

ARKANSAS COURT OF APPEALSDIVISION II
No. CACR11-685SHANDRA LATRICE LEFLORE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 23, 2012

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2009-632]HONORABLE RALPH WILSON, JR.,
JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellant pled guilty in June 2009 to the offense of forgery in the second degree, a Class C felony. She was placed on supervised probation for a period of three years and ordered to pay fines and costs totaling \$1,475 at the rate of \$50 per month beginning August 10, 2009. In August 2010, one year after appellant's payments were to have begun, the State filed a petition to revoke her probation, alleging that she violated the conditions thereof by failing to pay fines, costs, and fees as directed; failing to notify her probation officer of her current address and employment; and failing to work regularly at suitable employment. After an April 2011 hearing, the trial court found that appellant inexcusably failed to comply with the conditions requiring her to pay fines, costs, and fees; to report to her probation officer; and to work regularly at suitable employment. Appellant's probation was revoked, and she was sentenced to two years' imprisonment followed by three years' suspended imposition of sentence. On appeal, appellant asserts that the evidence was insufficient to support the trial

court's finding that she inexcusably failed to comply with the conditions of her probation. We affirm.

The court may revoke probation at any time before the expiration of the probationary period upon a finding by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of her probation. *McDowell v. State*, 2011 Ark. App. 674. The State need show only one violation to support revocation, and the trial court's findings will be upheld on appeal unless they are clearly contrary to the preponderance of the evidence. *Id.* Where the alleged violation of conditions is a failure to make payments as ordered, the State has the burden of proving by a preponderance of the evidence that the failure to pay was inexcusable; although the burden of proof does not shift, once the State has introduced evidence of nonpayment, the burden of going forward does shift to the defendant to offer some reasonable excuse for her failure to pay. *Reese v. State*, 26 Ark. App. 42, 759 S.W.2d 576 (1988). To hold otherwise would place a burden upon the State, as part of its case in chief, to negate any possible excuses for nonpayment—a burden it could never meet. *Id.* Once the assertion of inability to pay is made, the State can then carry its burden in various ways, *e.g.*, it can undermine the probationer's credibility, or it can show a lack of effort, such as a failure to make bona fide efforts to seek employment or to borrow money to make payments. *Newsom v. State*, 2011 Ark. App. 760.

Here, appellant's arguments are largely concerned with her contention that the trial court failed to consider that she offered a reasonable excuse for her failure to make the required payments and to obtain employment. Specifically, appellant points to her testimony

that she was twenty-three years old, was being treated for manic-depressive disorder and paranoid schizophrenia, and had never worked. In determining whether to revoke probation for nonpayment, the court is required to consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay. *Jordan v. State*, 327 Ark. 117, 939 S.W.2d 255 (1997). In ruling from the bench, however, the trial court expressly considered appellant's testimony regarding her mental illness, finding, based on her testimony, that it was being controlled by prescription medications. In light of the deference we afford to the superior opportunity of the trial judge to determine the credibility of a witness's testimony, *see Barringer v. State*, 2010 Ark. App. 369, and of the evidence that appellant made no payments whatsoever toward her fines, fees, and costs; that she had expected to make the court-ordered payments with child support that she received for her six-year-old child; that she had never held a job; and the complete absence of any effort on appellant's part either to obtain employment or borrow money to pay her fines, costs, and fees; we cannot say that the trial court clearly erred in finding that appellant inexcusably failed to comply with a condition of her probation.

Affirmed.

HART and WYNNE, JJ., agree.