MEMORANDUM DECISION

APPELLANT PRO SE

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IN THE COURT OF APPEALS OF INDIANA

Jeffery Maxwell,
Appellant-Petitioner,

v.

Shirley Maxwell,
Appellee-Respondent

November 18, 2022

Court of Appeals Case No. 22A-DR-559

Appeal from the Hancock Circuit Court

The Honorable R. Scott Sirk, Judge

Trial Court Cause No. 30C01-1611-DR-1635

Vaidik, Judge.

Case Summary

[1] Jeffery Maxwell ("Husband") appeals several orders by the trial court in this marriage-dissolution case. We affirm on all issues except Husband's child-support arrearage.

Facts and Procedural History

[2] This is Husband's third appeal arising from the November 2017 dissolution of his marriage to Shirley Maxwell ("Wife"). In his first appeal, he challenged several aspects of the trial court's property division. We affirmed in part and reversed in part and remanded for further proceedings. *Maxwell v. Maxwell*, No. 30A01-1712-DR-2768, 2018 WL 4003126 (Ind. Ct. App. Aug. 10, 2018). After the trial court issued its order on remand, Husband brought his second appeal. We again affirmed in part and reversed in part. *Maxwell v. Maxwell*, 163 N.E.3d 337 (Ind. Ct. App. 2021), *trans. denied*. Among other things, we upheld the addition of 8% interest to the $68,953 equalization judgment owed by Husband, but we directed the trial court to consider the tax consequences of its disposition of Husband's pensions (and to adjust the equalization judgment accordingly). *Id.* at 341-43.

[3] On remand, the trial court scheduled a hearing to address the issues remanded by our opinion. Before that hearing, the parties made several additional filings. Husband petitioned to have his child-support obligation reduced because the parties' oldest child had turned nineteen and become emancipated. He also filed

a contempt petition against Wife, alleging she had violated the order for joint legal custody of their children by failing to consult with him regarding certain expenditures relating to their youngest child, who has cerebral palsy. Wife then filed her own contempt petition, alleging that Husband had not complied with a November 2018 order requiring him to pay $2,500 of Wife's attorney's fees. Shortly after Wife's filing, Husband paid the $2,500.

[4] After holding hearings on all pending issues, the trial court entered the three orders at issue in this appeal. The orders: (1) adjusted the property division to account for the tax consequences of the disposition of Husband's pensions and reduced the equalization judgment owed by Husband from $68,953 to $58,503, plus 8% interest; (2) reduced Husband's child-support obligation, though not as much as he had requested, and determined he owes an arrearage of $10,507.59; and (3) denied both contempt petitions.

[5] Husband now appeals.

Discussion and Decision

I. Property Division

[6] Husband's first two arguments criticize the trial court's handling of the property-division issues we remanded in our last opinion. Appellant's Br. pp. 14-28. He discusses at length Trial Rule 60(B), which authorizes trial courts to grant relief from judgment in certain circumstances, but he didn't make any filings under that rule in the trial court. And he makes passing references to due

process, equal protection, and civil rights but offers no relevant analysis or legal authority. Husband does make several statements about the trial court's disposition of his pensions and the related tax consequences, as well as alleged fraud and misrepresentations by Wife, but the statements are conclusory and not supported by cogent reasoning, as required by Appellate Rule 46(A)(8)(a). *See id.* at 19-22, 24-27. We therefore conclude Husband waived these contentions.

[7] Husband does make one cogent argument in this section of his brief. He contends the trial court erred by adding 8% interest to the equalization judgment. He acknowledges that trial courts have discretion in imposing interest in dissolution cases, *see Rovai v. Rovai*, 912 N.E.2d 374 (Ind. 2009), but he asserts that a rate of 8% is excessive under the circumstances and puts him in "a debtor's prison of interest," Appellant's Br. p. 25. Husband made a very similar argument in his last appeal, and we rejected it, noting that he "is free to pay off the judgment more quickly and thereby incur less in interest." *Maxwell*, 163 N.E.3d at 342-43. Husband has not given us a compelling reason to depart from that holding, especially now that the trial court has reduced the equalization judgment by more than $10,000 (more than 15%).

[8] We affirm the trial court's order on the remanded property-division issues.

II. Child Support

[9] Husband also challenges the trial court's order modifying child support, arguing that the court erred in determining Wife's income and in calculating the

arrearage owed by Husband. "In reviewing the trial court's decision regarding the modification of child support, we reverse only for an abuse of discretion." *Holtzleiter v. Holtzleiter*, 944 N.E.2d 502, 505 (Ind. Ct. App. 2011).

A. Wife's Income

[10] The trial court reduced Husband's weekly child-support obligation from $362 to $296. In doing so, the court found that Wife "is employed through the Mt. Vernon School Corporation and has a weekly gross income of Four Hundred Eighty-Five Dollars ($485.00)." Appellant's App. Vol. II p. 55. Husband contends the evidence doesn't support the finding that Wife makes only $485 a week working for the school corporation. He relies on a paystub from shortly before the modification hearing showing that Wife had bi-weekly gross income of $1,441.93 (or $720.97 a week). But that was Wife's income for that two-week period only. Wife is paid by the hour, and she testified that she only works when school is in session—about 180 days a year. Her year-to-date 2021 income as of December 17, 2021 (just before the holiday break), was $24,728.88. That is just shy of $485 multiplied by fifty-two weeks ($25,220). The trial court did not abuse its discretion in finding that Wife earns weekly gross income of $485 working for the school corporation.

[11] Husband also argues additional income should be imputed to Wife because (1) she can work a second job when she's not working for the school and (2) she once withdrew money from a 401(k) and "used it as income[.]" Appellant's Br. p. 29. But there is evidence refuting both theories. While Wife acknowledged that she has worked a second job in the past and may do so again, she also

testified that doing so is difficult because she must care for the parties' special-needs youngest child when he is not in school. And the 401(k) withdrawal was a one-time occurrence that was done as part of the parties' original property settlement. The trial court did not abuse its discretion by failing to impute additional income to Wife.

B. Husband's Arrearage

[12] Next, Husband asserts the trial court erred in its calculation of his child-support arrearage. The court determined the arrearage to be $10,507.59, and Husband contends it is only $7,230. However, he does not tell us how he reached that number. But Wife concedes that the trial court's calculation of Husband's arrearage is partially erroneous. Specifically, she notes that the court's calculation omitted $2,494 in payments Husband made in early 2020 and that the arrearage "should be reduced from $10,507.59 to $8,213.59 to account for these omitted payments." Appellee's Br. pp. 19-20. We therefore reverse the trial court's determination and remand for the entry of an arrearage of $8,213.59.

III. Contempt

A. Husband's Petition

[13] Husband contends the trial court erred by denying his contempt petition against Wife. "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." *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016).

[14] In his contempt petition, Husband alleged that Wife violated the order for joint legal custody by failing to consult with him before spending their special-needs son's entire lifetime "environmental modifications" Medicaid benefit of $15,000 to make improvements to her house. Appellant's App. Vol. II p. 103. He noted that this exhausted the benefit "for the remainder of [the child's] lifetime, even once he is an adult and living independently in his own house at any point in the future." *Id.* Wife acknowledged exhausting the benefit without consulting Husband but testified at length that the improvements to her home were necessary to make a bathroom wheelchair accessible so their son can use it more independently. She also testified that she has met with the Medicaid caseworker every three months for many years and that Husband generally hasn't attended those meetings and "hasn't historically involved himself" with Medicaid decisions. Tr. pp. 116-17. This evidence is more than sufficient to support the trial court's denial of Husband's contempt petition.

B. Wife's Petition

[15] In addition to denying Husband's contempt petition, the trial court denied Wife's contempt petition because shortly after Wife filed it Husband paid the $2,500 he owed under the November 2018 fee order. Husband now asks us to order the "return" of the $2,500, claiming the November 2018 fee order is void. Appellant's Br. pp. 33-35. Husband waived this argument by failing to seek return of the $2,500 in the trial court. To the contrary, during the contempt hearing, Husband said, "I'm not asking them to pay me anything or reimburse me for anything[.]" Tr. p. 136. Waiver notwithstanding, Husband's claim fails

because at a pretrial conference in January 2020, he agreed, through counsel, that the November 2018 fee order "is valid and binding[.]" *Id.* at 124-25; Appellee's App. Vol. II p. 5.

IV. Appellate Attorney's Fees

[16] Wife contends that Husband's appeal is "vexatious" and asks us to remand for an award of appellate attorney's fees. Appellee's Br. pp. 16-17. Appellate Rule 66(E) allows such an award when an appeal is "frivolous or in bad faith." While Husband's pro se briefs are certainly deficient, we cannot say his appeal is frivolous or in bad faith, especially because he has prevailed in part on the issue of child support. We therefore deny Wife's request.

[17] Affirmed in part and reversed and remanded in part.

Riley, J., and Bailey, J., concur.