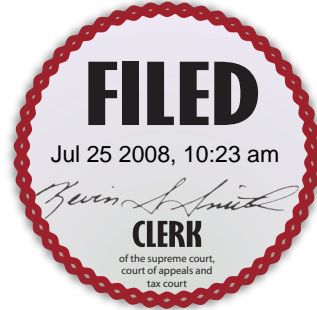


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

STEVEN BAYSINGER
Carlisle, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE MARRIAGE OF:)
)
STEVEN BAYSINGER)
)
Appellant/Respondent,)
)
vs.) No. 02A03-0801-CV-22
)
CHRISTIANA BAYSINGER)
)
Appellee/Petitioner)
)
and)
)
ROBERT AND CONNIE KARN, and)
)
LANCE AND CARY WITTE)
)
Appellees/Third-Party Intervenors.)

APPEAL FROM THE ALLEN CIRCUIT COURT
The Honorable Thomas J. Felts, Judge
The Honorable Craig J. Bobay, Magistrate
Cause No. 02C01-0104-DR-334

July 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Respondent Steven Baysinger appeals the trial court's order denying his petition alleging contempt and his request for an in-chambers interview of his minor children to investigate allegations of abuse. We affirm.

FACTS AND PROCEDURAL HISTORY

Steven and Christina Baysinger were married on February 8, 1995, and divorced on July 24, 2001. Steven and Christina are the parents of two minor children. Pursuant to the terms of the parties' divorce decree, Christina was granted legal custody of the children, and Christina's mother, Cary Witte, was named the children's temporary custodian. Additionally, Steven's mother, Connie Karn, was granted visitation rights and was permitted to take the children to visit Steven once every other month.¹

On June 25, 2002, the trial court modified the custody order, granting Karn legal custody of the children. On December 11, 2002, the trial court again modified the custody order, granting Christina legal custody of the children, granting Karn visitation rights, including the right to take the children to visit Steven, and ordering that the children reside with Witte. On August 8, 2005, the trial court ordered Christina to transport the children to visit Steven on the first Saturday of every month. Additionally, the trial court ordered Steven to assist with transportation expenses. On January 23, 2007, the trial court transferred the

¹ Steven is currently incarcerated in the Indiana Department of Correction ("DOC"). His earliest possible release date is December 11, 2028. See <http://www.in.gov/apps/indcorrection/ofs/ofs?lname=Baysinger&fname=Steven&search1.x=17&search1.y=11H> (last visited July 2, 2008).

responsibility to transport the children to visit Steven to Witte. Again, Steven was ordered to assist with transportation expenses.

On July 23, 2007, Christina filed a petition to modify visitation, seeking to terminate both Steven's and Karn's visitation rights with the children. On August 15, 2007, Steven filed a verified information for rule to show cause, alleging that both Christina and Witte were in contempt of the trial court's order pertaining to his visitation rights. On August 27, 2007, Karn moved to dismiss Christina's petition to terminate her visitation rights. On October 29, 2007, Steven moved for an in-chambers interview of the children to investigate allegations of abuse by Christina and Christina's current husband. The trial court conducted a hearing on all pending issues on November 29, 2007. On December 3, 2007, the trial court issued an order denying Christina's petition to modify visitation, Karn's motion to dismiss, Steven's contempt petition, and Steven's request for an in-chambers interview of the children. This appeal follows.

DISCUSSION AND DECISION

We initially note that no appellee's brief has been filed in this case. Where the appellee fails to file a brief on appeal, we may, in our discretion, reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *McGill v. McGill*, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). In this context, *prima facie* error is defined as "at first sight, on first appearance, or on the face of it." *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *McGill*, 801 N.E.2d at 1251. The *prima facie*

error rule, however, does not mean that the appellant automatically wins if the appellee fails to file a brief or that we must accept all of the appellant's assertions without question. Indeed, our refusal to formulate an appellee's argument certainly does not translate into blind acceptance of the appellant's argument.

I. Contempt

Steven contends that the trial court abused its discretion by finding that Christina and Witte were not in contempt of the court's order pertaining to his visitation rights. Steven specifically claims that Cristina and Witte knew of the court order and willfully disobeyed it in order to keep him from exercising his parenting time with the children.

The determination of whether a party is in contempt of court is a matter within the trial court's discretion. *In re Paternity of P.E.M.*, 818 N.E.2d 32, 39 (Ind. Ct. App. 2004). We will reverse the trial court's findings regarding contempt only where an abuse of discretion has been established. *Id.* A trial court abuses its discretion when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law. *Id.* When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses, and the trial court's judgment will be affirmed unless, after reviewing the entire record, we have a firm and definite belief that a mistake has been made by the trial court. *Malicoat v. Wolf*, 792 N.E.2d 89, 92 (Ind. Ct. App. 2003).

In order to be punished for contempt of a court's order, there must be an order commanding the accused to do or refrain from doing something. *In re P.E.M.*, 818 N.E.2d at 39. To hold a party in contempt for a violation of a court order, the trial court must find that the party acted with "willful disobedience." *Id.* Uncontradicted evidence that a party is

aware of a court order and willfully disobeys it is sufficient to support a finding of contempt. *Malicoat*, 792 N.E.2d at 92.

Here, in denying Steven's motion for contempt, the trial court determined that Christina and Witte had not acted in willful disobedience of the trial court's order regarding Steven's visitation. Originally, Christina was responsible for transporting the children to visit Steven, but that responsibility was later transferred to Witte. Both Christina and Witte, however, were of limited financial means and, as a result, could only afford to transport the children to visit Steven if he assisted with the transportation costs. Additionally, Witte informed Steven that she was not capable of making the long trip to the DOC facility during the winter months.

Further, the evidence established that Witte had attempted to comply with the court's order that she transport the children. On one occasion, Witte attempted to transport the children for visitation with Steven, but visitation was denied because Witte, who had become lost on her way to the DOC facility, arrived after visiting hours had ended. On another occasion, Witte successfully transported the children to the DOC facility for visitation with Steven. Also, Witte testified at the November 29, 2007 hearing that she was willing to work with Steven's grandmother, Jeanette Bergeman, to arrange more reliable transportation in order to ensure that the children would have the opportunity to visit Steven. In light of the evidence establishing Witte's attempts to comply with the court order pertaining to Steven's visitation rights, we conclude that the trial court did not abuse its discretion in denying his contempt petition.

II. In-Chambers Interview of Minor Children

Steven also contends that the trial court abused its discretion by denying his request for an in-chambers interview of the children. Steven specifically argues that he has “received many allegations of abuse being perpetrated against his children” and that due to his current inability to visit with the children, an investigation by the court into the alleged abuse is the only avenue he has to protect his children. Appellant’s Br. p. 11.

Indiana Code section 31-17-2-9 (2007) provides that, with respect to child custody decisions, the trial court may, in its own discretion, interview the child in chambers to ascertain the child’s wishes. Generally, our review of family law matters is for an abuse of discretion, with a preference for granting latitude and deference to the trial court. *Kicken v. Kicken*, 798 N.E.2d 529, 532 (Ind. Ct. App. 2003). Again, a trial court abuses its discretion when its opinion is against the logic and effect of the facts and circumstances before the court or is contrary to law. *In re P.E.M.*, 818 N.E.2d at 39.

Here, the trial court explained that it denied Steven’s request for an in-chambers interview of the children because, at the time of the November 29, 2007 hearing, no petition to modify custody had been properly filed before the court. The trial court further explained that all testimony relating to any potential modification of custody was therefore irrelevant and that the trial court would only consider evidence relating to the contempt petition and visitation issues. Additionally, the trial court explained to Steven that because his request for an in-chambers interview of the children to investigate the alleged abuse was related to a challenge to the current custody arrangement, such a request would not become relevant until he, or any other party, filed a petition to modify custody. In light of our preference to grant

discretion to the trial court in family law matters and the fact that a modification of custody was not properly before the trial court at the time of the November 29, 2007 hearing, we conclude that the trial court did not abuse its discretion in denying the requested interview.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.