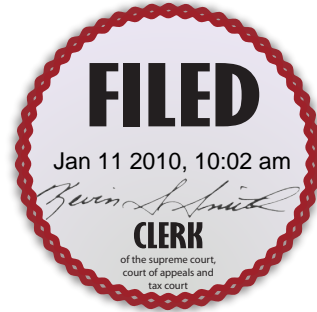


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DAREN DANZY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 79A05-0906-CR-305

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Randy J. Williams, Judge
Cause No. 79D01-0701-FC-3

January 11, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Daren Danzy appeals his conviction for Nonsupport of a Dependent,¹ a class C felony. Specifically, Danzy argues that the evidence was insufficient to support his conviction because the State failed to establish that his support arrearage exceeded \$15,000. Finding the evidence sufficient, we affirm the judgment of the trial court.

FACTS

Danzy is the father of K.D., who was born on May 4, 1999. On February 2, 2001, Danzy was ordered to pay \$42 per week in child support for K.D., pursuant to a paternity action. The trial court also determined that the child support obligation would date back to K.D.'s birth, resulting in a \$3,822 arrearage that Danzy was ordered to pay off at \$8 per week.

Danzy regularly defaulted on his payments and paid a total of only \$1,042 in child support between 2001 and 2006. Thus, there was an arrearage of \$15,800 as of January 10, 2007.

On January 16, 2007, the State charged Danzy with Count I, nonsupport of a dependent as a class D felony, and Count II, nonsupport of a dependent as a class C felony. Following a jury trial on February 11, 2009, Danzy was found guilty on both counts. Thereafter, the trial court merged Danzy's class D felony conviction with the class C felony conviction and sentenced him to five years with four years and 298 days suspended to probation. Danzy now appeals.

¹ Ind. Code § 35-46-1-5.

DISCUSSION AND DECISION

I. Standard of Review

In addressing Danzy's challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), trans. denied. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. Id. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. Id.

II. Danzy's Claims

Danzy's sole argument on appeal is that the class C felony conviction must be set aside² because the child support arrearage never reached the \$15,000 threshold as required by Indiana Code section 35-46-1-5. More particularly, Danzy claims that he is only responsible for the amount of arrearage that accumulated after his paternity of K.D. was established in 2001, which only amounts to \$11,978.

In accordance with Indiana Code section 35-46-1-5:

- (a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$15,000).

² Danzy does not appeal his conviction for nonsupport of a dependent as a class D felony.

We initially observe that Danzy did not challenge the February 2001 support order. Therefore, he is collaterally estopped from appealing that aspect of the order. Stephens v. State, 874 N.E.2d 1027, 1032-33 (Ind. Ct. App. 2007), trans. denied. Moreover, we note that while a trial court is not required to award retroactive child support from a date prior to the filing of the paternity action, a trial court's support order "may include the period dating from the birth of the child." I.C. § 31-14-11-5; see also C.A.M. ex rel. Robles v. Miner, 835 N.E.2d 602, 606 (Ind. Ct. App. 2005).

In this case, the State established that Danzy was ordered to pay an arrearage of \$50 per week in child support and continually failed to make those payments. Tr. p. 41-44; Ex. 1, 2. Moreover, the State showed that Danzy had accumulated an arrearage in the amount of \$15,800. As a result, the State established that Danzy was guilty of nonsupport of a dependent child as a class C felony.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.