

## MEMORANDUM DECISION

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### ATTORNEYS FOR APPELLANT

Tracy Pappas  
Rachel Hogenkamp  
Adam Mueller  
Indiana Legal Services, Inc.  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Robert Middleton,  
*Appellant-Respondent,*

v.

Paula Pyatte,  
*Appellee-Petitioner.*

June 14, 2021

Court of Appeals Case No.  
20A-DR-2354

Appeal from the Hendricks  
Superior Court

The Honorable Robert W. Freese,  
Special Judge

Trial Court Cause No.  
32D01-1401-DR-58

**Najam, Judge.**

## Statement of the Case

[1] Robert Middleton (“Father”) appeals the trial court’s order finding him in contempt of court. Father raises three issues for our review:

1. Whether the trial court erred when it found that he had willfully failed to pay child support and uninsured medical expenses.
2. Whether the trial court abused its discretion when it sentenced him to sixty days in the county jail on the contempt finding, which the court suspended on the condition that he pay the entire arrearage due.
3. Whether the trial court erred when it ordered him to pay Paula Pyatte’s (“Mother’s”) attorney’s fees.

[2] We affirm.

## Facts and Procedural History

[3] Mother and Father were married,<sup>1</sup> and they have one minor child together, T.M. (“Child”). In June 2010, the trial court dissolved the parties’ marriage. Following the dissolution, the court ordered Father to pay \$109 per week in child support. The court also ordered Mother to pay the first \$259 in Child’s uninsured medical expenses per year. For any uninsured medical expenses

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<sup>1</sup> The record does not indicate when the parties married.

beyond that amount, the court ordered Father to pay 61% and Mother to pay 39%.

[4] In April 2016, following numerous motions filed by both parties, the trial court determined that Father owed a child support arrearage totaling \$7,325.00 and \$647.82 in unpaid medical expenses. *See* Ex. Vol. 5 at 203. The court then modified Father's child support obligation and ordered Father to pay \$83 per week in child support plus an additional \$40 per week toward the arrearage. *See id.* at 213.

[5] On January 24, 2020, Mother filed a motion for rule to show cause in which she alleged that Father had continued to fail to make his child support payments and to pay his portion of the uninsured medical expenses. The trial court held a hearing on Mother's motion on September 30. At that hearing, Mother testified that, at the time she filed her motion, Father's child support arrearage was approximately \$14,000. Tr. at 8. Mother then testified that Father had made "some payments" and that, as of September 2, Father's child support arrearage totaled \$9,547.02. *Id.* at 6; *see also* Ex. Vol. 3 at 10. In addition, Mother submitted numerous exhibits to support her claim that Father owed her for uninsured medical expenses.

[6] Father testified that he did home repairs for a living but that he had injured his knee in 2016, which "stopped [him] from earning money." Tr. at 47. He also testified that, in 2016, his mortgage company filed a foreclosure action on his house and that he had to spend a large amount of money to defend that action.

Father then testified that the COVID-19 pandemic shut down his business and, as a result, he “started on unemployment” in February 2020, which wages were being garnished to pay his child support obligations. *Id.* at 54. He testified that he has “done the best [he] could with the ability and funds” he has. *Id.* at 55.

[7] Father then testified that he had not accumulated any new assets, that he did not have stocks or bonds, and that he did not have any equity in his home. He also testified that he had not made a mortgage payment in the previous four years, but that his payments had been \$1,400 to \$1,500 per month. *See id.* at 70. Father then testified that he had “attempted” to buy a new truck in 2019 and that he currently had “possession” of it. *Id.* at 72. But he claimed that there was an issue with the purchase that is “still being resolved” and that he would have had a payment of \$400 per month had there not been a problem. *Id.* Father also acknowledged he had recently purchased a “[c]argo trailer” that he uses for work but that the payments had been suspended due to the pandemic. *Id.* at 74.

[8] On October 19, the court entered, in part, the following findings of fact and conclusions thereon:

b. According to the Arrearage calculation, as of September 2, 2020, Father owes a total of \$9,547.02 in child support arrearages. When Mother filed her rule to show cause, Father’s arrearage was almost twice this amount and only has been reduced due to Father’s unemployment and due to the fact that the [Title] IV-D prosecutor garnished those wages.

c. Father willfully failed and refused to pay child support pursuant to the court's order which resulted in the substantial arrearage.

d. Additionally, said Order required Mother to pay the first \$259 in uninsured medical expenses for the minor child and then any amount exceeding Mother's \$259.00 shall be split with 39% by Mother and 61% by Father.

e. As of December 31, 2019, Father owes to Mother \$1,654.56 in uninsured medical expenses for the years of 2016, 2017, 2018, and 2019. Father has failed to reimburse his ordered percentage to Mother for all uninsured medical expenses since 2016.

f. Father alleges that he does not have the financial means to pay Mother child support on a weekly basis and that he has attempted to pay her with the funds he has. Father's testimony is not credible. Father has not had a mortgage payment in four (4) years, he has only had to make one car payment in the last year and has successfully suspended most other expenses due to COVID-19. Furthermore, Father purchased a new truck and a "cargo hauler." Notwithstanding Father's minute monthly expenses, Father has still refused to pay his ordered amount of child support and uninsured medical expenses. . . .

Appellant's App. Vol. 2 at 72-73. Accordingly, the court found Father in contempt for his "willful failure" to follow the court's order. *Id.* at 73. The court then ordered Father to serve sixty days in the county jail but suspended that sentence on the condition that Father pay \$11,201.58—the total amount of child support and uninsured medical expenses owed—by December 31. The

court also ordered Father to pay Mother's attorney's fees in the amount of \$7,648.25. This appeal ensued.<sup>2</sup>

## **Discussion and Decision**

[9] Father appeals the court's order finding him in contempt and ordering him to pay Mother's attorney's fees. Initially, we note that Mother has not filed an appellee's brief.

When an appellee fails to file a brief, we apply a less stringent standard of review. We are under no obligation to undertake the burden of developing an argument for the appellee. We may, therefore, reverse the trial court if the appellant establishes prima facie error. "Prima facie" is defined as "at first sight, on first appearance, or on the face of it."

*Deckard v. Deckard*, 841 N.E.2d 194, 199 (Ind. Ct. App. 2006) (citations omitted).

### ***Issue One: Contempt Finding***

[10] On appeal, Father first contends that the trial court erred when it found him in contempt. Where, as here,

the trial court issued findings of fact and conclusions of law, we applied a two-tiered standard of review. First, we determine whether the evidence supports the findings, and second, whether

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<sup>2</sup> Following the court's order, on December 21, 2020, Mother filed a motion requesting that the court order Father to execute his suspended sentence. Appellant's App. Vol. 2 at 101-02. That same day, Father filed a motion in which he asked the court to stay his sixty-day sentence pending the outcome of this appeal. *Id.* at 104-05. The trial court granted Father's motion on January 12, 2021. *Id.* at 107.

the findings support the judgment. The trial court's findings are controlling unless the record includes no facts to support them either directly or by inference. Legal conclusions, however, are reviewed *de novo*. We set aside a trial court's judgment only if it is clearly erroneous. Clear error occurs when our review of the evidence most favorable to the judgment leaves us firmly convinced that a mistake has been made.

*Scott v. Corcoran*, 135 N.E.3d 931, 939 (Ind. Ct. App. 2019) (quotation marks and citations omitted). Further, “we will not reweigh the evidence nor will we reassess the credibility of witnesses.” *Manis v. McNabb*, 104 N.E.3d 611, 617 (Ind. Ct. App. 2018).

- [11] The trial court found Father in contempt for failing to pay child support and for failing to pay his portion of Child's uninsured medical expenses in violation of the court's April 2016 order. To find a party in contempt for failure to pay child support or child-support obligations, the trial court must find that the party had the ability to pay child support and that the refusal to do so was willful.

*Woodward v. Norton*, 939 N.E.2d 657, 662 (Ind. Ct. App. 2010). Father bears the burden to demonstrate that his violation of the court's order was not willful. *See Norris v. Pethe*, 833 N.E.2d 1024, 1029 (Ind. Ct. App. 2005).

- [12] On appeal, Father does not dispute the existence of a court order requiring him to pay child support, nor does he dispute the fact that he had a child support arrearage. However, Father asserts that the court erred when it found him in contempt because “the evidence does not show that [he] was willfully refusing to pay child support or uninsured medical expenses.” *Id.* at 10. Specifically,

Father contends that he “had reduced earnings due to his inability to work and no other means with which to pay the support, other than his unemployment compensation payments which were already being garnished weekly for child support.” *Id.* at 11. Father maintains that he “has done everything in his power to pay bills” such that the contempt finding was improper. *Id.* In other words, Father argues that the evidence does not support the contempt finding.

[13] As to Father’s argument that he lacked the ability to pay child support as ordered, the trial court heard Father’s testimony regarding that alleged inability and explicitly found that it was “not credible.” Appellant’s App. Vol. 2 at 72. Indeed, the court based that finding on Father’s own testimony that he has not had a mortgage payment in over four years, which payments were \$1,400 to \$1,500 per month. The court also based that finding on Father’s testimony that he had purchased a new truck in 2019 for which Father anticipated paying \$400 per month. However, Father was not currently making payments on that truck because of an issue with the purchase. *See Tr.* at 72-73. And Father acknowledged that he had purchased a new cargo trailer but that payments on that trailer had been suspended. In other words, the evidence demonstrates that Father was not currently paying the majority of his monthly bills. That evidence supports the court’s finding that Father had the ability to pay child support and medical expenses as ordered.

[14] The evidence also supports the court’s finding that Father willfully refused to pay child support and medical expenses as ordered. The court first ordered Father to pay those expenses in 2010 following the dissolution of his marriage



to Mother, but, by 2016, Father had already accumulated an arrearage of more than \$7,300. At that point, the court reduced Father's child support obligation and ordered him to pay \$83 per month in child support plus an additional \$40 per month toward the arrearage. However, from 2016 through early 2020, Father failed to make regular payments. *See* Ex. Vol. 3 at 4-9. Instead, in 2019, Father purchased a new truck and a new cargo trailer. And, while Father began making child support payments on a more regular basis beginning in 2020, his child support arrearage as of the date of the hearing in September remained at almost ten thousand dollars. Further, Father acknowledges that some of his payments in 2020 were only for \$69.27, despite the fact that he was ordered to pay \$123 per week. *See* Appellant's Br. at 16.

[15] Our review of the record demonstrates that, for several years following the court's April 2016 order, Father failed to make regular payments toward either his child support obligation or Child's uninsured medical expenses as ordered. And Father failed to make the necessary payments despite the fact that he had the ability to do so. Based on that evidence, we cannot say that the trial court clearly erred when it found Father in contempt.

### ***Issue Two: Sanction***

[16] Father next asserts that the court abused its discretion when it sanctioned him on the contempt finding. "It lies within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of its order." *MacIntosh v. MacIntosh*, 749 N.E.2d 626, 631 (Ind. Ct. App. 2001). The "primary objective of a civil contempt proceeding is not to punish the defendant, but

rather to coerce action for the benefit of the aggrieved party.’” *Moore v. Ferguson*, 680 N.E.2d 862, 865 (Ind. Ct. App. 1997) (quoting *Duemling v. Fort Wayne Comm. Concerts, Inc.* 243 Ind. 521, 188 N.E.2d 274, 276 (1963)). It is well settled that imprisonment may be used in civil contempt proceedings. *See id.* “If the court uses imprisonment to coerce the defendant into doing an affirmative act, the court must provide that the imprisonment cease as soon as the act is done, so that the defendant has the key of his prison in his own pocket.” *Id.* (quotation marks omitted).

[17] Here, the trial court sentenced Father to sixty days in the county jail but suspended that sentence on the condition that Father pay the entire amount owed within seventy-three days of the date of the court’s order. On appeal, Father acknowledges that the court provided a method by which he could avoid imprisonment. However, he asserts that the sanction was nevertheless punitive because it was unattainable.

[18] To support his assertion, Father relies on this Court’s opinion in *McCollum v. Indiana Family and Social Services Administration*, 82 N.E.3d 368 (Ind. Ct. App. 2017). In that case, the trial court found that mother was in contempt for having failed to pay child support for 150 weeks, which failure resulted in an arrearage of over \$15,000. *Id.* at 372. As a result, the court sentenced mother to 150 weeks imprisonment to be served on work release. *Id.* at 373. The court then ordered that mother be released from custody at any point if she reduced her arrearage to below \$7,500. *Id.*

[19] On appeal, mother acknowledged that the court had allowed her to purge her contempt and end her imprisonment by paying \$7,797 of her arrearage. *Id.* at 375. But mother argued that that sanction was punitive in nature because it was “realistically unattainable” since she only earned \$7.50 per hour at her job. *Id.* This Court found that, based on Mother’s job earning \$7.50 per hour and the “excessive amount” the trial court ordered her to pay, it was “not reasonably likely” that Mother would be able to “attain the conditions necessary for her release.” *Id.* at 376. This Court also found that the sentence Mother would have to serve if she were not able to purge her contempt would be greater than the maximum sentence allowed had she been charged criminally with nonsupport of a defendant. *Id.* at 376. As such, this Court concluded that mother’s sanction was improperly punitive. *Id.* at 375.

[20] However, in *Hunter v. State*, we reached a different result. 802 N.E.2d 480 (Ind. Ct. App. 2004). In that case, the trial court found Hunter in contempt for having failed to pay child support as ordered, which resulted in an arrearage of over \$18,000. *Id.* at 482. As a result, the court sanctioned Hunter to an indefinite term of imprisonment and provided that Hunter could purge his contempt finding if he paid the full arrearage. *Id.* at 484. On appeal, Hunter asserted that his sanction was punitive rather than coercive because the purge requirement was “virtually impossible.” *Id.* But this Court was not “persuaded” by Hunter’s argument. *Id.* at 485. Rather, this Court found that the “large amount” Hunter was required to pay to purge himself of the contempt finding was “the result of his prolonged failure to comply with the

support orders, despite his ability to pay the court-ordered support.” *Id.* As to Hunter’s indefinite sentence, this Court found that the “only limit on the sentence is that it must give the contemtor an opportunity to purge himself from contempt.” *Id.* at 484 (quotation marks omitted). Accordingly, this Court concluded that Hunter’s sanction was coercive rather than punitive. *Id.* at 485.

[21] Similarly, in *Moore*, the trial court found Moore in contempt for failing to pay child support as ordered in nine cause numbers, which resulted in a total arrearage of approximately \$79,000. 680 N.E.2d at 864. The court sentenced Moore to consecutive sentences of 180 days in county jail for each cause. But the court allowed Moore to purge the finding and avoid incarceration in each cause if he paid 10% of the amount owed. *Id.* Moore challenged that sentence and asserted that he was required to pay an “excessive” amount of money—\$7,859.70—to purge himself of contempt. *Id.* at 865. On appeal, this Court rejected Moore’s argument and held that his sentence was not punitive because the large amount he was required to pay was the result of his “prolonged failure” to comply with the support orders and because the trial court provide a method by which he could purge himself from each contempt finding. *Id.* at 866.

[22] We conclude that the facts in *McCollum* are distinguishable and that the circumstances here are more similar to those in *Hunter* and *Moore*. As in both *Hunter* and *McCollum*, the large amount that Father was required to pay was the result of Father’s own prolonged failure to pay child support as ordered despite his ability to do so. Indeed, Father consistently failed to pay child support for

several years as ordered by the court in 2016, which order the court only issued after Father had failed to comply with the 2010 order. In addition, the trial court gave Father a method by which he could purge himself of the contempt and avoid incarceration.

[23] Still, Father contends that the amount he is required to pay to purge himself of the contempt is unattainable because he testified that he has no assets or any means by which he could pay the arrearage. However, the trial court expressly discredited Father's testimony regarding his ability to pay. Instead, the court relied on Father's own testimony that he had attempted to purchase a truck for which he expected to pay \$400 per month but was not currently making any payments, that he is not currently making any payments on his cargo trailer, and that he had not made a mortgage payment for over four years.

[24] In sum, the amount that Father was ordered to pay was based on his failure to pay as ordered when he had the ability to do so. We thus conclude that the trial court's sanction order was designed to promote compliance with the court's order rather than to punish Father. Accordingly, we cannot say that the trial court abused its discretion when it sanctioned Father.

### ***Issue Three: Attorney's Fees***

[25] Finally, Father contends that the trial court abused its discretion when it ordered him to pay Mother's attorney's fees. "Regardless of consideration of economic resources, once a party is found in contempt, the trial court has the inherent authority to compensate the aggrieved party for losses and damages

resulting from another's contemptuous actions, including an award of attorney's fees." *Madden v. Phelps*, 152 N.E.3d 602, 615 (Ind. Ct. App. 2020). The determination of damages in a contempt proceeding is within the trial court's discretion, and we will reverse an award of damages only if there is no evidence to support the award. *Id.*

- [26] On this issue, Father first contends that the trial court's order that he pay Mother's attorney's fees was an abuse of discretion because he "was not properly found in contempt of court." Appellant's Br. at 17. However, as we have discussed above, the trial court did not err when it found Father in contempt for having failed to make child support payments and for having failed to pay Child's uninsured medical expenses as directed by the April 6, 2016, order. Accordingly, Father's argument cannot succeed.
- [27] Still, Father contends that the court abused its discretion when it ordered him to pay Mother's attorney's fees because the "attorney fee award was not supported by the evidence."<sup>3</sup> *Id.* Specifically, Father contends that the fee award is "unreasonable given the lack of an affidavit and absence of any meaningful explanation of the other claimed fees." *Id.* Father acknowledges that Mother's attorney submitted an exhibit summarizing her fees, but he nonetheless

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<sup>3</sup> During the underlying proceedings, Mother was represented by two attorneys. The court's award of attorney's fees included \$800 in fees for the first attorney and \$6,848.25 in fees for the second attorney. Father concedes that the award of \$800 for the first attorney was proper because that attorney submitted an affidavit detailing the work he did and the fee he charged. See Appellant's Br. at 19. However, Father challenges the "remainder of the fee request." *Id.*

contends that that document is inadequate because it “does not explain what work generated the fees listed and how many total hours were put in the case.” *Id.* at 19-20.

[28] But we note that Father did not object to the admission of that exhibit during the hearing, nor did he challenge the reasonableness of the fees. Father also declined to cross-examine Mother about the work her attorney did, nor did he question the attorney regarding her fees, her work done on this case, or her billing practices. “When a party fails to make an objection to the trial court, it cannot raise the objection on appeal.” *J.S. v. W.K.*, 62 N.E.3d 1, 10 (Ind. Ct. App. 2016). The “failure to object to the admission at trial of evidence as to attorney’s fees constitute[s] waiver of any contention on appeal with respect to the correctness and accuracy of that evidence.” *Id.* By failing to object, he has waived appellate review of any argument challenging the fees.

[29] Waiver notwithstanding, Mother submitted as evidence a document that summarized the total fees for her attorney’s work. That document stated that the attorney’s fees totaled \$6,848.25. *See* Ex. Vol. 4 at 96. And Mother testified that her attorney had “only worked on the contempt issue[.]” Tr. at 15. In other words, the evidence demonstrates that Mother incurred attorney’s fees in the amount of \$6,848.25 in order to litigate the contempt issue. We therefore affirm the court’s order that Father pay that amount in Mother’s attorney’s fees.

### *Conclusion*

[30] In sum, the trial court did not err when it found Father in contempt. Nor did the court abuse its discretion when it sanctioned Father on the contempt finding. And Father has waived any challenge to Mother's attorney's fees by failing to object to the exhibit outlining those fees. We therefore affirm the trial court's order.

[31] Affirmed.

Pyle, J., and Tavitas, J., concur.