APPELLANT PRO SE:

JOHN R. NIXON
Bippus, Indiana

IN THE COURT OF APPEALS OF INDIANA

JOHN R. NIXON,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 35A02-0804-CV-390
	)	
DAWN D. NIXON,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Thomas M. Hakes, Judge
Cause No. 35D01-0602-DR-41

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

John Nixon appeals the denial of his motion to find his former wife Dawn in contempt. He appears to be raising at least ten allegations of error, only two of which we are able to address:[1] whether Dawn should have been held in contempt for violating the terms of the property settlement agreement and whether she committed perjury. We affirm.

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[1] Nixon first asserts three of the trial court's findings are not supported by or are contrary to the evidence presented. He does not explain what that evidence was, offer record references, or explain why the evidence did not permit the findings. He has accordingly waived that allegation of error. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (party who fails to develop a legal argument or provide adequate citation to authority and portions of the record waives issue for appellate review), *trans. denied* 855 N.E.2d 994 (Ind. 2006); *see also* Ind. Appellate Rule 46(A)(8) (requiring contentions in appellant's brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal).

He next asserts "[s]ome issues in John Nixon's Motions for Contempt (App. P. 44-47) (App. p. 51-60) were not addressed by the Court" in its order. (Appellant's Br. at 24.) Nixon offers no argument or references to the record indicating what those issues were or demonstrating evidence on those issues was presented. We are therefore unable to review that allegation of error.

Third, he asserts the trial court "failed to take account of adverse evidence." (*Id*.) Nixon offers no argument, and we decline what appears to be his invitation to reweigh the evidence. *See Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008) (an appellate court neither reweighs evidence nor judges witness credibility).

Fourth, under the heading "Judicial domination," Nixon asserts the trial court did not allow him to object to testimony by Dawn or statements by her attorney at the hearing. Nixon directs us to one page of the transcript, on which we find nothing to support this allegation of error. We therefore cannot find any improper "judicial domination."

Fifth, Nixon asserts the thirty minutes allotted for his hearing was insufficient for the volume of evidence and number of issues raised. Nixon directs us to nothing in the record indicating he objected to this schedule or sought a continuance. Only trial objections are effective to preserve claims of error for appellate review. *See, e.g.*, *Raess v. Doescher*, 883 N.E.2d 790, 796 (Ind. 2008) (failure to object at trial to the admission of evidence results in waiver of the error), *reh'g denied*. We therefore cannot address that allegation of error.

Sixth, Nixon complains of "Phantom and potentially biased witnesses." (Appellant's Br. at 25.) Nixon directs us to two pages in the transcript, one of which contains Nixon's direct examination of his own witness, and the second of which does not include testimony. As Nixon has not provided cogent argument supported by legal authority and references to the record, we cannot address that allegation of error. *See Davis*, 835 N.E.2d at 1113.

Seventh, Nixon asserts Dawn made "false allegations" against him at the hearing. (Appellant's Br. at 25.) The page of the transcript to which he directs us includes no "allegations" or testimony of any kind. Nor does our review of the transcript reveal Nixon objected to Dawn's testimony. Nixon complains the trial court allowed Dawn's allegations "to be entered into the record unchallenged," (*id.* at 25), but we remind Nixon it was his obligation to "challenge" them in the form of an objection. This allegation of error has not been preserved for our review. *See Raess*, 883 N.E.2d at 796.

FACTS AND PROCEDURAL HISTORY

Nixon and Dawn divorced in July of 2007 and entered into a property settlement agreement. After a series of disputes over whether certain terms of the agreement were being observed, Nixon and Dawn each brought contempt motions against the other. A hearing was conducted in January 2008. The trial court declined to hold either party in contempt and determined each party was responsible for its own costs and fees.

DISCUSSION AND DECISION

Dawn filed no brief. When an appellee does not submit an answer brief we need not undertake the burden of developing an argument on her behalf. Rather, we will reverse the judgment if the appellant's brief presents *prima facie* error. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). *Prima facie* error in this context is defined as "at first sight, on first appearance, or on the face of it." *Id*. Where an appellant is unable to meet this burden, we will affirm. *Id*. The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve us of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee. *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006).

Nixon first argues Dawn "lied and committed perjury from her very first dissolution filing through to the post dissolution contempt filing and hearing." (Appellant's Br. at 22.) The only trial court error he alleges from the perjury is that "despite unequivocal evidence of Dawn Nixon's repeated lies and perjury, the Court chose to assign credibility, and great weight, to her false claims and testimony." (*Id*. at 23.)

We note initially that in a trial to the court, the judge hearing the case is the sole judge of the weight of the evidence and the credibility of the witnesses. *Jennings v. State*, 553 N.E.2d 191, 192 (Ind. Ct. App. 1990), *reh'g denied*. The trial court was therefore entitled to "assign credibility, and great weight" to Dawn's testimony even if Nixon believes the testimony was "false." An appellate court does not reweigh evidence or judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008).

We decline Nixon's invitation to do so here, for several reasons. Nixon's first allegation of Dawn's "perjury" is that she provided, in her proposed settlement agreement, an erroneous separation date and the wrong value for a mortgage obligation. But the final divorce decree and the settlement agreement it incorporated do not include that allegedly false information. We therefore need not reach the merits of Nixon's claim as he has not shown how the earlier false statements in the proposed agreement prejudiced him. *See Estate of Lee ex rel. McGarrah v. Lee & Urbahns Co.*, 876 N.E.2d 361, 371 (Ind. Ct. App. 2007) (even if the trial court abused its discretion in declining to admit a deposition, any such abuse was harmless).

Nixon also asserts Dawn "created fictitious Property Settlement Agreement terms" so she could file "unjustified" contempt charges. (Appellant's Br. at 22.) As Nixon does not specify such terms or demonstrate why they were "fictitious," we are unable to address that allegation of error.

Nixon's final "perjury" allegation is that Dawn lied by "denying receipt" of a payment Nixon made to her pursuant to the settlement agreement. (*Id.* at 22.) In support, Nixon directs us to page 76 of the Appendix, which is Dawn's signed statement that she

"hereby *acknowledges receipt* of" that payment (emphasis supplied).[2] Nixon has not shown Dawn committed perjury.

Nixon next argues the trial court should have held Dawn in contempt because she repeatedly violated the terms of the property settlement agreement. Whether a party is in contempt of court is a matter left to the discretion of the trial court. *City of Gary v. Major*, 822 N.E.2d 165, 171 (Ind. 2005). We will reverse a contempt decision only where an abuse of discretion has been established. *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 223 (Ind. Ct. App. 2006). 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 decision, we will not reweigh the evidence or judge the credibility of witnesses. *Id*.

As evidence of Dawn's repeated violation of the agreement, Nixon directs us only to an exhibit he attached to his own motion[3] to hold Dawn in contempt, in which exhibit he alleges, among other things, that Dawn violated the agreement. We must decline Nixon's invitation to hold that a trial court must find a party in contempt just because the opposing party so alleges.

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[2] Nixon directs us to a number of other pages in the appendix and the transcript, but none include evidence supporting his allegation Dawn lied about whether she received the payment.

[3] Nixon also directs us generally to "[e]vidence presented . . . during the 18 January 2008 hearing," (Appellant's Br. at 23), but we will not search the entire transcript of that hearing in order to find evidence to support Nixon's argument. *See Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997) ("A court which must search the record and make up its own arguments because a party has not adequately presented them runs the risk of becoming an advocate rather than an adjudicator.").

We affirm the trial court's order.

Affirmed.

NAJAM, J., and ROBB, J., concur.