MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Jeremy W. Adkins,
Appellant-Respondent,

v.

Brooke N. Adkins,
Appellee-Petitioner.

July 18, 2022

Court of Appeals Case No. 22A-DR-211

Appeal from the Henry Circuit Court

The Honorable Bobby A. Witham, Judge

Trial Court Cause No. 33C01-1508-DR-164

Tavitas, Judge.

Case Summary

[1] Jeremy Adkins appeared pro se at a hearing to address his former wife's Motion to Modify Support and Petition for Contempt Citation. Adkins did not contest any of the evidence submitted against him, nor did he present witnesses or

evidence of his own, other than his own narrative testimony. The trial court granted both the Motion and the Petition. Adkins now appeals. Finding his claims waived, we affirm the trial court.

Issue

[2] Adkins raises eight issues. We find, however, that a single issue is dispositive: whether Adkins has waived all issues for purposes of appeal.

Facts

[3] Adkins and his former wife, Brooke Adkins ("Mother"), entered into a Decree of Dissolution of Marriage filed on December 21, 2015. That same day, the parties entered into a Property Settlement Agreement and Agreement for Custody, Support, and Parenting Time for Minor Children ("Property Settlement Agreement").[1]

[4] On May 17, 2021, Mother filed a Motion to Modify Support, in which she alleged that "there have been continuing and substantial changes which make the current support order unreasonable, to-wit: Petitioner's income has decreased, Petitioner has different employment, and Respondent's income has increased." Appellant's App. Vol. II p. 26. Simultaneously, Mother filed a Petition for Contempt Citation and alleged that Adkins had failed to pay certain

[1] The parties share two minor children.

expenses related to the minor children pursuant to the Property Settlement Agreement.

[5] The trial court held a hearing on all pending matters on October 4, 2021. Mother testified and presented four exhibits, one of which purported to list the expenses for the two minor children for the 2020-21 year, for which Mother was seeking reimbursement from Adkins for his portion of the expenses. Adkins—unrepresented by counsel at the hearing—raised no objections to any of the exhibits or to any of Mother's testimony.

[6] Mother testified that her income had decreased since 2015 and that Adkins had only minimally paid the expenses to which he was obliged during those six years. Mother further testified that she was of the understanding that Adkins failed to provide adequate bedding for one of the minor children during visitation. Mother requested that Adkins pay the expenses contemplated by the Property Settlement Agreement and that Adkins cooperate with Mother regarding future orthodontic expenses for two minor children in accordance with the Property Settlement Agreement.

[7] Adkins briefly cross-examined Mother, but the trial court ended the examination and instead asked Adkins if he wished to testify. The trial court did not ask Adkins whether he had witnesses or other evidence to present. Adkins did testify, making several concessions about his failure to pay various expenses, and, under cross-examination, testified about his increase in income

since the entry of the Property Settlement Agreement. Neither party made closing arguments. Rather, the hearing concluded with the following exchange:

> MR. ADKINS: Sir, may I say something?
>
> COURT: You may.
>
> MR. ADKINS: Brooke, we were together for 16-21 years. We were 24 married for 16 years, been together for 21, end of our freshman year. This is going to be hard. Okay. I am sorry I did what I did. I am sorry. I don't manage money well. You know that. Until this year you have not said anything about money. Until this year when – the dental, the car, you have never said anything about money.
>
> COURT: Mr. Adkins, you are kind of getting away from some of the issues.
>
> MR. ADKINS: I know Sir. I am sorry.
>
> COURT: Obviously, there is not an agreement on some of these things, so that's why I have to go back and look at everything and I will be the one to make the decision on it, okay. Anything else you want to say today?
>
> MR. ADKINS: Brooke, I am sorry.
>
> COURT: [Mother's counsel], anything else?
>
> [MOTHER'S COUNSEL]: No Judge, thank you.

> COURT: I need to look through the exhibits I have here and go back and review the decree that was entered back in 2017 and I will try to have a decision for you as soon as possible.

Tr. Vol. II pp. 24-25.

[8] On October 26, 2021, the trial court issued its Order on Pending Matters. The trial court ordered: (1) a minor adjustment to Adkins' weekly child support obligation; (2) a minor adjustment in the amount of uninsured medical expenses which Mother was responsible for before Adkins becomes responsible for paying additional expenses in a given year; (3) that Adkins pay $100 per week for an $875 fee owed as part of the Property Settlement Agreement, and which Adkins admitted he had not paid; (4) that Adkins pay $4,233.56 for extracurricular expenses for the minor children, based on calculations deriving from Mother's testimony and her first exhibit; (5) that Adkins cooperate with Mother regarding future orthodontic expenses for the minor children; (6) that Adkins ensure that one of the minor children has adequate bedding for overnight visitation; and (7) that Adkins pay $1000 in attorney's fees as a result of being in contempt. Adkins now appeals.

Analysis[2]

[9] Adkins opens the argument section of his brief with an accurate concession that his failure to object to any of the evidence submitted by Mother—or for that matter, failure to challenge whether Mother had met her burden in the trial court—would ordinarily mean that any related claims are waived for purposes of appellate review. *See, e.g., M.S. v. C.S.,* 938 N.E.2d 278, 285 (Ind. Ct. App. 2010). Waiver is a threshold matter, determined prior to our reaching the merits, and it plays an important role in our system. "'The rule of waiver in part protects the integrity of the trial court; it cannot be found to have erred as to an issue or argument that it never had an opportunity to consider.'" *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763, 770 (Ind. Ct. App. 2009) (quoting *GKC Ind. Theatres, Inc. v. Elk Retail Investors, LLC*, 764 N.E.2d 647, 650 (Ind. Ct. App. 2002)).

[10] The doctrine of waiver protects not only the integrity of the trial courts, and their authority to "apply the law to the facts found, and to decide questions raised by the parties[,]" *id*., it also protects judicial economy, *see, e.g.*, *Clarkson v.*

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[2] Mother did not file an appellee's brief. "[W]here, as here, the appellees do not submit a brief on appeal, the appellate court need not develop an argument for the appellees but instead will 'reverse the trial court's judgment if the appellant's brief presents a case of prima facie error.'" *Salyer v. Washington Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quoting *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 758 (Ind. 2014)). "Prima facie error in this context means 'at first sight, on first appearance, or on the face of it.'" *Id*. This less stringent standard of review "relieves [us] of the burden of controverting arguments advanced in favor of reversal where that burden properly rests with the appellee." *Jenkins v. Jenkins*, 17 N.E.3d 350, 352 (Ind. Ct. App. 2014) (citing *Wright v. Wright*, 782 N.E.2d 363, 366 (Ind. Ct. App. 2002)). We are obligated, however, to correctly apply the law to the facts in the record in order to determine whether reversal is required. *Id*. (citing *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006)).

Dep't of Ins. of State of Ind., 425 N.E.2d 203, 206 (Ind. Ct. App. 1981), and prevents unfairness to the opposing party, who did not have the chance to respond to unraised issues in the trial court. *Id.*; *see also City of Michigan City v. Lake Air Corp.*, 459 N.E.2d 760, 763 (Ind. Ct. App. 1984) ("It is improper to raise this issue for the first time on appeal since it would deprive [the opposing party] of the opportunity to litigate the question, and to raise any factual and legal contentions concerning it.").

[11] The integrity of our role in the system as a court of review is similarly protected. On appeal we presume that the record is free of reversible error, and the burden for overcoming that presumption lies with the appellant. *In re K.H.*, 838 N.E.2d 477, 480 (Ind. Ct. App. 2005) (quoting *Mead v. Salter*, 566 N.E.2d 577, 583 (Ind. Ct. App. 1991)). For that reason, "'all reasonable presumptions are indulged in favor of the rulings and judgment of the trial court.'" *Id.* We further presume, therefore, that the trial court correctly applied the law. *See, e.g.*, *Luttrell v. Luttrell*, 994 N.E.2d 298, 305 (Ind. Ct. App. 2013) (citing *Bizik v. Bizik*, 753 N.E.2d 762, 768-69 (Ind. Ct. App. 2001), *trans. denied*) ("The presumption that the trial court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal.").

[12] Simply put, we cannot reach past these presumptions and into the record to address unraised issues. To do so would be to fundamentally transform the role of the Court of Appeals. It is, rather, the role of the parties to develop their claims—at both the trial and appellate level—and the arguments supporting

those claims. "We do not undertake the burden of developing arguments for a party because that is the party's duty." *Spainhower v. Smart & Kessler, LLC*, 176 N.E.3d 258, 266 (Ind. Ct. App. 2021) (citing *Maser v. Hicks, 809 N.E.2d 429, 432 (Ind. Ct. App. 2004)), reh'g denied, trans. denied*.

[13] Adkins' misfortune in waiving his claims here results from a combination of two factors. First, Adkins represented himself at the hearing. And, while it is true that we hold pro se litigants to the same standards as licensed attorneys, *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 364 (Ind. Ct. App. 2021) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983 (Ind. Ct. App. 2016)), we also note "that the Indiana Code of Judicial Conduct gives guidance to trial courts and provides: '[a] judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.'" *Atkins v. Crawford Cnty. Clerk's Off.*, 171 N.E.3d 131, 136 (Ind. Ct. App. 2021) (quoting Ind. Code Jud. Conduct R. 2.2.). Thus, while our jurisprudence requires trial courts to treat self-represented litigants as being bound by the established rules of procedure, *id.*, self-represented litigants are frequently ill-equipped to understand and navigate the legal process. *See, e.g.* Ind. Code Jud. Conduct 2.6(A) ("A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.").

[14] We are concerned here with the numerous procedural shortcuts that the trial court appears to have availed itself. During Adkins' short-lived cross-examination of Mother, the following colloquy ensued:

> MR. ADKINS: Judge, clearly I don't have a lawyer to advocate for me. My words are going to be, my questions are going to be hearsay. I have no proof. My wife lost her job at the end of the school year and I'm. . .
>
> COURT: Hang on a second Mr. Adkins. You are starting to get into testifying. I will give you a chance to do that.
>
> MR. ADKINS: Okay. I am sorry.
>
> COURT: [Mother's counsel], is there any objection if I go ahead and swear him in and let him testify and you can ask him questions on cross examination?
>
> [MOTHER'S COUNSEL]: That would be fine, Judge.
>
> COURT: I am going to swear you in before you testify and then you will get a chance to tell me whatever you want to then [Mother's counsel] will have a chance to ask you questions. [ ]
>
> MR. ADKINS: Okay.

Tr. Vol. II p. 16. Without explanation the trial court ended Adkins' cross-examination of Mother; did not require Mother to rest before Adkins proceeded with a case-in-chief; and did not confirm whether Adkins understood that he could call witnesses and submit evidence for purposes of challenging Mother's evidence. Thus, Adkins' decision to proceed pro se was compounded by a hearing in which the trial court did not make clear to Adkins what was happening and what was expected of him.

[15] Nevertheless, Adkins offers only a single sentence with respect to his argument that his claims are not waived on appeal: "Here, Father contends that issues were preserved for appellate review by the explicit and implicit nature of the objections in his testimony." Appellant's Br. p. 15. This argument is not supported by either cogent reasoning or citations to authority. Thus, Adkins' argument with respect to waiver is, itself, waived. *See* Ind. Appellate Rule 46(A)(8). Accordingly, we find that Adkins' claims are waived for failure to raise them below.

[16] Finally, Adkins contends that, waiver notwithstanding, we should address his claims pursuant to the doctrine of fundamental error. We cannot agree. There are few exceptions to the rule that a party must raise an issue at trial in order to raise it on appeal. *See Lakes & Rivers Transfer, a Div. of Jack Gray v. Rudolph Robinson Steel Co.*, 736 N.E.2d 285, 289 (Ind. Ct. App. 2000) (citing *Albright v. Pyle*, 637 N.E.2d 1360, 1363 (Ind. Ct. App. 1994) (subject matter jurisdiction may be challenged at any time); *see also Grose v. Bow Lanes, Inc.*, 661 N.E.2d 1220, 1226 (Ind. Ct. App. 1996) (permitting issue to be raised for the first time on appeal in summary judgment proceeding where it would have been inconsistent with the position taken by the party below); *N. Indiana Commuter Transp. Dist. v. Chicago SouthShore & S. Bend R.R.*, 685 N.E.2d 680, 687 (Ind. 1997) (finding no waiver "[w]here a state court acts in an unanticipated way to deprive a party of the opportunity to make an argument or present a valid defense based on the Federal Constitution[.]").

[17] Adkins directs us only to the fundamental error exception, which we generally apply in the context of criminal cases. We have, on occasion, applied the exception in civil cases, but only where a substantial right is concerned. *See Johnson v. Wait*, 947 N.E.2d 951, 959 (Ind. Ct. App. 2011) (citing *S.M. v. Elkhart Cnty. Office of Family & Children*, 706 N.E.2d 596, 599 n. 3 (Ind. Ct. App. 1999)) ("We have applied the fundamental error doctrine only in limited situations in civil cases."). This is because the exception derives from the due process protection in both the Indiana and Federal Constitutions. *See, e.g.*, *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). Adkins points us to no case in which we have applied the fundamental exception in the context of child support or a contempt petition regarding a property settlement agreement or decree of dissolution of marriage. We decline to find that the exception applies in those contexts.

Conclusion

[18] Adkins' claims, raised for the first time on appeal, are waived. Accordingly, we affirm the trial court.

[19] Affirmed.

Riley, J., and May, J., concur.