order Father to obtain a life insurance policy naming her as the beneficiary for the value of that arrearage.

[7] The trial court agreed. In its order, the trial court noted that it had previously held Father in contempt for failing to produce documentation of his finances and indicated his refusal to provide such documentation would be viewed against him. The trial court determined Father's arrearage, calculated by referencing Father's offer letters and tax documents, when available, as follows:

a) For 2016, Father's arrearage was $22,894.19 ($83,932.69 [($145,000.00 x.7)(43/52)] due, less payments of $61,038.50).

b) For 2017, Father's arrearage was $53,050.88 ($126,022.88 ($180,032.68 x.7) due, less payments of $72,972.00).

c) For 2018, Father's arrearage was $57,252.86 ($135,204.36 ($193,149.081 x.7) due, less payments of $77,951.50).

d) For 2019, Father's arrearage was $80,912.90 ($155,264.90 ($221,807.00 x.7) due, less payments of $74,352.00).

e) For 2020, Father's arrearage was $46,824.00 ($84,000.00 ($240,000.00 x.5 x.7) due, less payments of $37,176.00).

Appellant's App. Vol. II, p. 43 (footnote omitted). The total arrearage amounted to $260,934.83, to be repaid in monthly installments of $5,000. The trial court also ordered Father to pay Mother's attorney's fees and required him to obtain a life insurance policy for the full amount of his arrearage. Father appeals.

Discussion and Decision

[8] Because the underlying action here concerns a child-support order, we will reverse the trial court's decision "only if it is clearly erroneous or contrary to law." *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008). "A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances that were before the trial court." *Id.* In conducting our review, "we must consider only the evidence most favorable to the judgment along with all reasonable inferences drawn in favor of the judgment." *Clary-Ghosh v. Ghosh*, 26 N.E.3d 986, 990 (Ind. Ct. App. 2015). "We give due regard to the trial

court's ability to assess the credibility of witnesses and will not reweigh the evidence." *Id.*

I. Arrearage Calculation

[9] Father first argues that the trial court erred "by enforcing a child support order in a manner that significantly exceeds the maximum amount permitted" under the Indiana Child Support Guidelines. Appellant's Br., p. 20. We disagree.

[10] To be sure, Indiana's Child Support Guidelines provide: "In no case shall child support and temporary maintenance exceed fifty percent (50%) of the obligor's weekly adjusted income." Ind. Child. Supp. Guideline 2. And according to Father, the trial court interpreted the 2016 child support agreement in a way that required him to pay well over 50% of his weekly income.[1] But Father leaves out any connection between Guideline 2 and the trial court's order. Nowhere in his brief does he allege that arrears payments qualify as either "child support" or "temporary maintenance," and we find no reason to treat it as such. An arrearage represents money that has already "accrued to the [children's] benefit" and as such, a court "may not annul [the arrearage] in a

[1] Because the 2016 child support agreement contemplated Father paying 70% of his base salary and 10% of any side income, it did not inherently violate Guideline 2. This is so because the parties could have expected Father's side income to surpass his base salary by a substantial amount. But even if it did violate Guideline 2 in practice, Father is entitled to no relief on this basis. Parties are free to enter into child support agreements that exceed the maximum amount of support a court could order. *Hay v. Hay*, 730 N.E.2d 787, 794-95 (Ind. Ct. App. 2000) (rejecting father's request for modification of child support on the basis that "he is paying twenty percent more than would be required under the guidelines" because doing so would "vitiate[] the agreement of the parties and run[] contrary to the public policy of encouraging parties to agree on matters of child custody and support").

subsequent proceeding." *Elwood v. Parker*, 77 N.E.3d 835, 838 (Ind. Ct. App. 2017) (quoting *Nill v. Martin*, 686 N.E.2d 116, 118 (Ind. 1997)).

[11] Returning to the heart of the matter, the trial court overall properly calculated Father's arrearage from the evidence before it. Father's main argument is that the trial court failed to distinguish between his different types of income and did not properly credit Father for the payments he made. But outside of one instance, the record belies both allegations.

[12] The trial court properly categorized Father's income from the evidence before it. Although Father generally asserted distinctions in the types of income he received, his evidence comprised little more than his answer of "[c]orrect" when asked by his attorney if he received any bonuses while working at NCC Group from 2014 to February 2018. Tr. Vol. II, pp. 21-22. Indeed, the most specific testimony presented about other incomes was when Father compared his 2017 tax documents, showing an income of about $180,000, with an offer letter showing that his salary at the time was $155,000. *Id.* at 24-25. From this, Father appeared to hope that the trial court would believe—without any actual financial documentation—that he had earned approximately $30,000 in other income in 2017.

[13] Put plainly, Father's arguments are undercut by his refusal to enter basic financial documents into the record. Particularly troubling is Father's refusal to provide Mother with his paystubs—as the 2016 child support agreement ordered him to do. Father's refusal to do this, combined with the lack of specific

financial documentation to help the court calculate his arrearage, entitled the trial court to calculate his income without consideration of any hypothetical side earnings. This same result applies to Father's unsubstantiated claims of a $20,000 overpayment when switching from the 2016 child support agreement to the 2020 agreement. *See, e.g.*, *Wood v. State*, 999 N.E.2d 1054, 1064 (Ind. Ct. App. 2013) (stating that the factfinder "is not required to believe a witness' testimony even when it is uncontradicted").

[14] Father, however, correctly identifies one discrepancy in the trial court's order.[2] In 2018, the trial court found Father earned $193,149.081. Appellant's App. Vol. II, p. 43. But Father's tax records from that year show he only earned $184,294. Exhs. Vol. III, p. 55. Given that the trial court relied on the same type of tax records to determine his income the next year, in 2019, this discrepancy defies explanation.[3] Thus, we remand to correct Father's 2018 arrearage on this basis.

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[2] Though Father describes this discrepancy as merely "an example" of wider problems with the trial court's order, he failed to specifically identify any other alleged errors based on documents in the record. Appellant's Br., pp. 13-14. Any inconsistencies between his testimony at the hearing and the trial court's order are readily explainable as the result of the trial court not believing Father's testimony in the absence of supporting financial documentation. Appellant's App. Vol. II, p. 43 (noting the factfinder's authority to "conclude that the documents [only] the witness could have produced" but did not "would have been unfavorable to the party's case" (quoting Ind. Model Jury Instruction (Civil) No. 535)).

[3] In fairness, the trial court attempted to explain its calculation of Father's 2018 income with an accompanying footnote. But that footnote does not identify the basis for the figures used in the calculation and we find no basis in the record to justify it. Appellant's Vol. II, p. 43 n.1.

II. The Trial Court Did Not Abuse Its Discretion in Ordering Father to Obtain a Life Insurance Policy.

[15] Father next argues the trial court erred in ordering him to obtain a life insurance policy covering the amount of his arrearage: $260,934.83. Father claims this was an abuse of the trial court's discretion because the record establishes "that it was not feasible for [Father] to obtain a policy" due to his "numerous health issues." Appellant's Br., p. 19.

[16] But Father's argument ignores that the trial court was within its discretion as the factfinder to not credit Father's claims about his health. Father introduced no objective evidence of his alleged health issues, such as medical or insurance records. And Father can hardly fault the trial court for not crediting his subjective testimony after Father's actions throughout the proceedings undercut his own credibility. For example, Father refused to provide Mother with his paystubs during the 2016 child support agreement and the trial court even resorted to a formal contempt order for Father's failure "to comply with the discovery order in this case." Appellant's App. Vol. II, p. 41; *see also Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011) ("Appellate deference to the determinations of our trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time."). Moreover, Father is already required under the 2016 child support agreement to carry a life insurance policy in the amount

of $145,000.[4] We find no clear error in the trial court's decision to require the policy to cover the full amount of his arrearage instead of roughly half.

[17] In conclusion, we reject Father's primary arguments and affirm the trial court's order. But we remand for the correction of Father's 2018 income to reflect that showed on his 2018 tax records.

Altice, C.J., and Kenworthy, J., concur.

[4] The 2020 agreement did not modify this requirement.