MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Maryland L. Austin
Austin Law Office
Corydon, Indiana

ATTORNEYS FOR APPELLEE

Thomas E. Banks, II
Peter J. Catalano
Straw-Boone Doheny Banks & Mudd PLLC
Louisville, Kentucky

IN THE COURT OF APPEALS OF INDIANA

Ryan R. McMurtrey,
Appellant-Respondent,

v.

Allison M. White,
Appellee-Petitioner.

October 5, 2022

Court of Appeals Case No. 22A-DC-788

Appeal from the Floyd Superior Court

The Honorable Bradley B. Jacobs, Special Judge

Trial Court Cause No. 22D01-1811-DC-832

Mathias, Judge.

[1] Ryan McMurtrey ("Father") appeals the Floyd Superior Court's order denying his petition to modify his child support obligation and granting Allison White's ("Mother's") motion to find Father in contempt for failure to pay child support.

Father presents three issues for our review, which we consolidate and restate as two issues:

I. Whether the trial court abused its discretion when it denied his petition to modify child support.

II. Whether the trial court abused its discretion when it found him in contempt.

[2] We affirm.

Facts and Procedural History

[3] Father and Mother (collectively, "Parents") have one child together, R.J.M. ("Child"), born out of wedlock on June 7, 2018. In May 2019, Parents entered into a mediated agreement regarding child custody, child support, and parenting time ("2019 agreement"). Under the agreement, Mother had primary custody of Child, with Father exercising parenting time, and the parties shared legal custody of Child. The parties agreed that Father's child support obligation would be $100 per week and that, at that time, he had an arrearage of $2,000. The agreement provided that if Father did not pay off the arrearage by April 1, 2020, he would be in contempt "unless proven otherwise." Appellant's App., Vol. 2, p. 20. The trial court approved the agreement.

[4] On October 5, 2020, Mother asked the trial court to find Father in contempt for his failure to pay any child support since November 2019. Father's child support arrearage was more than $5,000 at that time. Before the trial court ruled on Mother's motion, on October 12, the parties executed an agreed entry

whereby Father acknowledged his arrearage and paid Mother a lump sum payment to reduce his arrearage to $3,600. And he promised to pay the remaining arrearage in a lump sum in five days' time. Father also agreed to pay $250 in Mother's attorney's fees. The trial court approved that agreed entry and held the contempt motion in abeyance.

[5] On April 30, 2021, Mother filed with the trial court a motion for a ruling on Father's prior contempt and for "new findings of contempt of court." *Id.* at 31. Mother alleged that Father had not been paying child support as ordered. Father filed a response to Mother's motion and a motion to modify his child support obligation. In support of his motion, Father alleged that he had significantly reduced income and had been granted full custody of a daughter from a prior relationship, Ry.M., without receiving child support from Ry.M.'s mother.

[6] During a hearing in March 2022 on all pending motions, Father testified regarding his employment history and income. Father stated that he earned $33,000 in 2019, but he left his job and started a construction company in 2020, earning $5,300 in 2020 and $12,500 in 2021. Father testified that he is paid in cash for his construction work and that he keeps the cash in a "safe place at home." Tr. p. 43. Father also testified that his fiancée, Crystal Warth, "has access to all of [his] money." *Id.* Finally, Father admitted that he was in arrears on his child support obligation. The trial court denied Father's petition to modify his child support obligation. The court also found Father in contempt but took the issue of sanctions under advisement. This appeal ensued.

Discussion and Decision

Issue One: Child Support

[7] Father contends that the trial court abused its discretion when it denied his petition to modify his child support obligation.[1] In reviewing a determination of whether child support should be modified, we will reverse the decision only for an abuse of discretion. *Kraft v. Kraft*, 868 N.E.2d 1181, 1185 (Ind. Ct. App. 2007). We review the evidence most favorable to the judgment without reweighing the evidence or reassessing the credibility of the witnesses. *Id.* An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the court, including any reasonable inferences therefrom. *Id.* Further, our supreme court has expressed a "preference for granting latitude and deference to our trial judges in family law matters." *In re Guardianship of M.N.S.*, 23 N.E.3d 759, 765–66 (Ind. Ct. App. 2014). Appellate deference to the determinations of trial court judges, especially in domestic relations matters, is warranted because of their unique, direct interactions with the parties face-to-face, often over an extended period of time. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011).

[8] Indiana Code section 31-16-8-1 governs modification of child support orders and provides in relevant part:

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[1] Father frames his argument around the trial court's alleged application of the "improper legal standard to the facts in evidence," but the substance of his argument alleges that the evidence is insufficient to support the trial court's order. Appellant's Br. at 12.

> (a) Provisions of an order with respect to child support . . . may be modified or revoked.
>
> (b) Except as provided in section 2 of this chapter, . . . modification may be made only:
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> > (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.

[9] Father maintains that he has satisfied both prongs of the statute. Specifically, he asserts that he presented evidence of a substantial and continuing change of circumstances, namely, his significantly reduced income and his sole custody of Ry.M., whose mother does not pay child support. And he contends that he submitted two child support worksheets, each showing "a reduction of more

than 20% from the existing order," which was issued in 2019. Appellant's Br. at 13. We address each contention in turn.[2]

Changed Circumstances

[10] Father argues that he proved a substantial change in circumstances because "in July 2021 he had been awarded sole custody of his older daughter [Ry.M.], for whom the noncustodial parent paid no support, and his change of employment[,] coupled with the pandemic[,] had caused him to have reduced income in 2020." Appellant's Br. at 12-13. First, while Father asserts that his full custody of Ry.M. is a substantial change in circumstances that warrants a modification of his child support obligation, he does not direct us to any evidence showing the financial impact of that change other than the two unverified child support worksheets he submitted to the trial court. And those worksheets show only a $35 weekly obligation for "child support duty for prior born." Ex. pp. 102-03. In addition, while Father alleged in those unverified worksheets that Mother earns a minimum wage, he presented no evidence regarding Mother's income to support that bare allegation. Without evidence of

[2] Father also contends that the trial court abused its discretion when it found that he was voluntarily "underemployed." Tr. p. 117. But while the trial court remarked at the conclusion of the hearing that Father was "underemployed" and "has the capability of making certainly more money than what he is making now," the court did not impute income to Father. *Id.* Thus, it is not obvious that the court's off-handed comment at the conclusion of the hearing had any impact on the court's denial of Father's petition. In any event, "[w]hile legitimate reasons may exist for a parent to leave one position and take a lower paying position other than to avoid child support obligations, this is a matter entrusted to the trial court and will be reversed only for an abuse of discretion." *Bojrab v. Bojrab*, 810 N.E.2d 1008, 1015 (Ind. 2004). Here, Father acknowledged that if he had a job making the minimum wage, his income would increase by 33%. To the extent the court found that Father was voluntarily underemployed, we cannot say that the trial court abused its discretion.

Mother's income, Father cannot prove with the unverified child support worksheets that his child support obligation is unreasonable under the changed circumstances. *See, e.g.*, *Payton v. Payton*, 847 N.E.2d 251, 253-54 (Ind. Ct. App. 2006) (holding evidence insufficient to support modification of child support where neither parent submitted signed child support worksheet and court did not complete a worksheet).

[11] Second, at the hearing, Father testified that his income was substantially reduced after he started his construction company in 2020, and he submitted tax returns showing that his income in 2020 was $5,300 and his income in 2021 was $12,500. However, the October 2020 agreed entry, which the trial court approved, states as follows:

> Father reports to Mother that he has not had regular and consistent income in 2020. He started a contracting business which struggled during the pandemic and is only now starting to produce regular income. *Father hereby stipulates that he will be able to make regular payments no less than biweekly*.

Appellant's App. Vol. 2, p. 25 (emphasis added). By Father's own testimony, he earns more now than he did in October 2020, when he stipulated that he could afford to pay $100 per week in child support. And during the hearing, Wife cited the deposition testimony of Father's business partner that Father earned approximately $2,000 during the first five weeks of 2022. We hold that Father has not shown changed circumstances so substantial and continuing as to make his child support obligation unreasonable.

More Than Twenty Percent Deviation from Guidelines

[12] Father also contends that the two child support worksheets he submitted to the trial court show that, whether he was earning $33,000 per year or $15,080 per year, his actual child support obligation differs more than 20% from the 2019 trial court order. Again, however, because those worksheets were not signed by either party, they are not sufficient evidence of his child support obligation. *See Payton*, 847 N.E.2d at 253-54. Moreover, both in the 2019 agreement and the October 2020 agreed entry, Father *agreed* to pay $100 per week in child support despite the fact that his income did not support that amount under the Indiana Child Support Guidelines ("the Guidelines"). Indeed, at the hearing, Father acknowledged that the amount set out in the 2019 agreement "was based on the assumption that [he was] going to be making $50,000 a year." Tr. p. 15.

[13] Mother contends that, like the father in *Reinhart v. Reinhart* who agreed to pay child support in an amount that exceeded the Guidelines, Father "may not take advantage of his own error, if any, in agreeing to a support amount greater than that provided by the Guidelines." 938 N.E.2d 788, 791 (Ind. Ct. App. 2010). As we stated in *Reinhart*,

> Father does not contend that he was unaware that the support amount he agreed to pay exceeded the guideline amount. Thus, he cannot now be heard to complain that support should be modified because the amount he agreed to pay differs by more than twenty percent from the guideline amount.

Id.[3] Likewise, here, Father cannot now complain that his child support obligation differs by more than twenty percent from the guideline amount.

[14] For all of these reasons, Father has not shown that the trial court abused its discretion when it denied his petition to modify his child support obligation.

Issue Two: Contempt

[15] Father next contends that the trial court abused its discretion when it found him in contempt of court. Whether a party is in contempt of court is a matter within the trial court's discretion, and its decision will be reversed only for an abuse of that discretion. *J.M. v. D.A.*, 935 N.E.2d 1235, 1243 (Ind. Ct. App. 2010). "'The trial court's finding that a parent is not excused from his or her failure to pay support is a negative judgment which will be reversed only if there is no evidence to support the trial court's conclusion.'" *Id.* (quoting *Esteb v. Enright by State*, 563 N.E.2d 139, 141 (Ind. Ct. App. 1990)).

[16] To find a party in contempt for failure to pay child support, the trial court must find that the party had the ability to pay child support and that the refusal to do so was willful. *Woodward v. Norton*, 939 N.E.2d 657, 662 (Ind. Ct. App. 2010). Here, Father acknowledges that he has a child support arrearage. But he argues that "there was no evidence to establish that [he] 'had the financial ability to comply' with the order to pay child support on a weekly or bi-weekly basis, or

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[3] We also stated in *Reinhart*: "That is not to say that Father may never petition for modification of child support. Rather, because he agreed to the support amount, Father may demonstrate grounds for modification only if he can show a substantial and continuing change in circumstances." 938 N.E.2d at 791.

that his failure to comply was simply a willful refusal." Appellant's Br. at 15. In support of that contention, Father cites the trial court's acknowledgment that he was struggling to get his construction company off the ground and that he was "trying to do his best." Tr. p. 117.

[17] But the evidence shows that Father's income is almost entirely in cash, which he keeps in a safe at home. Father testified that Warth, who is unemployed, has free access to the safe. And depending on the month, Father gives Warth "more than $300[.]" *Id.* at 42. Father testified that there is "no set number" on the amount he gives Warth. *Id.* Father did not present any evidence of a household budget to show that, despite his best efforts, he cannot afford to pay his child support obligation. We cannot say that the trial court abused its discretion when it found that Father was in contempt of court for failing to pay child support.

[18] Affirmed.

Robb, J., and Weissmann, J., concur.