

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Courtney Marie Wilburn,
Appellant-Intervenor,

v.

Howard Johnson,
Appellee-Respondent,

and

Michelle W. Wilburn,
Appellee-Petitioner.

March 10, 2021

Court of Appeals Case No.
20A-DR-1634

Appeal from the
Fulton Circuit Court

The Honorable
A. Christopher Lee, Judge

Trial Court Cause No.
25C01-9602-DR-26

Kirsch, Judge.

- [1] Courtney Marie Wilburn (“Wilburn”) appeals the trial court’s order denying her petition for contempt against Howard Johnson (“Father”) for failing to contribute toward her college expenses and for failing to maintain health insurance coverage for Wilburn. Wilburn raises two issues, which we consolidate and restate as: whether the trial court abused its discretion in denying her petition and failing to find Father in contempt for failing to pay his portion of her college expenses and failing to maintain health insurance on her.
- [2] We affirm.

Facts and Procedural History

- [3] Wilburn is the biological daughter of Father and Michelle W. Wilburn (“Mother”) and was born on April 29, 1994. *Tr. Vol. 2* at 5. The marriage of Mother and Father was dissolved, and several years later, on July 17, 2013, Mother filed with the trial court a petition to allocate college funds for Wilburn and to require Father to provide health insurance for Wilburn. *Appellant’s App. Vol. II* at 7. On October 7, 2013, the trial court issued an order between Father and Mother by agreement, which dealt with, among other things, the issues of allocating college contributions for Wilburn and providing health insurance for Wilburn, who was nineteen at the time (“the October 2013 Order”). *Id.* at 35-37. Mother lost her copy of the October 2013 Order, and Wilburn did not receive a copy of the October 2013 Order until February 2020. *Tr. Vol. 2* at 5, 36. From what Mother had verbally told her, Wilburn previously understood that, under the October 2013 Order, Father “was supposed to be helping pay

one-third of [her] college tuition and maintain[ing] medical health insurance” coverage for her. *Id.* The October 2013 Order provided in pertinent part:

1. That [Father] shall continue to maintain health insurance for the child, [Wilburn] in October 2013, at his open enrollment through his employer.

. . . .

4. That [Wilburn’s] college expenses shall be divided as follows: Mother 1/3, Father 1/3, and [Wilburn] 1/3, and shall be capped at four (4) years.

5. That [Wilburn] must take a minimum of twelve (12) hours per term and pass sixty-seven percent (67%) of all classes for continued parenting responsibility.

6. That [Mother and Father] shall be relieved from any responsibility for the next term payment in the same proportion as a failed class not made up in the same term as failed.

7. That [Wilburn] shall provide [Father] with required information and documents in relation to tuition cost and grades immediately after each term ends.

8. That [Father] will pay his portion of tuition expenses directly to the child’s loan within thirty (30) days of the end of each term.

Appellant’s App. Vol. II at 35-37.

[4] At the time of the October 2013 Order, Wilburn had already begun her first term of college, and tuition for that term was \$3,000.00. *Id.* at 35. As part of

the October 2013 Order, Father was ordered to pay one-third of that, or \$1,000, of which the majority was paid by an overpayment of Father's child support.

Id. Father was ordered to pay the balance of \$175.00 immediately; however, as of the date of the appealed order in this case, Father had not paid this amount.

Id. at 35-36; *Tr. Vol. 2* at 9.

[5] After the October 2013 Order, Father did not contact Wilburn and did not believe that he had any reason to do so; he also did not provide Wilburn with a copy of the October 2013 Order and did not see the need to do so. *Tr. Vol. 2* at 44, 47. Subsequent to the October 2013 Order being issued, Wilburn first provided Father with documentation on college costs and medical insurance coverage in March 2016, including her courses, grades, and expenses to date. *Id.* at 8, 41-42. At that time, Father told Wilburn that he had lost his job, and she would need to get her own health insurance by April 30, 2016. *Ex. Vol. 3* at 3. Father also informed Wilburn that, pursuant to the October 2013 Order, she was required to maintain a certain grade point average and keep him informed about her schooling and grades in order to obtain contribution for her college expenses. *Id.* He also told Wilburn to get a copy of the October 2013 Order from Mother so she could know the conditions contained within the order. *Id.* at 4. Wilburn subsequently sent updated documentation of her college costs and uninsured medical expenses to Father in February 2020. *Tr. Vol. 2* at 8.

[6] At the time of the October 2013 Order, Father was employed at Dean Foods but lost his employment there in October 2015 when the factory closed. *Id.* at 40. In accordance with the October 2013 Order, Father maintained health

insurance coverage on Wilburn through his employment at Dean Foods; however, when he lost his employment, he also lost his health insurance. *Id.* at 46, 49-50. Wilburn's health insurance coverage was terminated when Father lost his employment. *Id.* at 15-16. On the date of the hearing in this case, Father was employed doing seasonal work and was laid off, and he also received income from his pension. *Id.* at 39, 48-49. When Wilburn contacted Father in April 2016, she requested that Father contribute ten dollars per month for a separate health insurance plan for her, but Father did not respond. *Ex. Vol. 3* at 5. Due to Wilburn's health insurance coverage being terminated when Father lost his employment, she had uninsured medical expenses for which she sought reimbursement. *Tr. Vol. 2* at 16-18.

- [7] On March 6, 2020, Wilburn filed a motion for contempt requesting the trial court to find Father in contempt for failing to continue to maintain health insurance for her and for willfully not paying any portion of her tuition expenses within thirty days of the end of each term as required under the October 2013 Order. *Appellant's App. Vol. II* at 14. In her filing, Wilburn included the February 17, 2020 letter she sent to Father prior to seeking court intervention, which contained information regarding what she believed his financial responsibilities for her college expenses were. *Id.* at 16-28. On April 1, 2020, Father filed a cross-petition for contempt requesting the trial court to find Wilburn in contempt for failing to comply with the October 2013 Order by failing to provide him with required information and documents in relation to

tuition, classes, and grades immediately after each college term ended. *Id.* at 34-35.

[8] On July 13, 2020, a hearing was held on Wilburn’s petition for contempt and on Father’s cross-petition for contempt against Wilburn. *Id.* at 10, 12. At the hearing, Wilburn presented documentation that she attended Western Governor’s University (“WGU”), beginning in February 2013, and continuing through March 2016, and then beginning again in January 2019 and continuing through June 2020. *Ex. Vol. 3* at 50-56. Although Wilburn maintained at least twelve credit hours in each academic term she attended at WGU, her transcripts showed that, for at least four terms, she passed less than 67% of her classes. *Id.* Specifically, she completed and passed twelve credit hours in Spring 2013, completed and passed 80% of eighteen credits in Fall 2013, only completed and passed 25% of her twelve credit hours in Spring 2014, and then only passed 50% of her twelve credit hours for Fall 2014, Spring 2015, and Fall 2015. *Id.* In the three educational terms that she took classes from January 2019 through June 2020, Wilburn completed and passed at least twelve credit hours each term. *Id.* at 51.

[9] Wilburn also presented loan documentation identifying the outstanding principal balances on loans for her education that totaled \$33,995.00. *Tr. Vol. 2* at 14. In her motion for contempt and at the hearing, Wilburn requested contribution from Father in the amount of \$7,175.00 for her college expenses. *Id.* at 15; *Appellant’s App. Vol. II* at 14, 16. Wilburn presented evidence of uninsured medical expenses totaling \$5,792.52, and she requested contribution

from Father of \$2,896.76. *Tr. Vol. 2* at 16-18. The total amount requested by Wilburn, including attorney fees sought against Father was \$11,571.76. *Id.* at 20.

[10] On August 5, 2020, the trial court issued its order denying Father's cross-petition for contempt against Wilburn because she was unaware of the October 2013 Order until shortly before the proceedings, and, therefore, any failure to comply with it was not willful. *Appellant's App. Vol. II* at 12. The order also found Father in contempt for failing to immediately pay \$175.00 directly to Wilburn's student loan as ordered in the October 2013 Order, and in order to purge himself of the contempt, Father was required to pay the \$175.00 within fifteen days and pay \$500.00 toward Wilburn's attorney fees within forty-five days. *Id.* at 13. The trial court denied Wilburn's request for a finding of contempt and judgment against Father regarding her college expenses because it found that Wilburn failed to comply with the preconditions to parental contribution set forth in paragraphs 5, 6, and 7 of the October 2013 Order. *Id.* The trial court also denied Wilburn's request for a finding of contempt concerning Father's failure to maintain health insurance on her and her request for uninsured medical expenses, reasoning that, because Father had lost his employment and, consequently, his insurance, when the factory where he worked was permanently shut down, Father's failure to maintain insurance was not willful but flowed from his employment circumstances. *Id.* at 13. Wilburn now appeals.

Discussion and Decision

- [11] We begin by noting that Father has not filed an appellee's brief. When an appellee fails to file a brief, we need not undertake the burden of developing an argument on appellee's behalf. *C.V. v. C.R.*, 64 N.E.3d 850, 852 (Ind. Ct. App. 2016). Instead, applying a less stringent standard of review, we may reverse the trial court's judgment if the appellant can prove a case of *prima facie* error. *Id.* "*Prima facie* error in this context is defined as, 'at first sight, on first appearance, or on the face of it.'" *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006) (quoting *Santana v. Santana*, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)).
- [12] Whether a party is in contempt is a matter left to the sound discretion of the trial court. *Himes v. Himes*, 57 N.E.3d 820, 829 (Ind. Ct. App. 2016) (citing *Sutton v. Sutton*, 773 N.E.2d 289, 297 (Ind. Ct. App. 2002)), *trans. denied*. We reverse the trial court's finding in contempt matters only if it is against the logic and effect of the evidence before the trial court or is contrary to law. *Id.* When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We will affirm the trial court's judgment unless a review of the entire record leaves us with a firm and definite belief that a mistake has been made. *Id.*
- [13] Wilburn argues on appeal that the trial court abused its discretion when it denied her petition for contempt against Father. She specifically contends that the trial court erred in not finding Father in contempt for his failure to contribute to her college expenses because Father had been ordered to

contribute one-third of her college expenses, and his failure to pay his portion violated the October 2013 Order. She also asserts that she did not receive a copy of the October 2013 Order until February 2020 and was unaware of the conditions contained in the order until then, but she did provide Father with documentation regarding her college expenses in 2016 and in February 2020. Wilburn further contends that the trial court erred in not finding Father in contempt for his failure to maintain health insurance coverage for her and denying her request for payment of uninsured medical expenses.

[14] Indirect contempt, or civil contempt, is the willful disobedience of any lawfully entered court order of which the offender has notice. *Kahn v. Baker*, 36 N.E.3d 1103, 1114 (Ind. Ct. App. 2015) (citing *Winslow v. Fifer*, 969 N.E.2d 1087, 1093 (Ind. Ct. App. 2012), *trans. denied*), *trans. denied*. To hold a party in contempt for a violation of a court order, the trial court must find that the party acted with “willful disobedience.” *Himes*, 57 N.E.3d at 829.

[15] As to Wilburn’s contention regarding Father’s failure to contribute to her college expenses, in its order denying to find Father in contempt, the trial court found “[Wilburn] failed to comply with the preconditions to parental contribution set forth in paragraphs #5, #6, and #7 of the [October 2013 Order].” *Appellant’s App. Vol. II* at 13. While Wilburn’s arguments focus on the conditions contained in paragraphs 5 and 6 of the October 2013 Order, we note that paragraph 7 stated, “That [Wilburn] shall provide [Father] with required information and documents in relation to tuition cost and grades immediately after each term ends.” *Id.* at 36. The undisputed evidence showed that

Wilburn did not provide information to Father regarding her tuition costs and her grades until March 2016, which was after she had completed six terms of college. *Tr. Vol. 2* at 8, 41-42. She then provided Father further information regarding her college expenses in February 2020. *Id.* at 8. Therefore, Wilburn did not keep Father apprised of her college expenses after each term as was required under the October 2013 Order.

[16] While we acknowledge that Wilburn was not given a copy of the October 2013 Order until February 2020, she was put on notice that there were certain conditions she had to meet in order to obtain contributions from Father. In March 2016, when Wilburn was in contact with Father, he informed her that, under the October 2013 Order, she was required to maintain a certain grade point average and keep him informed about her schooling and grades in order to obtain college expenses. *Ex. Vol. 3* at 3. He also told Wilburn to get a copy of the October 2013 Order from Mother so Wilburn could be aware of the conditions set out in the order. *Id.* at 4. Further, although Wilburn testified that Mother had lost her copy of the October 2013 Order, there was no evidence presented that Wilburn attempted to get a copy of the October 2013 Order from other sources, either from Father or from the trial court itself. *Tr. Vol. 2* at 36. Because Wilburn did not keep Father apprised of her college expenses and grades after each term as required by the October 2013 Order, Father could not be aware of what Wilburn's tuition costs were and that she had taken a minimum of twelve credit hours and passed 67% of those classes, which were the requirements for parental contribution. Therefore, Father did

not willfully disobey the October 2013 Order, and the trial court did not abuse its discretion when it denied Wilburn's petition for contempt against Father regarding him not contributing to her college expenses.

[17] As to Wilburn's contention regarding Father's failure to maintain health insurance coverage for her, in its order declining to find Father in contempt and denying Wilburn's request for assistance with uninsured medical expenses, the trial court found "[Father] lost his job, and consequently, his insurance, when the factory where he worked was permanently shut down. [Father's] failure to maintain insurance was not willful but flowed from his employment circumstances." *Appellant's App. Vol. II* at 13. Paragraph 1 of the October 2013 Order stated, in pertinent part, "That [Father] shall continue to maintain health insurance for the child, [Wilburn], . . . in October 2013, at his open enrollment through his employer." *Id.* at 35. The plain language of this paragraph required Father to maintain health insurance coverage for Wilburn in October 2013 when open enrollment occurred for his employer, and there is no dispute that he did so. The evidence showed that he maintained health insurance coverage on Wilburn until he lost his employment in October 2015 and the health insurance coverage from that employment lapsed in April 2016. *Tr. Vol. 2* at 40, 46, 49-50. Contrary to Wilburn's contention, the October 2013 Order did not require Father to maintain health insurance coverage until the age of twenty-six, or even beyond his open enrollment in October 2013. *Appellant's App. Vol. II* at 35. Therefore, Father did not willfully disobey the October 2013 Order, and the trial court did not abuse its discretion when it denied Wilburn's

petition for contempt against Father regarding not maintaining health insurance coverage for Wilburn.

[18] Affirmed.

Bradford, C.J., and May, J., concur.