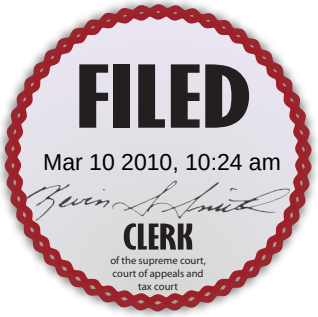

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IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE PATERNITY OF D.P. Minor Child,	)	
	)	
T.P. (Father),	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 76A05-0909-JV-533
	)	
C.P. (Mother),	)	
	)	
Appellee-Petitioner.	)	
	)	

APPEAL FROM THE STEUBEN CIRCUIT COURT
The Honorable Allen N. Wheat, Judge
The Honorable Randy L. Coffey, Magistrate
Cause No. 76C01-9404-JP-66

March 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

The trial court imposed an interest rate of eighteen percent per annum on T.P.'s ("Father") child support arrearage. Father now appeals contending that the trial court abused its discretion by imposing such a high interest rate. Finding that over $8000 of Father's arrearage accumulated while he was incarcerated and that Father resumed paying his current child support obligation as well as a portion of the arrearage after he was released, we conclude that the trial court abused its discretion. We reverse and reduce the judgment interest to eight percent per annum.

Facts and Procedural History

Father and C.P. ("Mother") have one child together, D.P., who was born October 6, 1994. Paternity was established in 1994, and in 1996 the trial court granted Mother custody of D.P. and ordered Father to pay child support in the amount of forty dollars per week. In 2000 Father filed a letter with the trial court stating that he was incarcerated, and the State confirmed this information. Father made no support payments from 2001 through 2003, and over $8000 of Father's arrearage accumulated while he was in prison. *See* Resp. Ex. A. After Father was released in 2004, he resumed making child support payments. In 2006 he paid his yearly child support obligation of $2080 plus an additional $1071 toward his arrearage. In 2007 he paid his yearly child support obligation of $2080 plus an additional $1277 toward his arrearage. In 2008 he paid his yearly support obligation of $2080 plus an additional $2773.20 toward his arrearage. Despite these payments, by March 2009, Father still had a child support arrearage of $12,741.26.

In October 2008 Father filed a motion concerning parenting time.[1] Mother filed a motion to modify support and a motion alleging violation of the court's order to pay child support. After a hearing was held, the trial court filed its Findings of Fact and Order. Regarding Father's arrearage, the trial court stated in its findings:

> 4. [Father] is not in contempt. Since being released from prison, he paid what he could pay, under the circumstances. In fact, he has reduced the arrearage since his release from prison.

Appellant's App. p. 7. In its order, the trial court stated:

> E) A judgment shall be entered in the record of the clerk for the arrearage in support. Such judgment shall be in the amount of $12,741.26 . . . in favor of [Mother] and against [Father]. It shall include all past due support through March 27, 2009. Such support shall accumulate interest at the rate of eighteen per cent (18%) per annum from the date of this judgment.

Id. at 9. Father filed a motion to correct errors, which was subsequently denied. He now appeals.

Discussion and Decision

Father contends that the trial court abused its discretion by imposing an interest rate of eighteen percent per annum on his child support arrearage. Indiana Code section 31-16-12-2 governs the interest rate that may be charged on delinquent child support payments. It provides in pertinent part:

> The court *may*, upon a request by the person or agency entitled to receive child support payments, order interest charges of not more than one and one-half percent (1 1/2 %) per month to be paid on any delinquent child support payment.

[1] Father's motion is not included in his appendix. The trial court stated at the hearing that although Father's motion is titled "Petition for Modification of Visitation," the trial court believed Father was instead asking for enforcement of visitation. Tr. p. 2.

(Emphasis added). The statute's use of the word "may" clearly allows the trial court to exercise its discretion when awarding an interest rate of one and one-half percent per month, or eighteen percent per annum. Indeed, in *Garcia v. Garcia*, 789 N.E.2d 993, 997 (Ind. Ct. App. 2003), this Court found that the trial court's award of prejudgment interest on a child support arrearage at the rate of eighteen percent per annum pursuant to Section 31-16-12-2 was an abuse of discretion. We acknowledge that the facts of *Garcia* are different from the present case. In *Garcia*, the mother waited over twenty years to file a contempt citation against the father for his failure to pay child support, 789 N.E.2d at 994, the father claimed to have made support payments directly to the mother, *id.* at 995, and the eighteen percent per annum interest rate imposed by the trial court amounted to a 600% penalty to the father, *id.* at 997. However, the same general proposition regarding Section 31-16-12-2 applies. That is, although a trial court may impose an interest rate of eighteen percent per annum, the trial court may also abuse its discretion in doing so.

Mother cites *In re Paternity of L.F.C.*, 901 N.E.2d 67 (Ind. Ct. App. 2009), as support for her argument that the trial court did not abuse its discretion in imposing an eighteen percent per annum interest rate on Father's child support arrearage. In *L.F.C.*, the trial court determined in July 2001 that the father was to pay $300 per week in child support. *Id.* at 69. By September of the same year, the father unilaterally reduced his payments to $150 per week, and then $105 per week by the end of 2002. *Id.* In 2005 the trial court found that the father was over $25,000 in child support arrears and imposed an interest rate of eighteen percent per annum. *Id.* When the father disregarded the court's 2005 order, the mother filed a contempt citation. *Id.* at 71. On the morning of the

hearing, the father paid the arrearage. *Id.* The father ceased payments in June 2007, paid a lump sum in August 2007, but paid no support between the lump sum payment and the following April. *Id.* at 69. In its 2008 appealed order, the trial court merely reiterated that the interest to be paid regarding the 2005 order was to be calculated until the date of the arrearage payment. *Id.* at 71. This Court found that the trial court did not abuse its discretion in doing so. *Id.*

We highlight that we are not challenging a trial court's ability to award, in its discretion, eighteen percent per annum. However, the facts of the present case are quite different from *L.F.C.* Here, over $8000 of Father's arrearage accumulated while he was incarcerated. The trial court did not find Father in contempt for violating the court's order to pay child support and instead found that after he was released from prison, "he paid what he could pay, under the circumstances." From 2006 through 2008, Father paid over $5000 toward his arrearage. We should not discourage payment after prison, especially here, where Father is clearly trying to pay down his arrearage. We therefore find that the trial court abused its discretion in awarding the interest rate of eighteen percent per annum.

Although the dissent would decline to impose any interest on Father's arrearage, we note that Indiana Code section 24-4.6-1-101 provides for post-judgment interest at an annual rate of eight percent:

> Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:
>
> (1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher

> rate of interest may properly have been charged according to the contract prior to judgment; or
>
> (2) an annual rate of eight percent (8%) if there was no contract by the parties.

Post-judgment interest is statutorily mandated for money judgments. *Caldwell v. Black*, 727 N.E.2d 1097, 1100 (Ind. Ct. App. 2000). In *Caldwell*, this Court held that although the mother did not specifically request interest on a child support arrearage pursuant to Section 31-16-12-2, she was still entitled to interest pursuant to Section 24-4.6-1-101:

> [T]he Interest on Money Judgments Statute provides post-judgment interest, at the current statutory rate of eight percent per year, following a judicial determination of arrearage without the necessity of a specific request for interest. However, if the custodial parent specifically requests interest pursuant to the Interest on Delinquent Child Support Statute, the trial court has the discretion to grant post-judgment interest at a significantly higher rate of interest, up to one and one-half percent per month, on the arrearage.

Id.

Here, Mother requested interest on the arrearage at a rate of eighteen percent per annum pursuant to Section 31-16-12-2. The trial court's award of interest at this rate was an abuse of discretion, and we therefore reverse and remand with instructions to reduce the judgment interest rate to eight percent per annum.

Reversed and remanded.

CRONE, J., concurs.

RILEY, J., dissents with separate opinion.

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Appellant-Respondent,	)	
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vs.	)	No. 76A05-0909-JV-533
	)	
	)	
C.P. (Mother),	)	
	)	
Appellee-Petitioner.	)	

RILEY, Judge, dissenting with separate opinion.

I respectfully dissent from the majority's decision to reduce the trial court's imposition of an interest rate of eighteen percent per annum on Father's child support arrearage to eight percent per annum. While I do agree that the trial court abused its discretion in awarding an interest rate of eighteen percent, I would impose no interest rate on Father's arrearage in light of our supreme court's rationale in *Lambert* and *Clark*.

In *Lambert v. Lambert*, 861 N.E.2d 1176, 1182 (Ind. 2007), our supreme court concluded that in the case of an incarcerated parent, the child support obligation should be based on the actual income or assets available to that parent during the time of imprisonment. In reaching this decision, the *Lambert* court emphasized that

> We believe the conclusion is also supported by the overarching policy goal of all family court matters involving children: protecting the best interest of those children. The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make—and is capable of making—to share fairly the economic burdens of child rearing. Considering the existing sociological evidence, it seems apparent that imposing impossibly high support payments on incarcerated parents acts like a punitive measure, and does an injustice to the best interests of the child by ignoring factors that can, and frequently do, severely damage the child-parent relationship.
>
> Individual reactions to economic realities can have profound effects on the behavior of non-custodial parents. Substantial sociological research has focused on the effects child support obligations and incarceration have on the behavior of non-custodial parents. These studies have generally concluded that the existence of unsustainable support orders actually leads to a greater failure of non-custodial parents to pay their support obligations.

Id. at 1180.

Two years later, the supreme court handed down its opinion in *Clark v. Clark*, 902 N.E.2d 813, 815 (Ind. 2009), adopting *Lambert*'s reasoning to petitions to modify a child support obligation based on the incarceration of an obligated parent. In *Clark*, the court reasoned that

> Proscribing the consideration of incarceration as a substantial change in circumstances justifying the modification of a child support order is not in the best interest of children. When released, most obligated parents face the twin barriers of large arrearages and difficulty finding employment. Such a situation makes it more likely that the newly-released obligated parent will face jail time as a result of non-payment of child support or participate in the underground economy again—once again straining family relationships, if not jeopardizing public safety. *Lambert* recognized the realities of incarceration for families, and is equally applicable to modifications of child support orders.

Id. at 817.

Here, we are faced with a Father who was reasonably diligent in paying his support obligation until he was imprisoned. He notified the trial court of his incarceration and ceased payment as long as he was in prison, accumulating over $8,000 in arrears. Father resumed child support payments upon his release in 2004. Starting in 2006, he made very sizeable contributions to the down payment of his arrearage. To that effect, the trial court noted that since being released from prison, Father has reduced the arrearage. I find that to now impose an interest rate on the child support arrearage, largely accrued while he was incarcerated, would merely serve a punitive purpose and violate the rationale of *Lambert* and *Clark*.