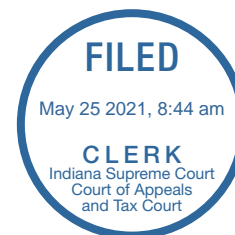


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEYS FOR APPELLANT

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## IN THE COURT OF APPEALS OF INDIANA

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State of Indiana,  
*Appellant-Intervenor,*

v.

Zackery M. Rogers,  
*Appellee-Petitioner.*

May 25, 2021

Court of Appeals Case No.  
21A-JP-50

Appeal from the Washington  
Circuit Court

The Honorable Larry W. Medlock,  
Judge

Trial Court Cause No.  
88C01-1405-JP-94

**Weissmann, Judge.**

[1] Six months after Zackery Rogers<sup>1</sup> (Father) was released from jail, he requested the trial court erase the child support arrearage he accrued during his approximately two years of incarceration. Though the trial court granted Father's request, Indiana law bars retroactive modifications of support arrearages. We therefore reverse and remand to the trial court to assess Father's child support arrearage to include his period of incarceration.

## Facts

[2] In 2016, the trial court ordered Father to pay child support of \$51 per week for his daughter K.M.G. However, Father failed to pay any support while he was incarcerated from November 2018 to May 2020. Upon his release, the State sought to hold Father in contempt for failing to pay child support as ordered. In response, Father filed a motion for abatement of child support for the period of his incarceration. The trial court granted Father's motion for abatement, reducing Father's arrearage from \$10,734.11 to \$7,011.11. The court further ordered Father to pay \$20 weekly toward that arrearage in addition to his original weekly child support obligation of \$51 per week. This appeal followed.

## Discussion and Decision

[3] The State argues that the trial court abused its discretion by granting Father's motion for abatement and reducing the arrearage he accrued prior to filing his

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<sup>1</sup> The record reflects two different spellings of Rogers's first name. We have used the version found in the judgment under appeal.

motion. Father did not file an appellee's brief; allowing us to apply a less stringent standard of review. We may reverse if the appellant establishes prima facie error—that is, error at first sight. *C.S. v. T.K.*, 118 N.E.3d 78, 82 (Ind. Ct. App. 2019). The State has met that standard and more.

[4] Our Supreme Court has long held that a court may not retroactively reduce or eliminate child support obligations after they have accrued and absent a petition to modify support. *Whited v. Whited*, 859 N.E.2d 657, 661 (Ind. 2007); *Zirkle v. Zirkle*, 172 N.E. 192, 194 (Ind. 1930). Instead of filing a petition to modify his child support payments during his recent incarceration, Father waited until six months after his release to request relief. And then, rather than filing a motion to modify his support, he filed a motion for abatement. To the extent that Father's motion may be construed as a petition to modify his child support obligation, this pleading could not eliminate the arrearage he accrued prior to the date of that filing.

[5] Incarceration may constitute a substantial change in circumstances justifying modification of an existing child support obligation. *Becker v. Becker*, 902 N.E.2d 818, 819 (Ind. 2009). But such a modification may not take effect earlier than the date on which a petition to modify is filed. *Id.* at 820. Consequently, the trial court could not retroactively abate Father's child support obligation. See *Whited*, 859 N.E.2d at 661.

[6] The judgment of the trial court is reversed, and the case is remanded with instructions for the trial court to reinstate the child support arrearage Father accrued while he was incarcerated.

[7] Kirsch, J., and Altice, J., concur.