

Jane Ellen Lareau (Jane) appeals from the trial court's orders deciding issues that arose after her marriage to Ernest William Lareau (Bill) was dissolved. Jane presents the following restated issues for our review:

1. Did the trial court abuse its discretion by modifying Bill's child support obligation?
2. Did the trial court abuse its discretion by finding Jane in contempt for violating a visitation order?
3. Did the trial court abuse its discretion by failing to find Bill in contempt for failing to make maintenance payments?
4. Did the trial court lack the authority to require Jane to sign joint federal and state income tax returns?
5. Did the trial court err by failing to award Jane attorney fees?

We affirm.

Jane and Bill were married on June 9, 1990, and two children were born of the marriage. The marriage was dissolved on August 29, 2007. A Mediated Settlement Agreement was approved by the trial court and incorporated into the decree of dissolution. Jane was granted primary physical and sole legal custody of the children and Bill was granted reasonable rights of visitation pursuant to parenting time guidelines.

Bill agreed to pay \$2,400 per month at the first of each month to the Clerk of the Tippecanoe County Court for child support and 96% of the children's uninsured medical expenses. The agreement also provided that Bill pay \$2,000 per month in maintenance for the first 36 months following the date of dissolution. He was to accomplish that by making Jane's car payment and then paying the remainder directly to her. Jane agreed to timely sign and file joint state and federal income tax returns for 2005 and 2006.

On February 19, 2008, Bill filed a petition to modify support, a petition for contempt citation, and a petition asking the court to enter an order resolving issues regarding the division of frequent flier miles and the division and payment of the parties' 2005 income tax liability. On July 10, 2008, Jane filed a petition for contempt citation alleging that Bill was in arrears on the payment of child support, uninsured medical expenses, and maintenance. The trial court heard evidence and took the pending matters under advisement, and the parties submitted proposed findings. The trial court entered its order on those issues on November 5, 2009.

Jane filed a petition to incarcerate Bill on November 12, 2009. The trial court ordered Bill to personally appear on December 14, 2009 and then took the matter under advisement after hearing evidence. Jane filed a motion to correct error on December 7, 2009, the court heard argument, and then entered an order correcting a typographical error, but leaving the previous order in place. The trial court declined to enter an order on Jane's petition to incarcerate Bill.

On December 23, 2009, Jane filed a motion for change of venue from judge and objection to trial setting. A special judge was chosen and the case was transferred to another court. Jane now appeals from the trial court's November 5, 2009 (post-dissolution petitions), and January 20, 2010 (motion to correct error) orders.

We note at the outset that Bill has failed to file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument for the appellee. *MPACT Const. Group, LLC v. Superior Concrete Constructors, Inc.*, 785 N.E.2d 632 (Ind. Ct. App. 2003). This court may reverse the trial court if the appellant makes a

prima facie showing of reversible error. *Id.* “Prima facie, in this context, is defined as ‘at first sight, on first appearance, or on the face of it.’” *Burrell v. Lewis*, 743 N.E.2d 1207, 1209 (Ind. Ct. App. 2001) (quoting *Johnson County Rural Elec. Membership Corp. v. Burnell*, 484 N.E.2d 989, 991 (Ind. Ct. App. 1985)).

1.

Jane claims that the trial court abused its discretion by modifying Bill’s child support obligation. Our Supreme Court has placed a “strong emphasis on trial court discretion in determining child support obligations” and has acknowledged “the principle that child support modifications will not be set aside unless they are clearly erroneous.” *Lea v. Lea*, 691 N.E.2d 1214, 1217 (Ind. 1998). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Scoleri v. Scoleri*, 766 N.E.2d 1211 (Ind. Ct. App. 2002). We consider the evidence most favorable to the judgment and the reasonable inferences to be drawn therefrom. *Id.* We do not reweigh evidence or reassess the credibility of witnesses. *Id.*

Under the original terms of the decree, Bill was ordered to pay child support in the amount of \$2,400 per month commencing September 1, 2007. On February 19, 2008, Bill filed a petition to modify support in which he alleged a substantial change in circumstances due to a significant reduction in his income. As of May of 2009, Bill was delinquent in child support payments in the amount of \$28,200.00. After hearing the evidence regarding support modification, the trial court concluded that there had been a significant reduction in Bill’s income and modified his child support obligation to \$150.07 each week effective Saturday, March 1, 2008.

At the hearing on support modification, Bill testified that at the time he entered into the Mediated Settlement Agreement he was doing contract work for Phoenix Worldwide Consulting Group. He was terminated from his employment there in December of 2008. Bill stated that after his employment was terminated he borrowed money from his brother and his current in-laws, his car had been repossessed, he had taken cash advances on his credit cards, borrowed approximately \$67,000.00 from his former employer, and dissolved IRAs for approximately \$159,000.00 in late 2007 to make child support payments and for living expenses. He submitted a tax return from 2008 in which he reported \$33,415.00 in total income. Of that income, Bill testified that \$11,000.00 was reported as income to him, but was not actually received because of an IRS lien against the Phoenix Worldwide Consulting Group. Bill was one of three owners of that company.

Jane attacks the trial court's modification of Bill's support obligation with three separate arguments. First, she claims that Bill had substantial income with which to pay his child support obligation. Next, she argues that he could not demonstrate a change in circumstances so soon after the entry of the original support order. Last, she argues that Bill is voluntarily underemployed.

Although there is evidence to support Jane's claim that Bill had substantial income with which to pay his child support obligation, there is also evidence to support the trial court's ultimate determination to modify the support obligation. In other words, Jane is asking this court to reweigh the evidence, a task we may not undertake. *Scoleri v. Scoleri*, 766 N.E.2d 1211 (Ind. Ct. App. 2002). Ind. Code Ann. § 31-16-8-1 (West, Westlaw through 2010 2nd Regular Sess.) provides that a child support order may be modified "upon a showing

of changed circumstances so substantial and continuing as to make the terms unreasonable”. Our review of the record leads us to conclude that the trial court correctly found that Bill had shown a substantial change in circumstances.

Jane also argues that the trial court abused its discretion in modifying the support order because Bill failed to submit a child support worksheet until he filed his proposed order and cites to the commentary to Indiana Child Support Guideline 3(B)1. The commentary provides as follows:

Worksheet Requirement. Submission of the worksheet became a requirement in 1989 when use of the Guidelines became mandatory. The Family Support Act of 1988 requires that a written finding be made when establishing support. In Indiana, this is accomplished by submission of a child support worksheet. The worksheet memorializes the basis upon which the support order is established. Failure to submit a completed child support worksheet may, in the court’s discretion, result in the court refusing to approve a child support order or result in a continuance of a hearing regarding child support until a completed worksheet is provided. At subsequent modification hearings the court will then have the ability to accurately determine the income claimed by each party at the time of the prior hearing.

Jane claims that the trial court should not have accepted Bill’s worksheet as it was unsigned and unverified.

Assuming without deciding that it was error for the trial court to base its modification of the support order on the unsigned and unverified worksheet submitted by Bill, any such error was harmless. Here, the trial court had other evidence upon which to base its modification of the support order. Bill submitted a tax return from 2008 in which he reported \$33,415.00 in total income. On the child support worksheet submitted by Bill he calculated support based upon \$645 weekly gross income to him. Consequently, the trial court’s

modification of support to \$150.07 was within the scope of the evidence presented at the hearing.

Jane also contends that Bill is voluntarily underemployed. The Indiana Child Support Guidelines provide that if a parent is voluntarily unemployed or underemployed, child support shall be determined based on potential income. Ind. Child Support Guideline 3(A)(3). “A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor’s work history, occupational qualifications, prevailing job opportunities, and earning levels in the community.” *Id.* The purposes behind determining potential income are to “discourage a parent from taking a lower paying job to avoid the payment of significant support.” Child Supp. G. 3 cmt. 2(c).

A trial court has wide discretion with regard to imputing income to ensure the child support obligor does not evade his or her support obligation. *Apter v. Ross*, 781 N.E.2d 744 (Ind. Ct. App. 2003). Child support orders cannot be used to “force parents to work to their full economic potential or make their career decisions based strictly upon the size of potential paychecks.” *In re E.M.P.*, 722 N.E.2d 349, 351-52 (Ind. Ct. App. 2000).

Jane points to evidence that Bill has thirty years of work experience, he has a bachelor’s degree, two masters degrees, a Ph.D., and is a licensed psychologist. Based upon this evidence, she contends that Bill should be capable of earning enough to pay \$2,400.00 in child support. Bill testified that he believed he was capable of earning \$100,000.00 per year. He also testified, however, that he was having difficulty finding comparable consulting work and that finding employment in other occupations was difficult due to the fact he was sixty-one years old. Evidence at the hearing showed that Bill earned \$295,671.00 in 2004;

\$511,017.00 in 2005, \$61,047.00 in 2006, \$261,985.00 in 2007, \$33,415.00 in 2008, and \$3,500.00 for 2009 as of the hearing. Although Jane points to conflicts in the testimony about his earnings and earning potential, the trial court's support order is within the range of the evidence presented at the hearing. The trial court's order is not clearly erroneous.

2.

Jane challenges the trial court's order finding her in contempt for failing to abide by the visitation order. She argues that the trial court abused its discretion in so finding because the evidence establishes that Bill failed to exercise visitation on many occasions, returned the children early on others, and agreed that visitation did not have to be enforced if the children did not wish to come with him.

Whether a party is in contempt is a matter left to the sound discretion of the trial court, and we reverse the trial court's finding of contempt only if it is against the logic and effect of the evidence before it or is contrary to law. *Mosser v. Mosser*, 729 N.E.2d 197 (Ind. Ct. App. 2000). When reviewing a contempt order, we will neither reweigh the evidence nor judge the credibility of witnesses, and unless after a review of the entire record we have a firm and definite belief a mistake has been made by the trial court, the trial court's judgment will be affirmed. *Piercey v. Piercey*, 727 N.E.2d 26 (Ind. Ct. App. 2000). 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. *Id.* 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.*

Here, Jane was granted primary physical and sole legal custody of the children and Bill was granted reasonable rights of visitation pursuant to parenting time guidelines. Bill

testified at the hearing about difficulties he had encountered in exercising his right to visitation with the children and he supplemented his testimony with exhibits containing e-mail correspondence about visitation issues. Although Jane's testimony characterizes the situation differently, there is sufficient evidence in the record to support the trial court's finding of contempt. We decline Jane's invitation to reweigh the evidence and reassess the issue of witness credibility. The trial court did not abuse its discretion in finding Jane in contempt on this basis.

3.

Jane argues that the trial court abused its discretion by failing to find Bill in contempt of court for failing to make maintenance payments to her. As previously stated, 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. *Piercey v. Piercey*, 727 N.E.2d 26.

In the Mediated Settlement Agreement, Bill agreed to pay to Jane \$2,000.00 per month for three years in maintenance. The trial court's order reflects that Bill was ordered to pay maintenance/alimony, but failed to do so and is delinquent in the amount of \$23,525.00 as of May 20, 2009. The trial court declined, however, to find that Bill's actions were the result of willful disobedience of the trial court's order. In effect, Jane contends that the trial court's order finding Bill in contempt of court for his failure to pay child support is inconsistent with the trial court's failure to find Bill in contempt of court for his failure to pay maintenance.

We note an important difference in the state of the evidence as to each issue. As to the issue of child support, Bill admitted that he chose to pay down credit card debt with money

he was able to borrow and obtain through cashing in IRAs rather than pay child support. That evidence certainly supports the finding of willful disobedience of the trial court's child support order. There is no similar evidence, i.e., an admission of a conscious decision not to pay, in regard to the issue of contempt of the trial court's maintenance order. The trial court did not abuse its discretion by failing to find Bill in contempt of court in this regard.

4.

Next, Jane disputes the trial court's authority to order her to sign the joint federal and state income tax returns for the years 2005 and 2006. In effect, she argues that the trial court abused its discretion by finding her in contempt of court for failing to sign the returns, a condition of the dissolution decree.

In the Mediated Settlement Agreement, which was incorporated into the decree of dissolution, Jane agreed to timely sign and file joint state and federal income tax returns for 2005 and 2006. Per that agreement, Jane was given the opportunity to have the tax returns reviewed prior to signing them, but was to have them ready for filing in the appropriate time period. During her testimony about the issue of the tax returns, Jane acknowledged that she had been given the opportunity to review and have reviewed the proposed tax returns for those years, although she contended that she was given inadequate time for a meaningful review of the proposed returns. Jane further testified that she was advised by her accountant not to sign the returns because of various questions about deductions and reporting. Jane admitted to the trial court that she refused to sign the returns.

Jane cites to her testimony and the testimony of others she offered at the hearing to justify her refusal to sign the returns. While this court and the trial court certainly does not

condone inaccurate reporting on federal and state income tax returns, Jane's testimony established that she willfully disobeyed a court order to sign the tax returns, a provision with which she agreed during mediation. Though the testimony at the hearing may be indicative of genuine questions that we are not asked to decide here about Bill's efforts to hide or obscure income from the IRS, the evidence also supports the trial court's finding that Jane willfully disobeyed the trial court's order. If Jane had questions about her liability for allegedly fraudulent reporting on the returns, she could have petitioned the trial court for relief or waiver of that portion of the court's order and presented her evidence at that time.

The cases relied upon by Jane to support her argument that she was justified in disobeying the trial court's order are inapposite as they involve the question of dissipation of assets, an issue not raised here. The trial court did not abuse its discretion.

5.

Jane asserts that the trial court erred by failing to award her request for payment of attorney fees of \$3,279.92. The trial court ordered each of the parties to pay their own attorney fees.

In post-dissolution proceedings, the trial court may order a party to pay a reasonable amount for attorney's fees. *In re Marriage of Tearman*, 617 N.E.2d 974 (Ind. Ct. App. 1993). A trial court's decision to grant or deny attorney fees is left to the sound discretion of the trial court, and a decision to deny attorney fees will be reversed only for an abuse of discretion. *Ratliff v. Ratliff*, 804 N.E.2d 237 (Ind. Ct. App. 2004). The trial court abuses its discretion if its decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

When determining whether an award of attorney fees is appropriate, the court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors that bear on the reasonableness of the award. *Id.* Any misconduct on the part of one party that causes the other party to directly incur additional fees may be taken into consideration. *Id.* When one party is in a superior position to pay fees over the other party, an award of attorney fees is proper. *Id.* The court need not give reasons for its determination. *Id.*

Here, the trial court's order does not explain why it declined Jane's request for attorney fees. Jane contends the trial court abused its discretion because Bill was in contempt of court for failing to pay child support and for failure to cooperate during discovery. Jane seems to ignore that she, too, was found in contempt of court. Both parties raised issues to be decided by the trial court. Furthermore, Bill's financial difficulties while these issues were pending seems to us to be a sufficient basis upon which to refuse Jane's request. We find no abuse of discretion in the trial court's failure to award Jane attorney fees.

Judgment affirmed.

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