

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ignacio Espinosa de los
Monteros,
Appellant-Respondent,

v.

Amber Espinosa de los Monteros
n/k/a Amber Scott-Raddatz,
Appellee-Plaintiff

September 29, 2023

Court of Appeals Case No.
23A-DR-878

Appeal from the Hamilton
Superior Court

The Honorable
Andrew R. Bloch, Special Judge

Trial Court Cause No.
29D06-1503-DR-1750

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

- [1] Ignacio Espinosa de los Monteros (“Father”) appeals a portion of the trial court’s March 21, 2023, post-dissolution order. Father argues the trial court erred when it denied his request to require Amber Espinosa de los Monteros (“Mother”) to reimburse him for certain expenses related to supervised parenting time. We affirm.

Facts and Procedural History

- [2] Mother and Father’s marriage dissolved in 2016. Two children were born of the marriage – B.M., who was born in 2007, and I.M., who was born in 2010 (collectively, “Children”). Mother and Father have engaged in significant post-dissolution litigation and, herein, we focus only on the facts relevant to the order on appeal.
- [3] Between February 2019 and August 31, 2022, Mother and Father filed several motions asking the trial court to modify parenting time and child support, as well as to find the opposing party in contempt for a variety of reasons. On September 1, 2022, Mother filed a “Verified Motion for Contempt Citation, And Motion to Continue Hearing or Dismiss Petition to Modify Child Support.” (App. Vol. II at 58) (original formatting omitted). Mother alleged Father should be found in contempt because he failed “to promptly and completely respond to [Mother’s] discovery requests^[1] no later than the 30th

¹ The record presented to us does not indicate what information Mother requested.

day of August, 2022.” (*Id.*) (footnote added). Additionally, Mother also asked the trial court to continue a hearing scheduled for September 15, 2022, regarding modification of child support and transition of Father’s parenting time from supervised to unsupervised because Father had not provided information regarding his income for the purposes of determining his child support responsibility. Finally, Mother requested that, if the trial court declined her request to continue the September 15 hearing, Father’s motion to modify child support be dismissed “as a sanction for his refusal to provide the documentation necessary to calculate child support.” (*Id.* at 59.)

[4] Father responded to Mother’s motion on the same day. He agreed with Mother’s request to continue the portion of the September 15 hearing regarding child support. He also asked the trial court to require Mother to produce certain documents relevant to the computation of child support, order an “informal settlement conference to resolve the discovery issues[,]” deny Mother’s motion to dismiss Father’s motion for modification of child support, and deny Mother’s request for sanctions as part of her motion for contempt. (*Id.* at 64.) The trial court did not rule on the parties’ requests.

[5] On September 9, 2022, Mother filed another motion to continue the September 15 hearing. Mother’s counsel advised the trial court he “was unexpectedly called out of the State of Indiana for a family-related matter and will not be returning until September 13, 2022.” (*Id.* at 71.) Further, Mother argued the “current two hour setting will not allow sufficient time to hear all pending matters” and she estimated the hearing would take at least four hours. (*Id.*)

Mother additionally noted Father still had not fully complied with some of her discovery requests. Mother asked the trial court to continue the September 15 hearing as to all motions or “alternatively, conduct the hearing on September 15, 2022 at 1:30 p.m. as to Father’s parenting time review only[.]” (*Id.*) (emphasis in original). On September 14, 2022, the trial court granted Mother’s motion to continue the September 15 hearing and ordered the parties to comply with all discovery requests within ten days.

[6] The trial court rescheduled the hearing for November 3, 2022. Subsequently, the trial court rescheduled that hearing on its own motion for November 21, 2022. On November 21, 2022, the trial court held a hearing on Mother’s September 1, 2022, motion. On January 23, 2023, the trial court issued an order modifying Father’s parenting time from supervised to unsupervised based on a phase-in schedule, modifying the parties’ child support order to clarify both parties’ responsibilities as part of the modification, and denying Mother’s request to hold Father in contempt for non-payment of child support.² At the end of the order, the trial court stated:

14. Several matters remain pending before the Court that were not adjudicated at the time of this hearing. The Court acknowledges that an additional hearing occurred on January 23, 2023, in which separate issues were addressed. This court has not considered evidence entered at that hearing in this Order.

² This request for a finding of contempt was not included in Mother’s September 1, 2023, motion and is not in the record.

15. All pending matters before the Court shall be heard on February 17, 2023, at 2:30p[.m.]

(*Id.* at 78-9.) Father appealed the trial court's January 30, 2023, order and we recently issued an opinion on that appeal, *Espinosa De Los Monteros v. Espinosa De Los Monteros*, 23A-DR-439 (Ind. Ct. App. August 23, 2023).

[7] On February 17, 2023, the trial court held a hearing regarding all remaining matters. During that hearing, Father submitted a spreadsheet with his self-computation of his mileage, food expenses, vehicle depreciation, lost wages, attorney fees, and fees paid for supervised parenting time and court-ordered therapy. In that exhibit, Father alleged he had incurred \$17,266.00 in costs to exercise supervised parenting time between September 15, 2022, and February 17, 2023. He asked the trial court to order Mother to reimburse him for those costs because he alleged Mother's motion to continue was in bad faith and caused him to have to pay extra costs given that the trial court likely would have changed his parenting time from supervised to unsupervised if the hearing had been held on September 15, 2022, as originally scheduled. On March 22, 2023, as part of its order on all matters then pending, the trial court found, in relevant part:

6. As best the Court can tell, Father alleges that Mother's additional request for discovery shortly before the hearing scheduled for September 15, 2022, was made in bath [sic] faith which caused the matter to be continued. This continuance caused him to incur additional attorney fees, counseling fees, his loss of time and various other expenses.

7. The Court has considered the relevant factors, evidence, and testimony with respect to Father's claim that Mother has acted in bad faith. The Court has considered the credibility of the parties with respect to their testimony. Father has not demonstrated that Mother's discovery request or motion to continue was made in bad faith.

(*Id.* at 55.) Based thereon, the trial court concluded: "As Father has not demonstrated Mother acted in bad faith, his request for additional relief, attorney fees, and the payment of additional expenses is DENIED, unless already addressed by another Order of this Court." (*Id.* at 56) (emphasis in original).

Discussion and Decision

[8] As an initial matter, we note Mother did not file an appellee's brief. When an appellee fails to file a brief, we do not undertake the burden of developing arguments for them. *Destination Yachts, Inc. v. Fine*, 22 N.E.3d 611, 615 (Ind. Ct. App. 2014). We instead apply a less stringent standard of review and may reverse the trial court's judgment if the appellant establishes prima facie error. *Id.* Prima facie error is "error at first sight, on first appearance, or on the face of it." *Penrod v. The Car Co.*, 832 N.E.2d 1020, 1021 (Ind. Ct. App. 2005).

[9] When, as here, the trial court enters findings sua sponte after a bench trial, the findings control our review and judgment only as to those issues specifically referenced in the findings. *Samples v. Wilson*, 12 N.E.3d 946, 949-50 (Ind. Ct. App. 2014). When the trial court does not make specific findings on an issue,

we apply a general judgment standard, which permits us to affirm on any legal theory supported by the evidence adduced at trial. *Id.* at 950.

A two-tier standard of review is applied to the sua sponte findings and conclusions made: whether the evidence supports the findings, and whether the findings support the judgment. Findings and conclusions will be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. In conducting our review, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. We will neither reweigh the evidence nor assess witness credibility.

Id.

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. Thus enabled to assess credibility and character through both factual testimony and intuitive discernment, our trial judges are in a superior position to ascertain information and apply common sense, particularly in the determination of the best interests of the involved children.

Best v. Best, 941 N.E.2d 499, 502 (Ind. 2011).

[10] As noted in the facts, the trial court denied Father's request for costs incurred between September 15, 2022, and February 17, 2023, because Father did not demonstrate Mother filed her September 1, 2022, and/or September 9, 2022, motion to continue in bad faith. Father argues the trial court erred when it

denied this request. Father contends he is due the costs because, had the trial court not granted Mother's motion to continue, "it is highly likely that the court would have removed or modified supervision of Father's parenting time at the hearing on September 15, 2022[.]" (Father's Br. at 11.) Therefore, Father asserts he "needlessly incurred the continuing ongoing costs of supervised parenting time because Mother requested the entire hearing be continued when what she was interested in was continuing the child support portion." (*Id.*)

[11] As noted in the facts, on September 1, 2022, Mother filed a motion to continue the September 15, 2022, hearing on various issues including modification of child support and parenting time because she alleged Father had not complied with certain discovery requests relevant to the calculation of child support. The same day Father replied and agreed to continue the issue of child support. On September 9, 2023, Mother filed a motion to continue due to counsel's unexpected unavailability. Mother requested the trial court to continue the September 15 hearing as to all pending motions, including child support and parenting time, or "alternatively, conduct the hearing on September 15, 2022 at 1:30 p.m. as to Father's parenting time review only[" (App. Vol. II at 71) (emphasis in original). The trial court granted Mother's motion to continue and did not bifurcate the issue of parenting time.

[12] While Mother did request a continuance of the September 15, 2022, hearing, she invited the court to hold a hearing on parenting time separately from the child support issues. It was not Mother, but the trial court, that chose not to bifurcate the issues. Father has not pointed to evidence that demonstrates

Mother's request to continue was made in bad faith as an effort to deny Father unsupervised parenting time. Father's request is an invitation for us to reweigh the evidence and judge the credibility of witnesses, which we cannot do.

Samples, 12 N.E.3d at 950 (appellate court cannot reweigh evidence or judge the credibility of witnesses). Because the evidence before the trial court supported the trial court's findings and those findings supported the trial court's conclusion, we cannot say the trial court erred when it found and concluded Mother was not required to pay Father the costs of supervised parenting time between September 15, 2022, and January 23, 2023.

Conclusion

[13] The trial court did not err when it denied Father's request for costs because the evidence supported the trial court's findings and those findings supported the trial court's conclusion. Accordingly, we affirm.

[14] Affirmed.

Altice, C.J., and Foley, J., concur.