ATTORNEY FOR APPELLANT:

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IN THE
COURT OF APPEALS OF INDIANA

BARBARA (BUSHMAN) WOOD,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 12A02-0605-CV-436
	)	
RANDALL J. BUSHMAN,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Linley E. Pearson, Judge
Cause No. 12C01-8408-DR-315

November 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Plaintiff, Barbara Bushman Wood (Wife), appeals the trial court's Order directing her to pay an arrearage of child support, plus statutory interest, to her son, C.B.

We affirm.

ISSUE

Wife raises one issue on appeal, which we restate as: Whether the trial court properly entered an Agreed Order, which added the statutory interest rate to the amount of child support arrearage owed by Wife, an amount determined in a previous Agreed Order.

FACTS AND PROCEDURAL HISTORY

On February 6, 1985, the trial court entered the following Decree of Dissolution, in pertinent part:

> The [c]ourt, having heard evidence, now finds as follows:
>
> 1. That the [c]ourt has jurisdiction over the parties and the subject matter of this action.
>
> 2. That [Wife and Randall Bushman (Husband)] were married on August 14, 1982, and separated on May 15, 1984.
>
> 3. That one (1) child was born of this marriage.
>
> 4. That there has been an irretrievable breakdown of the marriage.
>
> 5. That [Husband] is a fit and proper person to have care, custody and control of the minor child.
>
> 6. That [Wife] shall have reasonable visitation.

7. That [Wife] shall pay support in the amount of $20.00 per week through the office of the Clerk of the Clinton Circuit [c]ourt [(the trial court)].

(Appellant's App. p. 10).

Subsequently, on December 13, 2004, Wife filed a Verified Petition for Emancipation, stating in pertinent part:

1. This [c]ourt entered a Dissolution Decree granting custody of the minor child of the parties, namely, [C.B.], born February 29, 1984,[1] to [Husband] and granting [Wife] visitation with said child at reasonable times and places.

2. Pursuant to the [c]ourt's most recent Order regarding Support, [Wife] was ordered to pay $30 per week with a like sum due each Friday.

3. That since the entry of the Dissolution Decree, [C.B.] has turned 18 years old, has graduated from high school and is not currently enrolled in school and [is] not under the care, custody or control of either parent.

4. [C.B.] should be emancipated and the child support payable by [Wife] should terminate effective June 29, 2002.

(Appellant's App. p. 11). From the record, it appears that the trial court never held a hearing or issued a determination on Wife's Verified Petition for Emancipation.

On September 23, 2005, the trial court entered the following Agreed Order, in pertinent part:

1. That there shall be no child support ordered effective March 1, 2005.

2. That [Wife] was delinquent in the payment of child support in the amount of $16,140.00 as of [September 13, 2005].

3. That [Wife] shall continue to pay $40.00 per week towards said child support arrearage via income withholding order until said child support arrearage is paid in full.

[1] There is inconsistent information in the record regarding C.B.'s date of birth. In this opinion, we consider his date of birth to be February 29, 1984.

(Appellant's App. p. 13).

Thereafter, on October 28, 2005, the trial court entered another Agreed Order, stating in pertinent part:

> 2. [C.B.] is currently receiving [Social Security Income] benefits, in an amount sufficient to provide for his care and support.
>
> 3. The parties stipulate that [Wife's] child support obligation terminated on [C.B.'s] 21st birthday [in February of 2005].
>
> 4. The issue of [Wife's] responsibility for child support after [C.B.] turned 21 years of age due to any mental or physical disability is reserved for hearing on [December 14, 2005]. . . .
>
> 5. As of August 10, 2005, [Wife] is in arrears in her child support obligations, including interest at the statutory rate of 8% per annum, in the sum of $20,293.69.
>
> 6. [Wife] shall continue to pay $40.00 per week towards said child support arrearage via income withholding order until said support arrearage, plus statutory interest, is paid in full.

(Appellant's App. pp. 15-16).

Thereafter, Wife filed a Motion to Set Aside the second Agreed Order, pursuant to either Ind. Trial Rule 60(B) or a Motion to Correct Error. On January 9, 2006, the trial court held a hearing on Wife's motion. On February 8, 2006, the trial court denied her motion.

Wife now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Wife argues that she agreed to the trial court's Agreed Order entered on September 23, 2005; however, she contends that she was given no notice and did not

authorize her attorney or anyone else to file the Agreed Order entered by the trial court on October 28, 2005. In addition, Wife contends that the second Agreed Order is invalid because the trial court did not specify whether it replaced the first Agreed Order. She also asserts that the trial court did not have jurisdiction to enter the second Agreed Order.

Essentially, Wife is disputing the trial court's denial of a motion to correct error. While we typically review such a denial for an abuse of discretion, we note that, here, Husband did not submit an appellee's brief. *Gard v. Gard*, 825 N.E.2d 907, 910 (Ind. Ct. App. 2005); *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). In such a situation, we do not undertake the burden of developing arguments on behalf of the Appellee. Rather, we apply a less stringent standard of review with respect to showings of reversible error, and we may reverse the trial court if the appellant can establish prima facie error. *Freeman*, 847 N.E.2d at 1048. In this context, prima facie is defined as "at first sight, on first appearance, or on the face of it." *Id*. (quoting *AmRhein v. Eden*, 779 N.E.2d 1197, 1205 (Ind. Ct. App. 2002)). The purpose of this rule is not to benefit the appellant, but to relieve this court of the burden of controverting the arguments advanced for reversal where that burden rests with the Appellee. Where an appellant is unable to meet that burden, we will affirm. *Freeman*, 847 N.E.2d at 1048.

In the present case, the trial court denied Wife's Motion to Set Aside Order, stating:

> The [c]ourt having examined the authority in opposition to [Wife's] Motion to Set Aside Order Pursuant to Trial Rule [60(B)] or Motion to Correct Errors, finds the last [A]greed [O]rder is binding upon the parties and DENIES [W]ife's motion. The [c]ourt relies on the fact that the first [Agreed] [O]rder was approved by the parties. It can be reasonably

> believed that there was implied and apparent authority and inherent agency of [Wife's attorney] to approve this [second] Agreed Order.

(Appellant's App. p. 24).

Initially, Wife disagrees with the trial court's decision to uphold the second Agreed Order because she contends it ignores the stipulation in the original Agreed Order that she would not be obligated to pay child support as of March 1, 2005. However, our review of the record indicates that the second Agreed Order acknowledges the parties' stipulation that Wife's child support obligations will cease upon C.B.'s 21st birthday, which was in February of 2005. Furthermore, the second Agreed Order clearly states that the dispute regarding Wife's responsibility for any child support after C.B.'s 21st birthday is reserved for a separate hearing and determination, to have taken place on December 14, 2005. In our evaluation, the second Agreed Order had no effect on the previous stipulation by the parties. Rather, the second Agreed Order simply provided new information regarding Wife's arrearage and the statutory interest that applies thereto.[2] Thus, we disagree with Wife's contention that the second Agreed Order had any impact on the first Agreed Order.

Additionally, we disagree with Wife's assertion that the trial court did not have jurisdiction to enter the second Agreed Order because its jurisdiction terminated upon the

[2] The right to post-judgment interest arises as a matter of statutory law. *See Tincher v. Davidson*, 784 N.E.2d 551, 553 (Ind. Ct. App. 2003); Ind. Code § 24-4.6-1-101. The statute controlling post-judgment interest on money judgments, I.C. § 24-4.6-1-101, requires post-judgment interest from the date of the "verdict" in a jury trial or the "finding of the court" in a bench trial. *Tincher*, 784 N.E.2d at 553. The statute currently provides for post-judgment interest at the rate of eight percent annually. I.C. § 24-4.6-1-101. Therefore, although we agree that an attorney is required to explain matters to the extent reasonably necessary so that a client may make informed decisions regarding their case, the question of statutory interest is not one left to the client, as Indiana considers post-judgment interest to be "part and parcel" of a money judgment. Ind. Professional Conduct Rule 1.4(b); *See American Family Mut. Ins. Co. v. Ginther*, 843 N.E.2d 575, 579 (Ind. Ct. App. 2006).

issuance of the original Agreed Order. Specifically, Wife contends that a trial court only maintains jurisdiction in a marriage dissolution for as long as the children of a marriage remain minors. However, we note first that in the instant case, C.B. was 21 years of age when the trial court entered both the first and second Agreed Orders; thus, we find Wife's argument factually flawed. Second, we note that Wife's legal support of this argument is scarce. *See* Ind. Appellate R. 46(A)(8)(a). Nonetheless, we will address this argument by Wife on its merits.

While we have held that "[a] trial court which entered the original dissolution decree and support order retains continuing jurisdiction during the child's minority," it does not follow that a trial court's jurisdiction disappears upon the age of majority when there is still a child support order for arrearages in effect. *Pickett v. Pickett*, 470 N.E.2d 751, 754 (Ind. Ct. App. 1984). It is firmly established that a trial court issuing a dissolution decree retains exclusive and continuing responsibility for future modifications and related matters concerning the care, custody, control, and support of any children. *See Singh v. Singh*, 844 N.E.2d 516, 523 (Ind. Ct. App. 2006). Furthermore, "[a] parent who fails to pay child support has an obligation to that child that remains unfulfilled, regardless of whether the child is emancipated or not." *Paternity of L.A. ex rel. Eppinger v. Adams*, 803 N.E.2d 1196, 1201 (Ind. Ct. App. 2004), *trans. denied*. This continuing obligation of parents requires us to supply our trial courts with appropriate tools to enforce support orders so as not to undermine the public's confidence in our judiciary. *See id*. Additionally, our courts have a compelling interest in ensuring that their orders are not ignored with impunity. *See id.*

Under Wife's theory here, parents who are behind in their child support payments have an automatic "out" when their children pass the age of minority. We refuse to set such precedent. Rather, we emphasize to Wife that the jurisdictional grant to a dissolution court is warranted as an extension of "the necessary and usual powers essential to effectuate [the marital dissolution]." *Singh*, 844 N.E.2d at 523 (quoting *Fackler v. Powell*, 839 N.E.2d 165, 167-68 (Ind. 2005)). In Wife's case, she was obligated – under the dissolution decree – to pay child support to C.B. Therefore, the trial court has jurisdiction to effectuate Wife's payment of such support and C.B.'s age is of no relevance. Moreover, our review of the record unveils no evidence that the trial court otherwise lacked personal jurisdiction over Wife at the time the second Agreed Order was entered.

In examining the remaining arguments by Wife pertaining to the validity of the trial court's subsequent Agreed Order, we again find nothing to support a reversal of the trial court's denial of her Motion to Set Aside Order. In fact, we find we are unable to address the entirety of her arguments, as they all pertain to the trial court's ability to order child support past the age of 21 years – an issue entirely beyond the scope of the matter before us, as no such order had even been issued at the time of this appeal. Accordingly, we conclude that Wife has failed to establish any prima facie error by the trial court in entering the second Agreed Order. *See Freeman*, 847 N.E.2d at 1048.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly denied Wife's Motion to Set Aside Order.

Affirmed.

BAILEY, J., and MAY, J., concur.