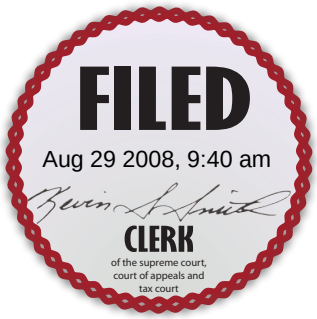

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IN THE
COURT OF APPEALS OF INDIANA

TONY ELLIOTT,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 34A02-0803-CV-199
	)	
ELAYNE ELLIOTT,	)	
	)	
Appellee.	)	

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0208-DR-661

August 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tony Elliot appeals the trial court's determination that he owes Elayne Elliot, his former spouse, $2,891.04 in tax arrearage and $28,065.11 in unpaid credit debt.[1] The court also found Tony to be in indirect contempt of court for not paying those sums to Elayne when due. Tony raises three issues for our review,[2] which we restate as follows:

1. Whether the trial court's determination that Tony owed Elayne the tax arrearage is clearly erroneous.

2. Whether the trial court's conclusion that Tony owed Elayne the unpaid credit debt is clearly erroneous.

3. Whether the trial court abused its discretion in finding Tony to be in indirect contempt of court.

We affirm.

FACTS AND PROCEDURAL HISTORY[3]

Tony and Elayne were married on October 18, 1991. On November 28, 2000, Elayne filed a petition for dissolution of marriage. On April 2, 2001, Tony and Elayne filed a property settlement agreement with the trial court, in which Elayne received the marital residence located at 1909 North 300 East in Kokomo. Pursuant to the property

[1] The trial court also determined that Tony owed Elayne costs and interest.

[2] Elayne argues on appeal that she should be awarded attorney's fees. While we agree with Elayne that Tony's brief is not artfully drafted, we do not agree that Tony's appeal is so "permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay" as to justify awarding her appellate attorney's fees. See Thacker v. Wentzel, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003).

[3] Tony's brief on appeal is not in conformity with the Appellate Rules of Procedure. Most notably, Tony does not provide adequate page references to the record on appeal or the appendix, and he does not provide a complete appendix. See Ind. Appellate Rules 22(C), 46(A), and 50. However, Tony has attempted to correct most of those errors in his reply brief. As such, we decline Elayne's invitation to hold that Tony has waived appellate review. See, e.g., Galvan v. State, 877 N.E.2d 213, 216 (Ind. Ct. App. 2007) ("In light of the numerous and flagrant violations of our appellate rules, we must dismiss Galvan's appeal."). But we remind Tony's counsel to comply with the appellate rules in the future.

settlement agreement, Tony agreed to assume "[a]ny and all debts associated with [his] businesses, Elliott's Auto Connection and Action Auto," and "[a]ny and all liabilities owed to the IRS for past joint tax liabilities and agrees to hold Wife harmless thereon." Appellant's App. at 100-01. The parties also agreed that Tony "shall be entitled to claim both of the parties[']minor children for State and Federal tax exemption purposes each and every year." Id. at 104. That same day, the court entered its decree of dissolution, in which it adopted the parties' property settlement agreement.

Over the next several years, various motions and other filings were presented to the trial court. During that time, Tony was represented by attorney Michael Bolinger. On August 30, 2005, the parties appeared in court, by counsel, to address "all pending matters." Appellee's App. at 11. The court took those issues under advisement. However, on September 7, 2005, prior to a court ruling, the parties filed an agreed entry ("Agreed Entry"). The Agreed Entry was not signed by Tony or Elayne, but, rather, was signed only by their respective counsel. In relevant part, the Agreed Entry states as follows:

> [Tony] agrees to obtain financing so as to remove the lien that presently exists on [Elayne's] residence located at 1909 North 300 East, Kokomo, Indiana, as a result of [Tony's] previously existing floor plan with Key Bank relating to his former used car business; [Tony] agrees to apply all proceeds from the sale of any remaining inventory from his used car business on the loan and agrees not to borrow additional money which would further encumber [Elayne's] residence; therefore refinancing shall take place within 180 days of the date of this Agreed Entry.

Appellant's App. at 89. Later that day, the court entered an order, stating that "[t]he court finds that [Tony] agrees to refinance [Elayne's] residence so as to remove his lien . . . within 180 days of the date of this order." Appellee's App. at 26. The court also

stated that the "terms of the Agreed Entry are approved and the terms of any previous order of court shall remain in effect, providing that they are not inconsistent with this order." Id.

In April of 2007, Elayne sold her 1909 North 300 East residence. At that time, she discovered that the Key Bank lien remained on her property. As such, $28,065.11 of her sale proceeds were used to remove the lien. Elayne then filed a Motion for Rule to Show Cause/Request for Judgment, which she subsequently amended, requesting reimbursement in the amount of the Key Bank lien. Elayne also filed a Second Motion for Rule to Show Cause, in which she requested reimbursement after the IRS had seized $1,670 of her 2004 tax refund and $1,221 of her 2005 tax refund. In both motions, Elayne requested that Tony be held in contempt for not complying with the court's orders. In August of 2007, Tony "disengaged the services of" his attorney Bolinger, and instead hired his current counsel. Appellant's Brief at 7.

On November 15, 2007, the court held a hearing on Elayne's motions. At that hearing, the following exchange took place between Tony and Elayne's counsel:

> Q Alright. Do you remember back in 2005, you had an attorney back in 2005, correct?
>
> A Yes.
>
> Q And in September of 2005 do you know if your attorney entered into an agreed entry and signed an agreed entry on your behalf?
>
> A No, I do not.
>
> Q You didn't authorize your attorney to do that?
>
> A No.

Q Did he send you a copy of that afterwards?

A Not to my knowledge, no.

Q You had no idea that the parties entered into an agreement at all?

A Excuse me?

Q You had no idea that the parties—, that you entered into an agreement through your counsel?

A We had talked to Mr. Bolinger about that, correct.

Q So you had no idea that Mr. Bolinger, your attorney in fact, agreed that you would remove a lien that presently existed on 1909 North[] 300 East?

A Excuse me?

Q You had no idea that your attorney agreed that you would remove the lien that existed on 1909 North[] 300 East?

A He had called and said that we needed to do that and I told him there was no way that I could do that and he said try to get it done, you know, if you can.

Q And this loan—, this lien existed through Key Bank Loan, correct?

A That is correct.

Q And you also through your counsel agreed that it shall be, the refinancing shall take place within 180 days of September 7, 2005, do you understand that?

A Yes.

Q You didn't do that, did you?

A Do what?

Q You didn't refinance it within 180 days, did you, sir?

A No. when Mr. Bolinger told me I had to, you know, try to do it if I could, I had no way to finance it, refinance it. I tried to get a loan and could not refinance it.

* * *

Q Do you remember agreeing in the original property settlement agreement to hold your wife harmless for your tax, for the tax debt the two of you owed during the marriage?

A Yes, sir.

Q And do you believe you've done so?

A Yes, I have.

Q So the evidence that she just presented indicating that her taxes were taken and provided to the IRS, you think that's false?

A Yes, because like I say, she has deducted the children on her taxes every year. She's not allowed to do that. She's made statements or signed statements to the Judge here and our tax preparer that she would not file with the kids, deduct them, and she would not have received a refund if she would not have done that.

Appellant's App. at 59-61, 63.

On December 3, 2007, the trial court entered its order ("Order") on Elayne's motions. In the Order, the court entered special findings and conclusions, stating, in relevant part:

7. On August 21, 2007, Elayne filed a Second Motion for Rule to Show Cause and Motion for Proceedings Supplemental. In the Decree, Tony was ordered to pay and hold Elayne harmless for past joint tax liabilities owed to the IRS. In tax year 2004, the IRS seized Elayne's federal tax refund in the sum of $1,670.00, and in tax year 2005, the IRS seized Elayne's federal tax refund in the sum of $1,221.04, and applied the seized refunds to the parties' joint past federal tax liabilities.

8. In tax years 2004 and 2005, Elayne filed as head of household as tax laws and regulations permitted she do so. In accordance with the

Decree's terms, Tony claimed both children as tax dependents in those tax years.

9. The terms of the Decree require that Tony hold Elayne harmless for losses she incurs due to the parties' pre-dissolution federal tax liabilities. Tony has an obligation to reimburse Elayne in the amounts of her seized tax refunds that were applied to Tony's tax debt in the total principal amount of $2,891.04. Elayne is hereby awarded a judgment against Tony in the principal amount of $2,891.04. . . .

10. On October 22, 2007, Elayne filed an Amended Motion for Rule to Show Cause and Request for Judgment. The court's Decree required Tony to pay all debts associated with his auto business, and stated nothing specific as to a line of credit account with Key Bank that was a second mortgage on the marital residence awarded to Elayne. At times after the dissolution, Tony used the line of credit account for business purposes, and he made periodic payments on the account.

11. On September 7, 2005, the court approved the parties' Agreed Entry, which resolved certain financial issues between the parties. Included in that Agreement was a provision that obligated Tony to obtain financing so as to remove the lien that existed on Elayne's residence from the line of credit account. The order approving this agreement required Tony to refinance the account with 180 days of the September 2005 order.

12. Since the order was entered approving the [A]greed [E]ntry, Tony made periodic payments on the account but he did not refinance the debt so to remove the lien on Elayne's property. On July 13, 2007, Elayne closed on the sale of her property, and the account's balance of $28,065.11 was paid from the sale[] proceeds.

13. The court finds that Tony was obligated to refinance the Key Bank line of credit by March 2006, thereby removing the lien on Elayne's real estate. Tony's failure to do so resulted in the lien balance to be paid from Elayne's sale[] proceeds when she sold the home in July 2007.

14. The court awards a judgment to Elayne and against Tony in the principal sum of $28,065.11 . . . .

> 15. The court further finds that Tony is indirect [sic] contempt by his failure to refinance the line of credit as ordered, per the parties' agreement in September 2005. Tony shall purge himself of contempt by making all good faith efforts to pay the sums due to Elayne, including he making [sic] credit applications to secure financing necessary to pay the amounts due.

Appellee's App. at 64-66. Thereafter, Tony filed a motion to correct error, which the trial court denied. This appeal ensued.

DISCUSSION AND DECISION

Tony argues that the trial court's Order is erroneous for three reasons. First, he asserts that the court "erred by concluding that [Elayne] was eligible to file Head of Household under the [IRS] regulation[s] for tax years 2004 and 2005 . . . ." Appellant's Brief at 8. Second, he contends that the court "erred by entering a judgment . . . in the sum of $28,065.11, in that [Tony] did not agree to refinance the Key Bank account." Id. at 9. And, third, Tony argues that the trial court abused its discretion when it found him to be in indirect contempt of court. We address each contention in turn.

Issue One: Tax Liability

Tony first asserts that the trial court erred in determining the amount of tax arrearage he owed to Elayne. On this issue, the trial court entered special findings and conclusions thereon sua sponte. In such circumstances, we will reverse the trial court's order only if it is clearly erroneous. See Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). A judgment is clearly erroneous if the evidence does not support the trial court's findings or if those findings do not support the judgment. See Stonger v. Sorrell, 776 N.E.2d 353, 358 (Ind. 2002). A judgment is also clearly erroneous if it misapplies the law. See Yanoff, 688 N.E.2d at 1262. We do not reweigh the evidence; rather we

consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. Yoon v. Yoon, 711 N.E.2d 1265, 1268 (Ind. 1999).

Here, Tony asserts that the trial court erred in ordering him to reimburse Elayne for the tax payments seized from her because she "claimed the two . . . children of the parties as dependents for tax purposes contrary to the terms of the Decree and . . . [b]y doing this, the [seized] refund amount . . . was greater that it would have been . . . ." Appellant's Brief at 8-9. In the parties' property settlement agreement, the parties agreed that Tony "shall be entitled to claim both of the parties[']minor children for State and Federal tax exemption purposes each and every year." Appellant's App. at 104. But Elayne submitted her 2004 and 2005 tax forms to the trial court. In neither document did Elayne claim any dependents. Accordingly, Tony's argument on this point must fail.

Further, insofar as Tony asserts that the court erred by permitting Elayne to file as Head of Household with Qualifying Children, that argument also must fail. Specifically, Tony asserts that "a child had to be claimed as a taxpayer's dependent to be a qualifying child." Appellant's Brief at 8. But Tony cites no provisions of the Internal Revenue Code to support that position. And, again, the parties' property settlement agreement did not stipulate that Elayne could not file for Head of Household status; it only stated that she could not claim the parties' children as her dependents, which she did not do.

There is evidence in the record supporting the amount of Elayne's seized refunds. And, in the parties' property settlement agreement, Tony agreed to assume and hold Elayne harmless for all joint tax liability. It is not disputed that the IRS seized Elayne's

refunds to pay down that joint tax liability. Accordingly, the trial court did not err in ordering Tony to reimburse Elayne for the principal amount of $2,891.04.

Issue Two: Key Bank Credit Debt

Tony next asserts that the trial court erred in ordering him to reimburse Elayne $28,065.11 owed on a Key Bank line-of-credit debt, which had been secured by a lien on Elayne's house. Specifically, Tony contends that he did not authorize his attorney to sign the Agreed Entry on his behalf. On this issue, the trial court entered special findings and conclusions thereon, and we will review its judgment under the clearly erroneous standard. See Yanoff, 688 N.E.2d at 1262.

The evidence demonstrates that, on September 7, 2005, the Agreed Entry was filed with the trial court. The Agreed Entry was not signed by Tony or Elayne, but, rather, was signed only by their respective counsel. In the Agreed Entry, Tony agreed to obtain financing within 180 days to remove Key Bank's lien on Elayne's residence. He did not do so, and when Elayne sold her residence, $28,065.11 from the sale proceeds were used to remove the lien. And at the November 2007 hearing, Tony testified that, although he had not authorized his attorney to enter into the Agreed Entry, Tony had nonetheless been informed of the Agreed Entry's terms and had attempted to obtain the required financing within the 180-day window. Then, almost two years later, Tony fired that attorney and replaced him with his current counsel.

"The general rule is that a client is bound by his attorney's actions in civil proceedings." Parker v. State, 676 N.E.2d 1083, 1086 (Ind. Ct. App. 1997). "In the absence of fraud by the attorney, the client is bound by the action of the attorney, even

though the attorney is guilty of gross negligence." Koval v. Simon Telelect, Inc., 693 N.E.2d 1299, 1302 n.2 (Ind. 1998). "Authority can be express or implied and may be conferred by words or other conduct, including acquiescence." Id. at 1302.

Here, the evidence demonstrates that, at worst, Tony acquiesced to being bound by the Agreed Entry when he attempted to comply with its terms after learning of them. Tony does not assert that his former attorney acted fraudulently, nor does Tony raise on appeal any other challenge to the trial court's order that he reimburse Elayne the principal sum of $28,065.11 for the Key Bank debt. We cannot say that the court's order is clearly erroneous on this issue.

Issue Three: Contempt

Finally, Tony argues that the trial court abused its discretion when it found him to be in indirect contempt of court for not complying with the Agreed Entry. As we have stated:

> Indirect contempt is the willful disobedience of any lawfully entered court order of which the offender had notice. Hanson v. Spolnik, 685 N.E.2d 71, 82 (Ind. Ct. App. 1997), trans. denied. Whether a person is in contempt of a court order is a matter left to the trial court's discretion. Id. Upon review, we will reverse the trial court's determination only where an abuse of discretion has been shown. Id. An abuse of discretion occurs only when the trial court's decision is against the logic and effect of the facts and circumstances before it. Id.

Consol. Rail. Corp. v. Estate of Martin, 720 N.E.2d 1261, 1264 (Ind. Ct. App. 1999). When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses. Williamson v. Creamer, 722 N.E.2d 863, 865 (Ind. Ct. App. 2000). Rather, we will reverse the trial court only if there is no evidence supporting its

judgment. Id. The party in contempt bears the burden of showing that his or her violation of the court's order was not willful. Id.

There is evidence supporting the trial court's contempt judgment. Tony testified that he owned two real properties, one with an assessed value in excess of $500,000, and that his current wife owns the car business where Tony is employed.[4] Nonetheless, Tony asserts that he could not have willfully disregarded the Agreed Entry because he testified that he had "tried to get a loan and could not refinance" the line of credit.[5] Appellant's App. at 61. But Tony presented no evidence of rejected credit applications made in an attempt to comply with the Agreed Entry, and the trial court was free to disregard Tony's testimony. We will not reweigh that evidence on appeal. See Williamson, 722 N.E.2d at 865. Hence, Tony has not carried his burden of showing that his violation of the court's order was not willful, and the trial court did not abuse its discretion in finding Tony to be in indirect contempt.

Conclusion

In sum, the trial court's conclusions that Tony owed Elayne the principal sums of $2,891.04 in seized taxes and $28,065.11 for the Key Bank line of credit are not clearly erroneous. Further, the court did not abuse its discretion in finding Tony to be in indirect contempt of court. Thus, we affirm the trial court's judgment in all respects.

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[4] In his Reply Brief, Tony makes the following curious statement: "Appellee's attorney attempts to bring in prejudicial and inflammatory evidence before the appellate court by discussing the wages and alleged assets of Appellant . . . ." Reply at 15. Tony then asks that we strike Elayne's recital of Tony's testimony to the trial court from the record. We decline Tony's request to strike his testimony.

[5] Tony also contends that the court erred in finding him in contempt because the court erred in finding that he violated the Agreed Entry. But, as discussed above, the court's judgment that Tony did not act in accordance with the terms of the Agreed Entry is not clearly erroneous. Thus, we do not consider this additional assertion.

Affirmed.

MAY, J., and ROBB, J., concur.