MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Robert M. Hofferth,
Appellant-Petitioner,

v.

Michelle M. Hofferth,
Appellee-Respondent.

September 30, 2021

Court of Appeals Case No. 21A-DR-808

Appeal from the Jasper Circuit Court

The Honorable John D. Potter, Judge

Trial Court Cause No. 37C01-0503-DR-88

Najam, Judge.

Statement of the Case

[1] Robert Hofferth ("Father") appeals the dissolution court's order granting Michelle Hofferth's ("Mother's") petition for contempt and motion for college

expenses for their son R.H. Father presents three issues for our review, which we restate as the following two issues:

1. Whether the dissolution court abused its discretion when it found him in contempt for nonpayment of children's orthodontic expenses.

2. Whether the dissolution court clearly erred when it ordered him to pay $3,645 per year in college expenses for R.H.

[2] We affirm.

Facts and Procedural History

[3] Father and Mother were married in 1996, and they have three children together: Jo.H., born November 22, 1998; R.H., born May 24, 2001; and Ja.H. born April 12, 2003 (collectively, "Children"). In 2005, Father filed a petition for dissolution of the marriage, and in 2006, the parties entered into an agreement that awarded physical custody of the children to Mother, with Father exercising parenting time. The parties' agreement also required Father to pay $100 per week in child support and 75% of any of the Children's uninsured dental expenses. The trial court accepted the agreement and incorporated the terms of the agreement into the final decree of dissolution.

[4] In September 2017, Mother filed a motion with the dissolution court seeking an order that Father pay some of Jo.H.'s college expenses, as well as certain uninsured medical and dental expenses for the Children. Father, in turn, filed a

motion asking the court to emancipate Jo.H. for child support purposes. Following a hearing, the dissolution court ordered Father to

> (1) pay Mother $353.13 and $772.60 for past uninsured medical, optical, dental, and health expenses; (2) pay Mother $130.00 per week in child support, effective November 21, 2017, the day before [Jo.H.] was emancipated; (3) pay $3,366.32 annually for [Jo.H.'s] college education; and (4) reimburse Mother $3,366.32 for [Jo.H.'s] college expenses for the previous academic year (2017-18).

Hofferth v. Hofferth, No. 18A-DR-2261, 2019 WL 2998463 at *2 (Ind. Ct. App. July 10, 2019) ("*Hofferth I*"). On appeal, this Court affirmed the order with respect to the medical and dental expenses; reversed the order with respect to the college expenses; and remanded for a determination of whether Father was entitled to a credit towards his child support obligation.

[5] In January 2020, Mother filed a petition for contempt alleging in relevant part that Father had not paid certain health and dental expenses that he owed pursuant to the dissolution court's prior orders, and Mother asked the court to order Father to help pay R.H.'s college expenses. Father also filed a petition for contempt against Mother and asked the court to emancipate R.H. and to modify Father's child support obligation. Following a hearing, the dissolution court granted Mother's petition for contempt and motion for college expenses; denied Father's petition for contempt; and modified Father's child support obligation. This appeal ensued.

Discussion and Decision

[6] Initially, we note that Mother has not filed an appellee's brief. When an appellee does not file a brief, our court will not undertake the burden of developing arguments on that party's behalf. *Thurman v. Thurman*, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). Rather, we apply "a less stringent standard of review" and may reverse the trial court if the appellant establishes prima facie error. *Id.* Prima facie "means at first sight, or on first appearance, or on the face of it." *Id.*

Issue One: Contempt

[7] Father first contends that the dissolution court abused its discretion when it found him in contempt for nonpayment of court-ordered dental and orthodontic expenses. As the Indiana Supreme Court has stated:

> "It is soundly within the discretion of the trial court to determine whether a party is in contempt, and we review the judgment under an abuse of discretion standard of review." *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202 (Ind. 2012) (citation omitted). "We will reverse a trial court's finding of contempt only if there is no evidence or inference therefrom to support the finding." *Id.* The trial court has the inherent power to "maintain [ ] its dignity, secur[e] obedience to its process and rules, rebuk[e] interference with the conduct of business, and punish[ ] unseemly behavior." *Id.*

Steele-Giri v. Steele, 51 N.E.3d 119, 124 (Ind. 2016) (alterations in original).

[8] First, to the extent Father contends that Mother was precluded from presenting evidence of the unpaid bills because the issue had previously been litigated,

Father's argument is without merit. As the dissolution court noted, Mother was obviously entitled to present evidence that the bills had not yet been paid to support her contempt petition.

[9] Second, in support of his contention that the evidence shows that he had paid those bills, Father cites only his own testimony. Mother's Exhibit 1, however, shows an unpaid balance owing to the Children's orthodontist as of January 2020 of more than $14,000. And in *Hofferth I*, this Court held that, under the terms of the parties' settlement agreement, Father had agreed to pay 75% of the Children's uninsured dental expenses, which includes orthodontic expenses. 2019 WL 2998463 at *3.

[10] Father's contention on this issue amounts to a request that we reweigh the evidence, which we cannot do. The dissolution court found Father "not credible" when he testified that he thought the bills had been paid through income withholding. Appellant's App. Vol. 4 at 55. We hold that the dissolution court did not abuse its discretion when it found Father in contempt.

Issue Two: College Expenses

[11] Father next contends that the dissolution court clearly erred when it ordered him to pay $3,645 per year towards R.H.'s college expenses. Where, as here, the trial court's judgment is based on findings and conclusions entered by the court following an evidentiary hearing, we review the trial court's judgment under the clearly erroneous standard. We review the issues covered by the findings with a two-tiered standard of review that asks whether the evidence

supports the findings and whether the findings support the judgment. *See Steele-Giri*, 51 N.E.3d at 123.

[12] Father raised this same issue with respect to Jo.H.'s college expenses in his appeal in *Hofferth I*. As we stated, Indiana Code Section 31-16-6-2(a) provides that a dissolution court may order, "where appropriate:"

> (1) amounts for the child's education in elementary and secondary schools and at postsecondary educational institutions, taking into account:
>
> (A) the child's aptitude and ability;
>
> (B) the child's reasonable ability to contribute to educational expenses through:
>
> (i) work;
>
> (ii) obtaining loans; and
>
> (iii) obtaining other sources of financial aid reasonably available to the child and each parent; and
>
> (C) the ability of each parent to meet these expenses[.]

[13] We explained further that

> [a] court may order a parent to pay part or all of a child's extraordinary educational costs when appropriate. *In re Paternity of C.H.W.*, 892 N.E.2d 166, 171 (Ind. Ct. App. 2008), *trans. denied*. An educational support order must be fair, not confiscatory in amount and intended to provide a reasonable

> allowance for support, considering the property, income, and earning capacity of the noncustodial parent, and the station in life of the family. *Myers v. Myers (Phifer)*, 80 N.E.3d 932, 936 (Ind. Ct. App. 2017). It is within the discretion of the trial court to determine under all the circumstances what is just and equitable to the child and the noncustodial parent. *Id.* "The court may limit consideration of college expenses to the cost of state-supported colleges and universities or otherwise may require that the income level of the family and the achievement level of the child be sufficient to justify the expense of private school." Ind. Child Support Guideline 8, cmt. b.

Hofferth I, 2019 WL 2998463 at *4. And we held as follows:

> Here, we find the trial court committed clear error in ordering Father and Mother to pay a portion of [Jo.H.'s] college expenses. While Indiana Code section 31-16-6-2(a) allows a trial court to order a parent to pay post-secondary education expenses, "a parent is under no absolute legal duty to provide a college education for his children." *Claypool v. Claypool*, 712 N.E.2d 1104, 1109 (Ind. Ct. App. 1999), *trans. denied*. In deciding whether to order payment for post-secondary education expenses, a trial court must consider "the ability of each parent to meet those expenses." *See* Ind. Code § 31-16-6-2(a)(1)(c). Given that Father makes only $34,008.00 per year and that Mother makes only $15,900.00 per year (which comes from Social Security Disability income), we find that the trial court did not adequately consider the ability of either Father or Mother to contribute funds toward [Jo.H.'s] college education. We also find that the trial court did not consider that most or all of [Jo.H.'s] college expenses would have been covered if he had enrolled in a state university but that he substantially increased his college expenses by enrolling in Valparaiso University, a private institution. Thus, we vacate the trial court's order requiring that both Father and Mother help pay for [Jo.H.'s] education at Valparaiso University.

Id.

[14] Like Jo.H., R.H. is a 21st Century Scholar who chose to attend a private college. On appeal, Father asserts, without any citation to evidence, that, "should the trial court have limited consideration of college expenses to the cost of state supported colleges, [R.H.] could have had all secondary educational expenses paid for." Appellant's Br. at 11. And Father maintains that he cannot afford to contribute to R.H.'s college expenses given Father's limited income.

[15] However, at the hearing, the dissolution court acknowledged this Court's holding in *Hofferth I* and, in its subsequent findings, the court addressed the concerns we had raised with respect to the court's order that the parties help pay for Jo.H.'s college expenses. Here, the court specifically found that, while R.H.'s college is also a private school, after factoring in scholarships, grants, and loans, "the cost to [R.H.] and his parents is less than a land grant State University [sic] such as Purdue with in-state tuition." Appellant's App. Vol. 4 at 56. The court further found, based on Father's W-2 as well as Father's testimony, that Father's gross income for 2019 was $41,230, which is some $7,000 more than his $34,008 annual income reported in *Hofferth I*. And the court found that Father's obligation to pay $3,645 and Mother's obligation to pay $727 towards R.H.'s annual college expenses "are affordable and extremely reasonable for each party." *Id.* at 57. We are bound on appeal by our standard of review, and, here, we cannot say that the dissolution court's order is clearly erroneous.

[16] Affirmed.

Riley, J., and Brown, J., concur.