MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kayla Lynn Eikenberry,

Appellant-Petitioner,

v.

Michael Joseph Young,

Appellee-Respondent.

October 17, 2023

Court of Appeals Case No. 23A-DC-1023

Appeal from the Hamilton Superior Court

The Honorable David K. Najjar, Judge

Trial Court Cause No. 29D05-2103-DC-1577

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] Kayla Eikenberry ("Mother") appeals the Hamilton Superior Court's order modifying Michael Young's ("Father's") child support obligation and denying her motion for rule to show cause. Mother presents two issues for our review:

> 1. Whether the trial court abused its discretion when it modified Father's child support obligation.
>
> 2. Whether the trial court abused its discretion when it denied her motion to find Father in contempt.

[2] We affirm.

Facts and Procedural History

[3] Father and Mother were married in June 2019. Mother has a son from a prior relationship, E.E. And Father and Mother have one child together, R.B., born April 5, 2020.

[4] On January 30, 2021, Father was home alone with then-seven-year-old E.E. and R.B. when Father became angry with E.E. and threw him on the couch. E.E. sustained a broken clavicle as a result. After an investigation, the State charged Father with five offenses, including Level 5 felony domestic battery.

[5] In March, Mother filed a petition for dissolution of the marriage. In July, the trial court entered a final decree of dissolution awarding Mother sole legal and physical custody of R.B. At that time, Father was employed as a senior network engineer earning $90,000 annually. Accordingly, Father's child support obligation was calculated to be $326 per week. Father was also required to pay for supervised visitation with R.B.

[6] In January 2022, Father pleaded guilty to Level 5 felony domestic battery, and he was sentenced to four years with one day executed and three years suspended to probation. Because of that conviction, Father's employer revoked his security clearance, and his employment was terminated in March. Father received severance pay until mid-July. Father struggled with depression and anxiety that summer, and he underwent inpatient treatment for several weeks in April and June. Father also engaged in intensive outpatient therapy. Father applied for dozens of jobs, but every application was denied. In September, Father moved to Michigan to live with his parents because he could not afford to support himself.

[7] In the meantime, in June 2022, Father moved the trial court to modify his child support obligation. Father alleged that his unemployment was a substantial and continuing change in circumstances justifying a modification of his child support obligation. Father also alleged that he could not afford to pay for supervised visitation with R.B. In October, Mother filed a verified motion for rule to show cause why Father should not be found in contempt for a child support arrearage of $3,500 and for Father's failure to provide a life insurance policy pursuant to the dissolution decree.

[8] The trial court held a hearing on all pending motions on December 21, 2022, and February 7, 2023. During the February 7 hearing, Father testified that on January 9 he had started a job in a factory making $17.85 per hour. He explained that he had been unable to find employment as a senior network engineer because of his felony conviction. Father asked the trial court to modify

his child support obligation as follows: from July 22, 2022, to January 6, 2023, $66/week; and from January 7, 2023, and going forward, $139/week. Father also testified that he had applied for life insurance but had been rejected by three life insurance companies. Mother asked the trial court to impute income to Father since his intentional criminal act had caused him to lose his high-paying job. Mother also argued that Father could find a job in his field despite his felony conviction.

[9] Following the hearing, the trial court granted Father's motion to modify child support and denied Mother's motion for rule to show cause. The court retroactively reduced Father's child support obligation from July 22, 2022, to January 6, 2023, to $66 per week and $139 per week from January 7, 2023, going forward. And the court ordered Father to continue to pay the costs associated with supervised parenting time. This appeal ensued.

Discussion and Decision

Issue One: Child Support

[10] Mother contends that the trial court abused its discretion when it modified Father's child support obligation. Indiana Code section 31-16-8-1 provides in relevant part that child support may be modified only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable. As this Court has stated:

> Child support calculations are made utilizing the income shares model set forth in the Indiana Child Support Guidelines. The Guidelines apportion the cost of supporting children between the

> parents according to their means, on the premise that children should receive the same portion of parental income after a dissolution that they would have received if the family had remained intact. The trial court is vested with broad discretion in making child support determinations. A calculation of child support under the Guidelines is presumed to be valid.
>
> We will reverse a trial court's grant or denial of a request for modification of child support only where the court has abused its discretion. An abuse of discretion occurs when the trial court misinterprets the law or the decision is clearly against the logic and effect of the facts and circumstances before the court. We do not reweigh the evidence or judge the credibility of the witnesses upon review; rather, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom.

Sandlin v. Sandlin, 972 N.E.2d 371, 374-75 (Ind. Ct. App. 2012) (citations omitted).

[11] Mother maintains that the trial court abused its discretion when it did not impute income to Father. She argues that, because Father's intentional criminal conduct is the cause of his reduced income, he is not entitled to an abatement of his child support obligation. In support, Mother cites *Carmichael v. Siegel*, 754 N.E.2d 619 (Ind. Ct. App. 2001).

[12] In *Carmichael*, a father's income was reduced after his law license was suspended due to his misrepresentation of fact to a bankruptcy court. *Id.* at 623. Mother argued that the trial court should impute income to father commensurate with his income when he was practicing law, but the trial court rejected her argument. On appeal, we reversed the trial court and held that

> if a parent's intentional misconduct directly results in a reduction of his or her income, no corresponding decrease in his or her child support obligation should follow, because such misconduct results in "voluntary underemployment" according to Child Support Guideline 3(A)(3), and the income the parent was earning before that misconduct should be imputed to that parent.

Id. at 633. In support of that holding, we relied our opinion in *Holsapple v. Herron*, 649 N.E.2d 140 (Ind. Ct. App. 1995). In *Holsapple*, the father committed a crime, and we held that he was not entitled to a reduction in his child support based on the consequences of his act. In particular, the *Carmichael* panel quoted the following from *Holsapple*:

> when a criminal act or the resulting consequences therefrom is the primary cause of an obligor-parent's failure to pay child support, abatement of said obligation is not warranted. We held in *Davis v. Vance*, 574 N.E.2d 330, 331 (Ind. Ct. App. 1991): "It would be contrary to the Indiana Child Support Guidelines and to the very nature of our public policy favoring a child's security and maintenance to allow payments to abate based on a willful, unlawful act of the obligor." In other words, Holsapple may not profit from his own criminal behavior.

Id. at 141-42.

[13] Here, Mother asserts that

> a much more straightforward analysis [than in *Carmichael*] is implicated [here] because Father's decreased ability to pay, to the extent that it exists, is a direct result of a criminal conviction entered against him for committing battery involving serious bodily injury on a minor stepchild who is a former member of his household.[] If a situation such as this doesn't demand

> application of the rationale of *Holsapple* . . . and *Carmichael*[] it is hard to conceive of one that does. The parties' child ought not suffer, and Father should not profit, on account of his voluntary and intentional misconduct.

Appellant's Br. at 12-13 (record citations omitted).

[14] However, our Supreme Court has expressly disapproved of *Holsapple*. Specifically, in *Clark v. Clark*, the Court addressed the issue of whether "*incarceration* constitutes a substantial change in circumstances justifying modification of an existing child support obligation." 902 N.E.2d 813, 814 (Ind. 2009) (emphasis added). The Court held that it does and expressly disapproved of *Holsapple*. In particular, the Court stated:

> Strengthening marriages and relationships between children and non-custodial parents has emerged as a national strategy for enhancing the well-being of children.[] In *Lambert*[*v. Lambert*, 861 N.E.2d 1176 (2007)], we considered sociological evidence and concluded that "imposing impossibly high support payments on incarcerated parents acts like a punitive measure, and does an injustice to the best interests of the child by ignoring factors that can, and frequently do, severely damage the parent-child relationship." [*Id.*] at 1180. And studies have generally concluded that unsustainable support orders result in greater failure of non-custodial parents to pay their support obligations, making it "statistically more likely that the child will be deprived of adequate support over the long term." *Id.* at 1181.
>
> Proscribing the consideration of incarceration as a substantial change in circumstances justifying the modification of a child support order is not in the best interest of children. When released, most obligated parents face the twin barriers of large arrearages *and difficulty finding employment*. Such a situation

> makes it more likely that the newly-released obligated parent will face jail time as a result of non-payment of child support or participate in the underground economy—once again straining family relationships, if not jeopardizing public safety. *Lambert* recognized the realities of incarceration for families, and is equally applicable to modifications of child support orders.

Id. at 817 (emphasis added).

[15] While Father was only incarcerated for one day, he testified that his felony conviction has caused him to be denied dozens of jobs for which he has applied, including jobs within his field. Mother insists that Father could find a job in his field and make the same income that he made before the conviction, but it was for the trial court to assess the credibility of Father and Mother and to weigh the evidence. Our Supreme Court recognized that both a parent's incarceration and his "difficulty finding employment" after a conviction and sentence might impact his ability to pay child support. *See id.* And the Court acknowledged that, despite a parent's culpability in causing unemployment or underemployment, imposing "impossibly high support payments" on that parent is punitive and may not be in a child's best interests. *See id.* Accordingly, we reject Mother's argument on this issue and hold that the trial court did not abuse its broad discretion when it modified Father's child support obligation.

Issue Two: Contempt

[16] Mother next contends that the trial court abused its discretion when it denied her motion for rule to show cause. 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. *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016) (citation omitted). We will reverse a trial court's finding of contempt only if there is no evidence or inference therefrom to support the finding. *Id.*

[17] Mother asserts that the trial court "erred in declining to hold Father in contempt under circumstances where Father knowingly elected to pay less than the court-ordered support amount during the pendency of the modification proceeding while contemporaneously having the ability to pay the same." Appellant's Br. at 14. Mother points out that Father has approximately $50,000 in retirement funds; that he recently sold a vehicle with $28,000 in equity; and that he has no living expenses.

[18] But Father testified that he would incur a tax penalty for withdrawing retirement funds early and that he used the $28,000 to buy a car, which he testified he needs for transportation to and from his job. Mother's argument amounts to a request that we reweigh the evidence, which we cannot do on appeal. We cannot say that the trial court abused its discretion when it did not find Father in contempt of the dissolution decree.

[19] For all these reasons, we affirm the trial court.

[20] Affirmed.

Riley, J., and Crone, J., concur.