## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

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# IN THE COURT OF APPEALS OF INDIANA

Jason Stoops,
*Appellant-Respondent,*

v.

September Stoops,
*Appellee-Petitioner*

August 4, 2022

Court of Appeals Case No. 22A-DC-69

Appeal from the Marion Superior Court

The Honorable
Ryan Gardner, Judge
Gael Deppert, Magistrate
Regina Tidwell, Magistrate

Trial Court Cause No. 49D10-1908-DC-34587

**Vaidik, Judge.**

# Case Summary

[1] Jason Stoops ("Father") appeals the trial court's modification of his child-support obligation and award of attorney's fees to September Stoops ("Mother"). We affirm.

# Facts and Procedural History[1]

[2] Father and Mother married in 2013 and later had two children. The marriage was dissolved by agreement in November 2019. The parties agreed that Mother would have primary physical custody and Father would exercise parenting time and pay $86 per week in child support.

[3] In April 2021, Mother moved to modify Father's child-support obligation. She alleged that Father, who is in the Army Reserve, would be deployed for a year and that during this time his income would increase and Mother would have the children full time. A hearing on Mother's motion began on June 25. Father was scheduled to deploy to Fort Bliss, Texas, the next week. He had refused to disclose to Mother what his income would be during his deployment, so Mother contacted Father's commanding officer, who directed Mother to a

[1] Our review of this matter has been significantly hindered by the fact that, other than a single one-page document, Father's appendix doesn't include anything that was filed by the parties in the trial court. This violates Appellate Rule 50(A)(2)(f) and (g), which provide that the appellant's appendix in a civil appeal must include "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal" and "any other short excerpts from the Record on Appeal . . . that are important to a consideration of the issues raised on appeal[.]" We gathered many of the facts that follow through the Odyssey case-management system.

"website for military income." June 25 Tr. p. 16. Mother presented information from that website showing that a servicemember in Father's position would earn $1,490 a week. *See id.* at 8-22; Exs. 3-9. Mother also submitted a child-support worksheet showing that, based on that income, Father's weekly child-support obligation would be $418. Father, who was unrepresented, began cross-examining Mother but quickly asked for a continuance to retain an attorney. The trial court granted the continuance and set the hearing to resume remotely on July 29.

[4] On July 21, Father moved for a 90-day continuance due to his deployment. Unbeknownst to Mother and the trial court, an attachment to the motion purporting to be a letter from Father's commanding officer was a forgery. The court had not yet ruled on the motion when the hearing was set to resume on July 29, but Father did not appear. The court continued the hearing until November 4.

[5] In the meantime, on August 19, Mother filed a motion for rule to show cause alleging that Father had failed to maintain dental insurance for the children as required by the parties' original settlement agreement. Then, a few days before the hearing was to resume, Mother received proof that the commanding-officer letter was forged and submitted that proof to the trial court. *See* Ex. 10.

[6] The hearing resumed on November 4. Father was still unrepresented and did not ask or otherwise try to continue his cross-examination of Mother from the first day of the hearing. He admitted the letter attached to his July continuance

motion was a forgery, that he had failed to maintain dental insurance for the children, and that he still had not provided Mother information regarding his income. Mother asked the trial court to increase Father's child-support obligation from $86 per week to $418 per week, retroactive to July 1, 2021, which would create an arrearage of $5,976. She also asked the court to find Father in contempt for "his failure to carry dental insurance on the children, providing false documentation to the court as well as failing to appear for hearings" and to order Father to pay her attorney's fees of $2,135. Nov. 4 Tr. p. 19.

[7] At the end of the hearing, Father mentioned his child-support obligation for a child with another ex-wife. The trial court asked Father to provide Mother's attorney with documentation of that obligation and asked Mother's attorney to submit a child-support worksheet that includes any such obligation. The court also told Father that if he failed to provide documentation the court would accept Mother's worksheet "as it is, as truth." *Id.* at 27.

[8] On November 8, Mother submitted a proposed final order that included the following:

> 4. [Father] expressed that he was paying Thirty-Five Dollars ($35.00) for a prior born child support order and the Court gave him [until] Friday, November 5, 2021 at 5:00 p.m. to provide that information to [Mother's] counsel;
>
> 5. At the time of filing this Order, [Father] has failed to provide that child support order to counsel for [Mother]. [Mother] can see from his paystubs that were provided on

> November 5, 2021, that [Father] does pay Thirty-Three Dollars and Forty-Six Cents ($33.46) per week for a prior born child support order. That previous child support order of Thirty-Three Dollars and Forty-Six Cents ($33.46) has been rounded up to Thirty-Four Dollars ($34.00) and has been imputed in the Child Support Worksheet attached to this Order[.]

*Proposed Order on Hearing*, No. 49D10-1908-DC-34587 (Nov. 8, 2021). The attached child-support worksheet included Father's additional support obligation. Father did not object to Mother's submissions.

[9] On December 13, the trial court issued an order granting Mother's motion to increase Father's child-support obligation to $418 per week as of July 1, 2021. Based on that change, the court found an arrearage of $5,976 and ordered Father to pay it within 180 days. Finally, the court ordered Father to pay $2,135 for Mother's attorney's fees and explained this award "is suitable for sanctions" for Father's contempt: failing to maintain dental insurance for the children and "willingly providing false documentation to the Court." Appellant's App. Vol. II pp. 14-15.

[10] Father now appeals.

# Discussion and Decision

[11] Mother has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima

facie error. *Id.* In this context, "prima facie error" means error "at first sight, on first appearance, or on the face of it." *Id.*

# I. Due Process

[12] Father first contends that on the second day of the modification hearing the trial court did not "allow" him to (1) "resume his cross-examination of Mother" from the first day of the hearing or (2) "provide testimony," thereby violating his right to due process. Appellant's Br. pp. 12-13. Father did not make this due-process claim in the trial court and therefore waived it for appeal. *See Akiwumi v. Akiwumi*, 23 N.E.3d 734, 738-39 (Ind. Ct. App. 2014). Waiver notwithstanding, the claim is meritless. Father never tried or asked to resume his cross-examination of Mother from the first day of the hearing or to testify on his own behalf. Therefore, it cannot be said that the trial court did not "allow" him to do those things, and his due-process argument fails.

# II. Modification of Child Support

[13] Next, Father challenges the trial court's modification of his child-support obligation on several grounds. He first argues the evidence does not support the trial court's determination that his weekly income during his deployment was $1,490. We disagree. Again, Father refused to disclose his income to Mother, so Mother contacted his commanding officer and retrieved military pay information from a website showing that a servicemember like Father would earn $1,490 a week. Father does not challenge the trial court's admission of that

evidence, and he presented no evidence of his own suggesting a different dollar figure.

[14] Father also asserts the child-support worksheet submitted by Mother after the hearing, which was the basis for increasing Father's support obligation to $418 per week, does not fully account for the child support he has to pay for his child with another ex-wife. Father waived this issue by failing to object to Mother's child-support worksheet. *See Perez v. Mounce*, 110 N.E.3d 404, 409-10 (Ind. Ct. App. 2018). Waiver notwithstanding, Father has not directed us to anything in the record showing that he is obligated to pay more than $34 per week in support—the amount reflected in Mother's worksheet—for the other child. His appendix includes several post-hearing emails between him and Mother's attorney, but they do not contradict Mother's child-support worksheet. *See* Appellant's App. Vol. III pp. 2-8.[2]

[15] Father notes he "was not provided any overnight parenting time credit on Mother's child support worksheet." Appellant's Br. p. 17. Father also waived this issue by failing to object to Mother's child-support worksheet. *See Perez*, 110 N.E.3d at 409-10. Waiver notwithstanding, Father cites nothing in the record suggesting he would be able to exercise any overnights during his deployment to Texas.

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[2] In any event, the emails were not filed with the trial court and therefore are not properly before us. *See Bernel v. Bernel*, 930 N.E.2d 673, 676 n.2 (Ind. Ct. App. 2010), *trans. denied*.

[16] Father also notes the trial court "did not make specific findings explaining the basis for the modification[.]" Appellant's Br. p. 20. But the basis is obvious. The court relied on the child-support worksheet Mother submitted after the hearing, to which Father never objected. And the modification is also consistent with Indiana Code section 31-16-8-1(b)(2), which provides that a court can modify a support order

> upon a showing that:
>
> > (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
> >
> > (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Here, Mother filed for modification more than twelve months after the original support order was issued, and the child-support worksheet she submitted after the hearing established that application of the child-support guidelines would result in an amount—$418 per week—that differs by more than twenty percent from Father's original support obligation of $86 per week. The lack of specific findings does not require reversal.

[17] Father's last challenge to the modification is that he was not "afforded the opportunity to provide the Court" with a proposed order. Appellant's Br. p. 24. We disagree. The trial court never told him he couldn't submit a proposed

order. And more than a month passed between the end of the hearing (November 4) and the trial court's order (December 13). If Father wanted to submit a proposed order, he could have.

[18] Father has failed to show any error in the trial court's modification of his child-support obligation.

## III. Attorney's Fees

[19] Finally, Father asserts the trial court erred by ordering him to pay Mother's attorney's fees. His argument is one sentence: "The Court did not make any findings in which to substantiate an award of attorney fees." *Id.* at 21. We have consistently held that trial courts are not required to give their reasons for such awards. *See, e.g.*, *Myers v. Myers (Phifer)*, 80 N.E.3d 932, 938 (Ind. Ct. App. 2017). But here, the trial court **did** explain its decision. Specifically, the court found Father in contempt for failing to maintain dental insurance for the children and providing false documentation and concluded that the award of fees "is suitable for sanctions." Father does not challenge, or even mention, the contempt finding. He has shown no error in the award of attorney's fees.

[20] Affirmed.

Crone, J., and Altice, J., concur.