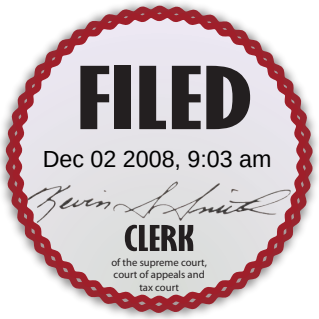

APPELLANT PRO SE:

JEFFREY L. HUNTSMAN
Macy, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JEFFREY L. HUNTSMAN,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 34A05-0806-JV-354
	)	
PATRICIA CLINE-ASHER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-8906-JP-75

December 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Jeffrey L. Huntsman (Huntsman), appeals from the trial court's Order finding his son, M.C., had been emancipated as of October 1, 2007, and determining Huntsman owed a support arrearage in the amount of $6,623.30 as of February 13, 2008.

We affirm.

ISSUES

Huntsman presents three issues for our review, which we restate as:

(1) Whether the trial court ignored applicable laws;

(2) Whether the judgment of the trial court was supported by the evidence; and

(3) Whether the trial court was biased.

FACTS AND PROCEDURAL HISTORY

On September 19, 2006, Patricia Cline-Asher (Asher), filed a petition to modify child support for M.C. On October 1, 2007, Huntsman, the father of M.C., responded by filing a petition to emancipate M.C. On February 13, 2008, the trial court held a hearing on the competing petitions. After the hearing, the trial court entered an Order emancipating M.C. and determining that Huntsman owed a support arrearage. In that Order, the trial court set out the facts as follows:

1. Asher and [] Huntsman are the parents of [M.C.], born August 18, 1988. On July 28, 1989, [] Huntsman's paternity was established in this action, and he was ordered to pay child support in the sum of $35.00 per week.

2. On May 26, 1994, the court entered an order [] after a hearing, finding that [Huntsman's] support arrearage was $5,763.00 (subject to clarification of a 1993 tax refund). [Huntsman's] weekly child support

obligation was modified to $88.00 per week for each week he works regularly plus $10.00 on the arrearage for a total of $98.00 on weeks that he works four (4) days or more; [and] on weeks that [Huntsman] works less than four (4) days per week, he is ordered to pay $40.00 per week with no payment on arrearage. [Huntsman] was responsible for verifying his work record.

3. There have been no subsequent court hearing or orders modifying [Huntsman's] support obligations in this cause.

* * *

6. [Huntsman] last saw [M.C.] in December 2003. [Huntsman] believes [Son] is now married and serves in the Air Force reserves. [Son] is now 19 years of age. From the evidence submitted, the court finds that [M.C.] was emancipated as of October 1, 2007.

7. [Huntsman] made all support payments through the Clerk of the Howard Circuit Court until October 11, 1995. Thereafter, [Huntsman's] support obligation for [M.C.] was administered by and support paid through the County of San Diego, California, Department of Child Support Services, and the Petitioner and [M.C.] had relocated to San Diego in 1995.

8. [Huntsman] was employed until October 1998, when he became disabled. In November 2003, [Huntsman] was awarded social security disability benefits and has continued to receive monthly benefits. Beginning in March 2004, [M.C.] received $76.00 per month dependent social security benefits, which monthly amount increased to $78.00 in January 2005. These benefits ended upon [M.C.'s] eighteenth birthday in August 2006.

9. The court finds that since [Huntsman's] support arrearage was last determined on May 26, 1994 (at $5,763.00), he should have paid in support the following: $88.00 per week from June 1, 1994 through October 1, 1998 (total $19,800.00); $40.00 per week from October 1, 1998 through October 1, 2007 (total $18,720.00), minus credit for [Son's] dependent social security payments (total $2,242.00), for a total due from June 1, 1994 thru October 1, 2007 of $36,278.00. Including the pre-May 26, 1994 arrearage of $5,763.00, the total amount due was $42,041.00.

10 From clerk's records submitted as exhibits at [the] hearing, the court finds that since May 26, 1994, [Huntsman] has paid the following amounts in support: $9,687.00 from May 26, 1994 thru October 21, 1996: and $18,137.70 from October 24, 1996 through September 21, 1999.

11. No clerk records were submitted showing payments made since September 1999. [Huntsman] testified, and the letter from San Diego's department of child support services confirms, that [Huntsman] pays $145.40 per month withheld from his social security benefits. In determining [Huntsman's] support arrearage, the court credits [Huntsman] with support payments made by withholding from his social security benefits in the amount of $145.50 per month from November 1, 2003 through February 13, 2008 (52 months) for a total paid during that time towards support of $7,566.00.

12. Based upon the above findings, [Huntsman] paid a total of $35,390.70 towards support from May 26, 1994 through February 13, 2008.

13. Based upon the above findings, the court finds that [Huntsman's] support arrearage as of February 13, 2008 is in the sum of $6,623.30.

14. The court finds and orders that the current withholding order directing social security benefits shall continue and all be applied to the support arrearage as determined herein, until said arrearage is paid in full.

15. The court further finds and orders that [Asher's] Petition to Modify Support filed September 19, 2006 is hereby denied.

(Appellant's App. pp. 84-89).[1] Both Huntsman and Asher filed motions to correct error after the trial court entered its Order, and the trial court denied both.

Huntsman now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

We begin by noting that Asher has not filed an Appellee's Brief. "When the appellee has failed to submit an answer brief, we need not undertake the burden of developing an argument on the appellee's behalf." *In re Petition for Establishment of Millpond Conservancy Dist.*, 891 N.E.2d 54, 57 (Ind. Ct. App. 2008). We will reverse the trial court's

[1] Huntsman stopped numbering the individual pages of his Appendix after page 73, but has listed page numbers for the first page of each separate document in the Table of Contents. We rely upon the Table of

judgment if the appellant presents a case of *prima facie* error. *Id*. *Prima facie* error in this context has been defined as, "at first sight, on first appearance, or on the face of it." *Id*. Where an appellant has not met this burden, we will affirm. *Id*.

I. *Applicable Laws*

Huntsman first contends that the "applicable law have not been adhered to." (Appellant's Br. p. 8).[2] Huntsman has divided his argument into five separate points. We will address each contention individually.

Huntsman contends: "The courts erred by not following the Child Support Guidelines that are mandated by Federal Laws. (Social Security Act of 1988)." (Appellant's Br. p. 8). This citation is too vague to aid us in our evaluation of Huntsman's claim. Huntsman provides no further contention or analysis on this point, and we conclude that his argument here falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a), which provides: "The argument must 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, in accordance with Rule 22." Therefore, we conclude that Huntsman has waived this contention.

Second, Huntsman contends: "No Arrearage Calculation Worksheet, State Form 51799 (6-04)/CSB0008 utilized in this error. (Ind. Dept. of Child Services)." (Appellant's

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Contents for the page numbers used in this citation.

[2] Huntsman failed to number any of the pages of his brief after page five. Nor has Huntsman listed page numbers in the Table of Contents of his brief. Therefore, for our citation to Huntsman's brief, we have counted sequentially from the last numbered page.

Br. p. 8). This is Huntsman's only comment on this contention. He provides no authority supporting that the use of the worksheet he references is mandatory, nor does he explain why the trial court's process of evaluating the evidence presented and then calculating his arrearage was deficient. Thus, we conclude Huntsman's second contention falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a) and is therefore waived.

Third, Huntsman contends: "Howard County Child Support Division would not grant a review of case as allowed for in order being enforced is in error. (Record On Appeal)." (Appellant's Br. p. 8). Huntsman cites to no authorities, and fails to explain how the trial court could have committed reversible error by the actions of the Howard County Child Support Division. Again, we conclude that Huntsman's third contention falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a) and is therefore waived.

Next, Huntsman contends: "As Indiana is the exclusive jurisdictional tribunal, the actions initiated in California are in error, as the Affidavit of Arrears is a misrepresentation of IC 31-18-2-5(a)(1)(A) facts." (Appellant's Br. p. 8). Huntsman does not explain this contention any further. Once more, we conclude that Huntsman's fourth contention falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a) and is therefore waived.

Finally, Huntsman contends: "San Diego County erred by not summoning me when they garnished [my] Disability Benefits. (IC 34-25-1-3)." (Appellant's Br. p. 8). Huntsman does not explain this contention any further, or how it could result in reversible error on the part of the trial court. On this final point we conclude that Huntsman's contention falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a) and is therefore waived.

II. *Judgment and the Evidence*

Next, Huntsman contends that the judgment is contrary to the evidence. In this section of his argument, Huntsman makes no reference to any of the evidence that was presented to the trial court. Nor does he make a contention that the findings were not supported by the evidence. Therefore, we conclude that Huntsman's contention falls short of the requirements of Indiana Appellate Rule 46(A)(8)(a) and is therefore waived.

III. *Prejudicial Bias*

Huntsman also contends that a "tenor of bias was present" during the trial court's hearing. (Appellant's Br. p. 10). Huntsman does not provide citations to authorities for his contention of bias, but he does provide appropriate citations to the record. So, we will address his contention of bias.

A fair trial by an impartial judge and jury is an essential element of due process. *Kennedy v. State*, 258 Ind. 211, 280 N.E.2d 611, 615 (1972). The law presumes that a judge is unbiased and impartial. *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). To rebut that presumption, an appellant must establish from the judge's conduct actual bias or prejudice that places the defendant in jeopardy. *Id*. Such bias and prejudice exists only where there is an undisputed claim or where the judge expressed an opinion of the controversy over which the judge was presiding. *Id*.

The trial court has a duty to remain impartial and refrain from unnecessary remarks. *Miller v. State*, 789 N.E.2d 32, 40 n.8 (Ind. Ct. App. 2003). However, the court also has a duty to conduct the trial in a manner calculated to promote the ascertainment of truth, fairness, and economy of time. *Id*.

Huntsman's contention is based upon two instances in the record. The first instance is where Asher's counsel asked Huntsman if he was ordered to pay child support in 1994, and Huntsman responded that he was actually ordered to pay child support in 1989. The trial court then stated: "That's right. There may be a little confusion because '94 was probably when it went on the court's record as CCS entries where the, with the ATS system, but, yes, the Petition to Establish Paternity in this case was filed June 7th, of 1989." (Transcript pp. 3-4). The second instance that Huntsman asserts demonstrates a tenor of bias on behalf of the trial court occurred when the trial court was questioning Huntsman on his claim that his support order had been abated by court order on December 15, 2000. The colloquy occurred as follows:

> Trial Court: Mr. Huntsman, do you have anything in your records there that would appear to be actually a document from a court proceeding that would bear on what your child support should be or not be?
>
> Huntsman: The summary of the support payments on- -
>
> Trial Court: No, a court order, none of this is a court order.
>
> Huntsman: No. All the minutes from the clerk's office are missing according to the clerk and the audio[-]cassette cannot be found either. I have tried repeatedly to get those, the dates on the support summary that shows in January 1st of 2001 that it was changed to $44. There had to be some court order to change that from the '94 court order. They can't provide it.
>
> Trial court: But my question to you, and I assume that means no, is that you don't have anything with you that is a court order that would show that your child support amount was stopped, abated or modified?

(Tr. pp. 21-22).

We do not interpret either of the instances in the record relied upon by Huntsman as evidence of bias on the part of the trial court; rather they are examples of the trial court conducting the trial to promote the ascertainment of the truth. Therefore, we conclude that Huntsman has failed to meet his burden of establishing actual bias on the part of the trial court.

CONCLUSION

Based on the foregoing, we conclude that Huntsman has waived all of his contentions but one: that the trial court was biased. However, we conclude that Huntsman has failed to establish that the trial court exhibited bias.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.