

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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IN THE COURT OF APPEALS OF INDIANA

Deborah L. Wehrheim,
Appellant-Defendant,

v.

James C. Lake,
Appellee-Plaintiff.

July 26, 2022

Court of Appeals Case No.
21A-DR-2738

Appeal from the Clark Circuit
Court

The Honorable William A.
Dawkins, Magistrate

Trial Court Cause No.
10C02-1311-DR-593

Bailey, Judge.

Case Summary

- [1] Deborah Wehrheim (“Mother”) appeals a post-dissolution order finding her in contempt of court for failing to pay college expenses of her child with James Lake (“Father”) and ordering that she pay \$750.00 of Father’s attorney’s fees. Mother presents the sole issue of whether the order amounts to an abuse of discretion because it is contrary to law. We affirm.

Facts and Procedural History

- [2] Mother and Father had three children. Their marriage was dissolved, and thereafter Father had primary physical custody of their twin sons while Mother had primary physical custody of their daughter. For several years, the parties had contributed to a college savings account for the benefit of their children. As part of the agreement incorporated into the dissolution decree, Father was to maintain control over the savings account.
- [3] On August 8, 2018, Father petitioned the trial court to order that Mother contribute to the college education expenses of their sons. For reasons not of record, Mother did not petition the trial court to order Father to contribute to their daughter’s college expenses, although she attended college. On November 1, 2018, the trial court entered an interim order on college expenses. Father was ordered to pay educational expenses from the educational savings account only upon agreement of both parties; Father was obligated to provide Mother

with monthly statements of the savings account balance; and the parties were directed to return to court when the educational savings account was depleted.

[4] On January 27, 2021, Mother and Father submitted a joint resolution stating that all their children were emancipated for purposes of child support. The trial court entered an order adopting the joint resolution. The parties' daughter completed college, one of their sons dropped out of college, and one commenced his junior year.

[5] On February 17, 2021, Father petitioned the trial court regarding Mother's contribution to educational expenses of their child still enrolled in college. On March 4, 2021, the trial court ordered that Mother pay one-third, Father pay one-third, and their son pay one-third. Mother filed a motion to correct error, which the trial court summarily denied. The judgment was not appealed.

[6] On August 6, 2021, Father filed a motion for a Rule to Show Cause, asking that the trial court hold Mother in contempt for failure to contribute to college expenses. The trial court conducted a hearing on September 20, 2021. On September 30, 2021, the trial court entered an order providing in part: "[Mother] has made no effort to pay toward this obligation and is in contempt of this Court." Appealed Order at 1. Mother was ordered to pay \$750.00 to Father's attorney. Mother now appeals.

Discussion and Decision

[7] “Civil contempt is the failing to do something that a court in a civil action has ordered to be done for the benefit of an opposing party.” *Flash v. Holtsclaw*, 789 N.E.2d 955, 958 (Ind. Ct. App. 2003). It falls within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of a court order. *Bechtel v. Bechtel*, 536 N.E.2d 1053, 1056 (Ind. Ct. App. 1989). We review a civil contempt of court order pursuant to the following well-settled standard:

a determination of whether a party is in contempt of court is a matter committed to the trial court’s sound discretion and we will reverse a trial court’s decision in that regard only for an abuse of discretion. *Piercey v. Piercey*, 727 N.E.2d 26 (Ind. Ct. App. 2000). An abuse of discretion occurs when the decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.* When reviewing a trial court’s contempt determination, we will neither reweigh evidence nor judge witness credibility. *Id.* “Our review is limited to considering the evidence and reasonable inferences drawn therefrom that support the trial court’s judgment. Unless after a review of the entire record we have a firm and definite belief a mistake has been made by the trial court, the trial court’s judgment will be affirmed.” *Id.* at 31-32 (quoting *In re Marriage of Glendenning*, 684 N.E.2d 1175, 1179 (Ind. Ct. App. 1997)). To hold a party in contempt for violating a court order, the trial court must find that the party acted with “willful disobedience.” *Piercey*, 727 N.E.2d at 32.

Kicken v. Kicken, 798 N.E.2d 529, 533 (Ind. Ct. App. 2003).

[8] Mother argues that the order finding her in contempt is contrary to law because “the order [entered] by the trial court constituted a money judgment and trial

courts are prohibited from using contempt powers to enforce money judgments.” Appellant’s Brief at 5-6. Additionally, Mother contends that the college expenses order was “ambiguous and indefinite” such that it could not be enforced by contempt. *Id.* at 6. As such, Mother requests that we reverse the \$750.00 award of attorney’s fees.

[9] Due to the prohibition against imprisonment for debt in Article I, § 22 of the Indiana Constitution, and “because parties may enforce obligations to pay a fixed sum of money through execution as provided in Trial Rule 69, all forms of contempt are generally unavailable to enforce an obligation to pay money.” *Cowart v. White*, 711 N.E.2d 523, 531 (Ind. 1999). However, Indiana Code Section 31-15-7-10 provides in relevant part: “Notwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by contempt[.]” Thus, we are required to look at the original order sought to be enforced.

[10] A panel of this Court has observed:

if a final money judgment – one requiring a person to pay a fixed sum of money to the other party – is entered, contempt is not an available remedy for noncompliance. Indiana Trial Rule 69 is the correct remedy for noncompliance with a money judgment. However, in the absence of a money judgment, contempt is an available remedy for noncompliance with a dissolution decree.

Mitchell v. Mitchell, 871 N.E.2d 390, 395 (Ind.Ct.App.2007). In *Mitchell*, the Court concluded that the dissolution order (requiring the husband to pay the mortgage and credit card debts) did not constitute a money judgment requiring

one party to pay a fixed sum of money to the other party and, therefore, the trial court was not barred from using its contempt powers to enforce compliance with the order. *Id.* See also *Dawson v. Dawson*, 800 N.E.2d 1000, 1003 (Ind. Ct. App. 2003) (recognizing that “a trial court may use its contempt power to enforce an order that requires performance instead of payment of a fixed sum to coerce a party into compliance with an underlying order or decree.”).

[11] Mother argues that the college expenses order of March 2021 “was a money judgment as it required a payment of a sum of money and stated a specific amount due.” Appellant’s Brief at 7. The order provided in relevant part:

[E]ach party is responsible for one-third (1/3) of their [son]’s college expenses. [Son] is responsible for the remaining one-third (1/3).

Spring 2020 expenses are divided in equal amounts of \$1,238.89.

Fall 2020 expenses are divided in equal amounts of \$2,190.00.

Spring 2021 expenses through February 2021 are divided in equal amounts of \$1,883.00.

[Father] shall be reimbursed by [Mother] for any portion of the expenses he has paid which exceed his obligation.

This allocation of financial responsibility for [son]’s education shall remain the Order of the Court going forward as long as [son] remains a full time student in good academic standing.

Order of Clark County Circuit Court No. 2, dated March 4, 2021, Case No. 10C02-1311-DR-593.¹

[12] Although the foregoing order allocates sums due corresponding to certain college semesters, the order does not fix a specific amount due from Mother to Father. Rather, the order contemplates a continuing obligation for Mother's one-third contribution to college expenses. It is an order requiring Mother's performance of that obligation. The trial court did not enter a contempt order upon a money judgment, contrary to law.

[13] Alternatively, Mother claims that the contempt order is "also contrary [to] law as the [college expenses] order was ambiguous and indefinite." Appellant's Brief at 7. Our Indiana Supreme Court has clearly directed: "A party may not be held in contempt for failing to comply with an ambiguous or indefinite order." *City of Gary v. Major*, 822 N.E.2d 165, 170 (Ind. 2005). "The order must have been so clear and certain that there could be no question as to what the party must do, or not do, and so there could be no question regarding whether the order is violated." *Id.*

¹ We obtained this record in the state case management system, Odyssey. See *Horton v. State*, 51 N.E.3d 1154, 1160-61 (Ind. 2016) (observing that Ind. Evidence Rule 201(b)(5) "now permits courts to take judicial notice of 'records of a court of this state,'" and that such records are presumptively sources of facts "that cannot reasonably be questioned"); see also Ind. Appellate Rule 27 (providing that the "Record on Appeal ... consist[s] of the Clerk's Record and all proceedings before the trial court ... whether or not transcribed or transmitted to the Court on Appeal").

[14] Here, the language of the college expenses order is clear and direct. Mother's obligation, like that of Father and their son, is for one-third of the son's college expenses. Three semesters for which expenses had already been incurred were identified with sums due, respectively. Mother complains that she was not told "to whom the payments are to be made," Appellant's Brief at 8, but the order clearly provides that Father is to be reimbursed. And while Mother observes that there is no precisely stated time for making her payments, she does not contest the trial court's finding that she made no payment whatsoever. Mother has not established that the order is ambiguous or indefinite such that its enforcement by contempt is contrary to law.

Conclusion

[15] Mother has demonstrated no abuse of the trial court's discretion.

[16] Affirmed.

Najam, J., and Bradford, C.J., concur.