

## 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

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Halie Jo Book,  
*Appellant,*

v.

Kevin Book,  
*Appellee.*

July 13, 2022

Court of Appeals Case No.  
22A-DC-451

Appeal from the Orange Circuit  
Court

The Honorable Steven L. Owen,  
Judge

Trial Court Cause No.  
59C01-1906-DC-54

**Bailey, Judge.**

# Case Summary

- [1] Halie Jo Book (“Mother”) brings this interlocutory appeal as of right, challenging a trial court order modifying child support and ordering her to pay attorney fees as a sanction her for contempt of court.<sup>1</sup> She raises the issue of whether the trial court abused its discretion when it suspended Kevin Book’s (“Father”) child support payments. However, her challenge to the attorney fee order is waived for failure to comply with the Appellate Rules.
- [2] We reverse in part, affirm in part, and remand.

## Facts and Procedural History

- [3] The parties were married and had six minor children. On August 14, 2019, the trial court approved the parties’ dissolution settlement agreement and adopted it as an order of the court. The dissolution decree granted the parties joint legal custody of the children with Mother having primary physical custody. Father was to temporarily have supervised parenting time with the children due to a pending Child Welfare investigation. Per an attached child support worksheet

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<sup>1</sup> Indiana Appellate Rule 14(A)(1) authorizes an interlocutory appeal as of right from orders “[f]or the payment of money[.]” The trial court’s order to pay attorney fees is clearly an order for the payment of money. So too is the order suspending Father’s child support payments to Mother. *See Crowley v. Crowley*, 708 N.E.2d 42, 50 (Ind. Ct. App. 1999) (noting provisional orders in a marital dissolution action with respect to child support constituted orders for payment of money and, thus, were appealable interlocutory orders), *overruling on other grounds recognized by Bojrab v. Bojrab*, 810 N.E.2d 1008, 1014 n.3 (Ind. 2004). *See also John Wendt & Sons v. Edward C. Levy Co.*, 685 N.E.2d 183, 187 n.3 (Ind. Ct. App. (1997) (noting “the risk of losing the right to payment of money is appealable as a matter of right”), *trans. denied*.

and the parties' agreement, Father was ordered to pay \$500 per week in child support. The dissolution decree also stated in relevant part:

43. Pursuant to IC 31-16-6-1.5, the parties agree the Petitioner/Father shall be allowed to claim the children each year for federal and state tax purposes. The parties agree to execute all documentation necessary to effectuate this arrangement as required by State or Federal tax authorities. The Father shall be entitled to claim the child(ren) so long as he is at least 95% current on child support for the year he is claiming by January 31 of the next year. The parties agree that once Respondent/Mother begins working, and making at least \$15,000.00 annually, she shall be entitled to claim some children also. The parties then agree to split the children with each claiming three children.

App. at 36.

- [4] By agreement of the parties, on December 26, 2019, Father was granted unsupervised parenting time with all other prior orders remaining in effect. On February 18, 2020, Father filed a petition to enforce and/or clarify parenting time and modify child support from \$500 to \$442 due to his transportation costs during parenting time.<sup>2</sup> On April 2, 2020, Mother filed a motion to stay, suspend, and/or restrict Father's parenting time on the grounds that he allegedly abused the parties' children and a child welfare investigation was

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<sup>2</sup> We note that the trial court repeatedly set the parties' various motions for hearings, but those hearings were frequently continued per the parties' requests.

pending. Mother further requested the appointment of a Guardian ad Litem (“GAL”), and the trial court granted that request.

[5] On June 15, 2020, Mother filed her notice of intent to relocate with the children to Texas. Father filed an objection to relocation and moved to modify custody to grant primary physical custody to him. On November 5, 2020, Mother filed another motion to stay, suspend, and/or restrict Father’s parenting time on the grounds that he allegedly abused the parties’ children and a child welfare investigation was pending.

[6] On January 21, 2021, Father was charged in criminal court with four counts of child molesting as Level 1 felonies and four counts of battery as Level 5 felonies, all related to the parties’ children. On February 2, 2021, the criminal court<sup>3</sup> issued a no-contact order prohibiting Father from contact with Mother and the parties’ children.

[7] On July 12, 2021, Father filed a motion to compel Mother to execute a release of claim tax form allowing Father to claim some of the parties’ children for tax exemptions “for the 2020/2021 tax year” per the August 14, 2019, dissolution decree. *See* July 12, 2021, Motion to Compel, Cause No. 59C01-1906-DC-54.<sup>4</sup> Father noted he had requested that Mother sign the release form and Mother

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<sup>3</sup> The criminal court is the same circuit court with the same presiding judge as in the parties’ dissolution action.

<sup>4</sup> The motion to compel was not included in the record on appeal but is available to this Court on Odyssey, the state court case management system.

had refused. Father also requested an order that Mother reimburse Father for his attorney fees incurred “in this matter” in the amount of \$1,000. *Id.* In an order dated July 15, 2021, the trial court granted Father’s motion to compel and request for attorney fees. On July 23, Mother filed a motion to correct error and/or reconsider the July 15 order, noting she signed the necessary tax form for the “2020 tax year” and asking the court to set aside the order and set a hearing so that Mother would have an opportunity to be heard on the issue. App. at 118.

[8] On December 6, 2021, the trial court held a hearing on the pending motions regarding contempt, parenting time, relocation, child custody, and child support. At trial Father’s counsel orally requested that the court “suspend [Father’s] child support obligation until we can get to the bottom” of whether or not Mother had supplied the requested executed tax forms. Tr. at 64. At the conclusion of the hearing, the trial court noted it would take the matters of custody, parenting time, and relocation under advisement pending the conclusion of the criminal proceedings against Father. The trial court stated that it was “keep[ing] in place” the July 15, 2021, contempt order requiring Mother to pay \$1,000 of Father’s attorney fees because its prior order in the court-approved dissolution agreement that Mother must execute the required tax form was clear and Mother failed to timely comply with that order. *Id.* at 72-73.

[9] Regarding child support, the trial court stated as follows:

Now with regards to the support obligation, you know we're, we're in a very um, I think a very unusual situation here. We have a parent that, the custodial parent that certainly wants to, uh, it appears at least from my observations, wants to terminate any kind of relationship between the children and their father. At least that's my apparent, that's what I see um, and it appears to be the actions that I've seen over the last couple of years. But [she] doesn't mind getting the five hundred dollars (\$500.00) a week. The income coming from the father, doesn't mind doing that. Um, so I am going to grant the request, that we are going to suspend that child support until we can come in at a later date and determine the legitimacy of this source of income.

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I do think it's somewhat problematic when we are attempting to try to terminate any kind of relationship and certainly whether it's legitimate or not. I know you're going to say no but – ... I'm just saying just, just from my observations. And it, it, can I, may not be totally off base. I don't know all the facts but certainly there has been hesitancy in exercising visitation with Mister Book, at least that's been my observations. The filing of and the reporting of the criminal charges came shortly after a similar hearing where we were enforcing visitations where there was some reluctance. And um, there has certainly um, been a reluctance of the children um, to be involved with their father now. And that's been quite, for quite a long time. And, the child support is pretty hefty and so you know, there, there, I don't know – ... but we're going to certainly deal with this at another time ...

Um, and so we will deal with that modification of support but I'm just goi' [sic], I mean, uh, certainly there could be some discussion one way or the other but I think it goes without saying he hasn't seen his kids for quite a long time. Quite a long time. Hasn't had any contact with them for a long time so. Um, and,

and certainly if the allegations that are contained within that are true there are certainly avenues that one can proceed with uh, to deal with that but we'll deal with that issue then later on. Hopefully you can get all that information to [Father's attorney] uh, so that she can then recalculate or we can come back and deal with that support. But I'm going to suspend that support obligation in temporary fashion until we come back.

Tr. at 73-75.

[10] On December 9, 2021, the trial court issued a written order in which it: “temporarily suspended” Father’s child support obligation; set a hearing on child support and parenting time issues for February 22, 2020; ordered Mother to sign tax forms within ten days as previously ordered on July 15, 2021; ordered Mother to pay \$1,000 to Father’s attorney within thirty days; took under advisement the matters relating to Mother’s relocation, child custody, and parenting time; and set those matters and “any unresolved child support matters” for a hearing on April 22, 2022. App. at 161-62. On December 17, 2021, Mother filed a motion to correct error regarding the December 9 order. The trial court did not set a hearing or rule on the motion to correct error within forty-five days and it was therefore deemed denied. Indiana Trial Rule 53.3(A). This appeal ensued.

## Discussion and Decision

[11] Mother challenges the trial court orders that suspended Father’s child support payments and required Mother to pay \$1,000 to Father’s attorney. As an initial

matter, we note that Father has not filed an Appellee’s brief in this appeal.

Under such circumstances, this 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. Prima facie error in this context means at first sight, on first appearance, or on the face of it.

*Salyer v. Wash. Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020) (quotations and citations omitted).

## Child Support

[12] Our standard of review in a challenge to a trial court’s child support ruling is clear:

[w]e will reverse a trial court’s decision in child support matters only if it is clearly erroneous or contrary to law. To the extent we address issues raised by [a] motion to correct error, we review the trial court’s ruling on the motion for an abuse of discretion. An abuse of discretion occurs when the trial court’s decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.

*In re Paternity of C.B.*, 112 N.E.3d 746, 757 (Ind. Ct. App. 2018) (quotations and citations omitted), *trans. denied*.

[13] The most important concern of a court in any action involving child support must be the best interests of the child. *Ward v. Ward*, 763 N.E.2d 480, 482 (Ind. Ct. App. 2002). “And one of the purposes of child support is to provide a child with regular and uninterrupted support.” *Id.* (citing *Rendon v. Rendon*, 692



N.E.2d 889, 897 (Ind. Ct. App. 1998). Thus, the Indiana Code provides that child support may be modified only:

(1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or

(2) 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.

Ind. Code § 31-16-8-1(b).

[14] Here, the only basis for Father’s oral request that child support be “suspended” appears to be Mother’s failure to timely respond to discovery.<sup>5</sup> Tr. at 64. However, the trial court’s extensive statements regarding the decision to suspend child support—quoted at length above—make it clear that the court

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<sup>5</sup> Father’s counsel’s only statement regarding suspension of child support was as follows:

We’d like the Court to order her to execute within ten (10) days the tax forms that a [sic] necessary and proper under the divorce decree um, certainly would have much more to present today regarding my client’s request for a modification of child support if discovery responses were not two (2) months overdue. So, I’d ask the Court to suspend his child support obligation until we can get to the bottom of that.

Tr. at 64.

reached that decision not as a discovery sanction against Mother but in response to what it called Mother's desire "to terminate any kind of relationship between children and their father." *Id.* at 73.

[15] Father's lack of parenting time with the children—even if it was improper—is not a permissible basis upon which to modify child support. Parenting time rights and child support "are separate issues, not to be commingled." *Perkinson v. Perkinson*, 989 N.E.2d 758, 762 (Ind. 2013) (quoting *Farmer v. Farmer*, 735 N.E.2d 285, 288 (Ind. Ct. App. 2000)). "Even if it is not in a child's best interest to visit with a parent, it is still in that child's best interest to be financially supported by that parent." *Id.* Thus, "a court may not make the receipt of support payments by a noncustodial parent contingent upon that parent receiving visitation." *Warner v. Warner*, 725 N.E.2d 975, 980 (Ind. Ct. App. 2000) (citing *Rendon*, 692 N.E.2d at 897); *see also Farmer*, 735 N.E.2d at 288 (citing *Rendon*, 692 N.E.2d at 897) (noting "a parent may not withhold child support payments even though the other parent interferes with visitation rights").

[16] The only "changed circumstance" cited by the trial court as a reason to modify child support was that Father had not received parenting time. I.C. § 31-16-8-1(b). As that is an impermissible basis upon which to modify child support, the trial court abused its discretion when it suspended Father's child support obligation.

## Attorney Fee Order

[17] Mother also challenges the trial court’s order finding her in contempt for failing to provide Father with necessary executed tax forms for the 2020 tax year<sup>6</sup> and ordering her to pay Father’s attorney \$1,000 in attorney fees as a sanction for her contempt.

[18] Mother’s argument regarding the issue of contempt was one paragraph long and contained no citations to the record or legal authority. Indiana Appellate Rule 46(A)(8)(a) requires that “[e]ach contention [ ] be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on....” When a party refers to facts without citation to the record in support, “we need not consider those facts.” *Reed v. City of Evansville*, 956 N.E.2d 684, 688 n.1 (Ind. Ct. App. 2011), *trans. denied*. Similarly, when an appellant provides no citation to legal authority supporting her contentions, those contentions are waived. *E.g., Shields v. Town of Perrysville*, 136 N.E.3d 309, 312 n.2 (Ind. Ct. App. 2019). Thus, under our Appellate Rules, “[i]t is not sufficient for the argument section that an appellant simply recites facts and makes conclusory statements without analysis or authoritative support.”

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<sup>6</sup> Mother seems to believe the trial court ordered her to sign tax forms allowing Father to claim the children on his taxes “in perpetuity.” Appellant’s Br. at 14. However, Father did not claim in his contempt petition that Mother must sign tax forms allowing Father to claim the children on his taxes in perpetuity, and the trial court did not find Mother in contempt for failing to do the same. Rather, the contempt petition related only to tax documents “necessary in order for [Father] to submit his State and Federal taxes for the 2020/2021 [sic] tax year.” *See* July 12, 2021, Motion to Compel, Cause No. 59C01-1906-DC-54. And there is nothing in the court’s order indicating that it relates to all future years.

*Kishpaugh v. Odegard*, 17 N.E.3d 363, 373 n.3 (Ind. Ct. App. 2014). This rule “prevents the court from becoming an advocate when it is forced to search the entire record for evidence in support of [a party’s] broad statements.” *Lane Alan Schrader Trust v. Gilbert*, 974 N.E.2d 516, 521 (Ind. Ct. App. 2012) (citing *Keller v. State*, 549 N.E.2d 372, 373 (Ind. 1990)).

[19] In Mother’s one paragraph argument regarding the attorney fee award, she refers to facts without citation to the record and she cites no legal authority at all. Therefore, Mother has waived her appeal of the attorney fee award.

## Conclusion

[20] The trial court abused its discretion when it suspended Father’s child support obligation on the sole ground that Father had not had parenting time with the children. However, Mother has waived her claim regarding the award of attorney fees by failing to comply with the applicable Appellate Rule.

[21] Reversed in part, affirmed in part, and remanded for further proceedings consistent with this opinion.

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