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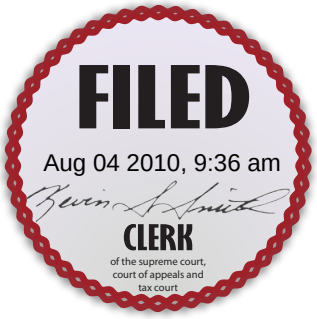


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# IN THE COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| JASON T. FABINI (Father), | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | |
| vs. | ) | No. 02A03-1003-DR-152 |
| | ) | |
| JOANNE M. FABINI (Mother), | ) | |
| | ) | |
| Appellee. | ) | |

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Charles F. Pratt, Judge
Cause No. 02D07-0807-DR-525

**August 4, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Jason T. Fabini ("Father") appeals the trial court's order granting his motion to modify child support.

We affirm.

## ISSUE

> Whether the trial court abused its discretion by not ordering that the child support modification be retroactive to the date Father filed his petition to modify.

## FACTS

Father and Joanne M. Fabini ("Mother") married on August 2, 1997, and four children were born of the marriage. On July 28, 2008, Mother filed her petition for dissolution. Mediation was ordered by the trial court, and the mediator advised the trial court on December 30, 2008, that the parties had reached a settlement agreement. The trial court "approved" the parties' agreement "in its entirety" and entered a decree of dissolution on February 10, 2009. (App. 23). The agreement provided that "commencing December 23, 2008," Father – who was completing his eleventh season as an NFL football player – would pay weekly child support of $857.00. (App. 31).

Within the month, Father experienced physical symptoms that led to his being diagnosed with a blood clot on his brain and a genetic condition known as thick blood. The medical treatment for Father's condition requires that he take Coumadin for the rest of his life, and taking Coumadin precludes his ever playing NFL football again. Consequently, Father's football career has ended.

On March 13, 2009, Father filed his motion to modify child support, asserting "a change of circumstances so substantial as to make the current terms unreasonable." (App. 60). On November 5, 2009, the trial court held a hearing on Father's motion. The trial court heard evidence that Father's compensation for the 2008 NFL season was $830,000.00, the figure used by the parties to compute his weekly income and the child support level to which the parties originally agreed. Further, pursuant to the NFL pay structure, players receive their annual contractual salary in installment payments during the regular football season. Father's payments for the 2008 season commenced on "September 4, 2008," and ended with a final payment on December 28, 2008." (Tr. 30). The trial court also heard evidence regarding the parties' substantial individual investment assets, accumulated during their marriage, and their respective post-dissolution incomes from these investments. Father asked that the trial court modify the amount of his child support "based on the parties' investment income" only, and that it order the modification "retroactive" for the "thirty-four (34) weeks since March 12th," the date he filed his motion to modify child support with the court. (Tr. 8, 11).

On February 2, 2010, the trial court issued its order. The trial court found that "[s]ince the entry of the . . . support order, there ha[d] been a change of circumstances so substantial and continuing as to make the terms of the support order unreasonable," in that "it was discovered that [Father] could no longer play professional football due to a serious health condition." (App. 1). The trial court found the parties' "investment income relatively equal," and used the stipulated income amounts to find that Father's

child support should be in the amount of $68.00 weekly. (App. 2). The trial court found "the appropriate date for modification of [Father]'s child support obligation" to be "September 4, 2009, which is the approximate starting date of the 2009 NFL season." (App. 1). Accordingly, it ordered that the modification of child support be effective as of September 4, 2009.

## DECISION

Decisions regarding child support generally rest within the sound discretion of the trial court. *Billings v. Odle*, 891 N.E.2d 106, 108 (Ind. Ct. App. 2008). Thus, a trial court's modification of a support order will be reversed only for an abuse of discretion, that is, when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Knisely v. Forte*, 875 N.E.2d 335, 339 (Ind. Ct. App. 2007) (citing *Burke v. Burke*, 809 N.E.2d 896, 898 (Ind. Ct. App. 2004)). Further,

> in determining whether the trial court abused its discretion in modifying a child support order, we neither reweigh the evidence nor judge the credibility of witnesses, but instead consider only the evidence most favorable to the judgment together with all reasonable inferences to be drawn therefrom. Where there is substantial evidence to support the determination of the trial court, the judgment will not be disturbed . . . .

*Id.* As to the effective date of any modification ordered, "[i]t is within the trial court's discretion to make a modification of child support relate back to the date the petition to modify is filed, or any date thereafter." *Quinn v. Threike*, 658 N.E.2d 665, 674 (Ind. Ct. App. 2006) (citing *Carter v. Dayhuff*, 829 N.E.2d 560, 568 (Ind. Ct. App. 2005)).

Father argues that the trial court "erred in failing to make the modification of child support retroactive to the filing" date of his motion to modify child support. Father's Br. at 1. Father first notes that the "circumstances warranting modification – [his] newly discovered genetic condition prohibiting him from continuing his NFL career – existed at the time he filed" his motion to modify. *Id.* at 5. Father then argues that because "[t]here is no evidence in the record to support a modification date" other than the filing date, the trial court abused its discretion when it did not make the modification order retroactive to that date. *Id.*

Father cites *Smith v. Mobley*, 561 N.E.2d 504 (Ind. Ct. App. 1990), wherein we found that the trial court abused its discretion in its modification of Mother's child support obligation "effective September 29, 1989." *Id.* at 508. In *Smith*, the trial court's modification order expressly found that Mother "was unemployed." *Id.* We further noted that Mother "no longer had income after March 10," 1989, and we found "no evidence in the record" to indicate that the September 29 date was "significant . . . with respect to the modification of the support payments." *Id.* Therefore, we found that "the court abused its discretion in making the reduced support payments effective as of September 29, rather than" the date she filed her petition to modify support. *Id.*

The evidence here established that an NFL player is paid during the regular football season, and that Father was paid for his 2008 season between September 4 and December 28, 2008. The trial court found, and the parties do not dispute, that the agreement as to child support was made with the parties' "reasonable expectation that

[Father] would be playing in the NFL for the 2009 season." (App. 1). Accordingly, the trial court found that Father's "health condition had no impact on his income from employment (NFL salary) between March 13, 2009 and September 4, 2009," because if Father "had played in the NFL during the 2009 season, his income from professional football between March 13, 2009 and September 4, 2009 would have been zero." (App. 7). Considering the "evidence most favorable to the judgment together with all reasonable inferences to be drawn therefrom," there is "substantial evidence to support the determination of the trial court" that the modification of Father's child support should be effective September 4, 2009. *Knisely*, 875 N.E.2d at 339. Therefore, we find no abuse of discretion here.

Affirmed.

BRADFORD, J., and BROWN, J., concur.