MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Matthew McClellan,
Appellant-Petitioner,

v.

Laura B. McClellan,
Appellee-Respondent

February 20, 2023

Court of Appeals Case No. 22A-DR-1901

Appeal from the Tippecanoe Circuit Court

The Honorable Peggy Lohorn, Sr. Judge

Trial Court Cause No. 79C01-1212-DR-179

Memorandum Decision by Judge Vaidik
Judges Riley and Bailey concur.

Vaidik, Judge.

Case Summary

[1] Matthew McClellan ("Father") appeals the trial court's denial of his petition to modify his child-support obligation. We affirm.

Facts and Procedural History

[2] Father and Laura B. McClellan ("Mother") divorced in 2014. Mother was given physical custody of their only child, E.M., born in 2005, with Father exercising parenting time. Father was ordered to pay $240 a week in child support.[1] Father has a bachelor's degree from Purdue University and worked in pharmaceutical sales for over twenty years. In December 2019, Father, who had previously been earning $80,000 a year plus commission, was laid off. Thereafter, he did not obtain a job. In December 2020, he petitioned the court to modify his child support, alleging his unemployment was a substantial and continuing change in circumstances warranting modification and asking the court to impute his income at the federal minimum wage.

[3] A hearing was held in July 2022. Father testified that he had been seeking work in pharmaceutical sales since December 2019, but "nobody [is] hiring in the

[1] In October 2019, after a period in which Father "intentionally withheld support," Mother agreed that this amount would be lowered to $210 in exchange for Father paying the over $43,000 arrearage that had accumulated because of his withholding. Appellant's App. Vol. II p. 32.

industry" due to the pandemic. Tr. Vol. II p. 13. He testified he sent out over fifty applications for pharmaceutical-sales positions as well as positions in related fields. He confirmed he had not attempted to gain employment that is not "sales" or "pharmaceutical related." *Id.* at 30, 34. He later said he would be willing to take "any job" he can "physically do and do well" but that he has a heart condition that precludes him from doing certain physical labor. *Id.* at 36. He stated that he had not applied for disability benefits and that during this time his living expenses have been paid by his live-in girlfriend and from an inheritance he received from his mother.

[4] After the hearing, the court denied Father's petition to modify child support, stating,

> The question is, is he able to support and the court has heard no evidence that he is physically disabled from that task. The court has heard no evidence that he is significantly impaired either emotionally or physically to enable [sic] him to work in a field that provides substantially the same amount of income that he had. The Court would be ill advised to impute minimum wage to this gentleman. It would be ill advised to input $15.00 an hour to this individual. However, had he come to court with what the court would call clean hands in the sense that he had come to court saying I'm working at McDonald's right now just to support my family, his argument (inaudible) but the court doesn't see that . . . He has simply not done it and although he may be making applications through the Internet, that's [not] the same as going out there and getting a job and so the court will find that the father has not met his burden to show a substantial change in circumstances.

Id. at 54. Similarly, the court's written order of denial stated,

> The Court specifically finds that the Father has . . . the continuing ability to earn the same income that was used to calculate child support pursuant to the last court order. Despite COVID and market shifts in his chosen field of employment, he has failed to work in any capacity. During this time, the father has financially benefited from an inheritance and the earning ability of his girlfriend to maintain his previous lifestyle.

Appellant's App. Vol. II p. 32.

[5] Father now appeals.

Discussion and Decision

[6] As an initial matter, Mother did not file an appellee's brief. When the appellee fails to file a brief on appeal, we may reverse the trial court's decision if the appellant makes a prima facie showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). In this context, prima facie error is defined as "at first sight, on first appearance, or on the face of it." *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *McGill*, 801 N.E.2d at 1251.

[7] Father argues the trial court erred when it determined there was no substantial and continuing change in circumstances warranting a modification because Father was voluntarily unemployed. Indiana Code section 31-16-8-1 provides that a child-support order may be modified "upon a showing of changed

circumstances so substantial and continuing as to make the terms unreasonable." 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. *Sandlin v. Sandlin*, 972 N.E.2d 371, 375 (Ind. Ct. App. 2012). 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. *Id.* We do not reweigh the evidence or judge the credibility of the witnesses; rather, we consider only the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *Id.*

[8] The Indiana Child Support Guidelines provide that a parent's child-support obligation is based on his or her weekly gross income. When imputing potential income as weekly gross income, the Guidelines further provide as follows:

> If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community.

Ind. Child Support Guideline 3(A)(3). The purposes behind determining potential income are to "discourage a parent from taking a lower paying job to avoid the payment of significant support" and to "fairly allocate the support obligation when one parent remarries and, because of the income of the new

spouse, chooses not to be employed." Child Supp. G. 3 cmt. 2(c). *See also Miller v. Sugden*, 849 N.E.2d 758, 761 (Ind. Ct. App. 2006), *trans. denied*.

[9] Father argues there is "no evidence [he] is voluntarily unemployed or that his current decline in income was purposefully brought about to reduce child support payments." Appellant's Br. p. 14. Notably, "[w]hile the Guidelines clearly indicate that a parent's avoidance of child support is grounds for imputing potential income, it is not a necessary prerequisite." *Miller v. Miller*, 72 N.E.3d 952, 956 (Ind. Ct. App. 2017). "[I]t is within the trial court's discretion to impute potential income even under circumstances where avoiding child support is not the reason for a parent's unemployment." *In re Paternity of Pickett*, 44 N.E.3d 756, 766 (Ind. Ct. App. 2015).

[10] Further, there is evidence to support that Father is voluntarily unemployed. Father, who holds a bachelor's degree and has twenty years of pharmaceutical-sales experience, has been unemployed since 2019. Since that time, he has been supported by his live-in girlfriend and his inheritance. Although he testified that he was actively looking for employment and would take any job, he also stated that he had only applied to positions in pharmaceutical sales and related fields. It is clear from the record that the trial court determined Father's efforts to obtain employment were insufficient. Given Father's many credentials and the longevity of his unemployment, we see no error in that determination. Father's argument to the contrary amounts to a request to reweigh the evidence, which we do not do.

[11] The trial court did not abuse its discretion in denying Father's petition to modify his child-support obligation.

[12] Affirmed.

Riley, J., and Bailey, J., concur.