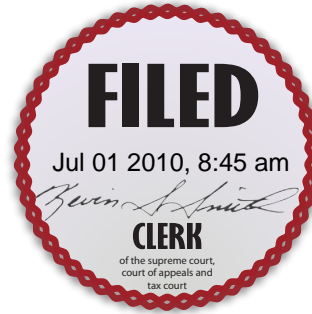


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN M. KNIGHT,

Appellant-Respondent,

vs.

KELLY A. KNIGHT,

Appellee-Petitioner.

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No. 39A01-0909-CV-453

APPEAL FROM THE JEFFERSON CIRCUIT COURT
The Honorable Ted R. Todd, Judge
Cause No. 39C01-9903-DR-144

July 1, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

John M. Knight (“Father”) appeals the trial court’s denial of his petition for modification of child support. He raises the following restated issue: whether the trial court abused its discretion when it denied his petition for modification of child support by finding that he was voluntarily unemployed and imputing excessive income to him.

We affirm.

FACTS AND PROCEDURAL HISTORY

Father was married to Kelly A. Knight (“Mother”),¹ and they had three children. The marriage of Father and Mother was dissolved, and Father was ordered to pay child support in the amount of \$140.00 per week. Prior to August 2008, Father had worked for the Internal Revenue Service (“IRS”), but was removed from his position. In order to keep his health benefits, Father filed for early retirement in December 2008, which was made retroactive to August 2008. Father filed a petition to modify his child support on December 30, 2008.² A hearing was held on this petition, at the conclusion of which the trial court denied Father’s petition.

In its order denying the petition, the trial court found that Father had voluntarily taken early retirement and had no disability that prevented him from gainful employment

¹ The State is not directly representing Mother in this matter but is representing the interests of the State because Mother is a Title IV-D recipient. *See* Ind. Code § 31-25-4-13.1; *Collier v. Collier*, 702 N.E.2d 351, 354 (Ind. 1998) (stating that Child Support Bureau is given explicit statutory authority to contract with prosecuting attorneys to undertake activities required to be performed under Title IV-D, including determination and enforcement of child support).

² We note that, in its brief, the State asserts that Mother was the one who filed the petition for modification of child support. In our review of the record, we find nothing to support this statement. In both the transcript and the trial court’s order denying the petition, the petition is referred to as the “Respondent’s petition.” *Tr.* at 3; *Appellant’s App.* at 5 (although the Appellant’s Appendix is not paginated throughout and stops at page 4, we cite to the pages as if the pagination continued in sequence). As Father was the Respondent below, he was, therefore, the party who filed the petition.

or returning to his prior job. The trial court then imputed wages of \$30,000.00 to Father. Because the new calculation of Father's child support obligation was not a twenty percent change from his prior obligation, the trial court denied the modification petition. Father filed a motion to correct error, which was denied by the trial court without a hearing. Father now appeals.

DISCUSSION AND DECISION

When we review a determination of whether child support should be modified, we reverse only if the trial court has abused its discretion. *Cross v. Cross*, 891 N.E.2d 635, 641 (Ind. Ct. App. 2008). An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* We consider the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *Id.* We do not reweigh the evidence or reassess the credibility of witnesses. *Id.* As the moving party, Father had the burden of establishing grounds for modifying his child support obligation. *Scoleri v. Scoleri*, 766 N.E.2d 1211, 1215 (Ind. Ct. App. 2002).

Father argues that the trial court abused its discretion when it denied his petition for modification of child support. He specifically contends that it was error for the trial court to find that he had voluntarily retired from his position with the IRS because his decision to retire was necessary to maintain his health insurance. He also claims that the trial court abused its discretion when it imputed income of \$30,000.00 to him as this amount was too high because he was restricted in the types of employment he could perform.

The modification of a child support order is governed by Indiana Code section 31-16-8-1, which states in pertinent part:

- (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:
 - (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.

Father had the burden of establishing that he was entitled to have the child support order modified. *Cross*, 891 N.E.2d at 641. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. Ind. Child Support Guideline 3(A)(3). “A determination of potential income shall be made by determining employment potential and probable earnings level based on . . . work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community.” *Id.*

Here, during the hearing Father testified that his early retirement from the IRS had been his choice and that he did not think that he would be able to get disability because he was able to return back to work by doing tax preparation. *Tr.* at 17-18. He further

stated that, although his doctor had told him he was unable to work in a physical capacity, he thought he would be able to produce income through a tax preparation business. *Id.* at 21, 22, 24-25. He testified that he was earning a federal pension of \$393.00 gross per month. *Id.* at 19. Father also stated that, at the time of the hearing, he was fifty-eight and would be able to draw income from his IRA when he turned fifty-nine and a half. *Id.* at 17, 20. Testimony was given that Father had earned \$51,600.00 in 2008, \$45,138.00 in 2007, and \$44,532.00 in 2006. *Id.* at 15-16. Based on the evidence presented at the hearing, we conclude that the trial court did not abuse its discretion when it denied Father's petition for modification of child support, finding that he was voluntarily retired and imputing wages of \$30,000.00 to him.³

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

³ Although Father also raises an argument that the trial court abused its discretion when it denied his motion to correct error without holding a hearing, he fails to support this contention with cogent reasoning or citation to authority. Indiana Appellate Rule 46(A)(8)(a) requires an argument "contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on" Failure to comply with that rule results in waiver of the argument on appeal. *Nealy v. Am. Family Mut. Ins. Co.*, 910 N.E.2d 842, 849 (Ind. Ct. App. 2009), *trans. denied*. Father has therefore waived this issue.