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IN THE
COURT OF APPEALS OF INDIANA

TRACY L. HENNINGSEN,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 16A01-1012-DR-640
	)	
TRACY H. HENNINGSEN,	)	
	)	
Appellee.	)	

APPEAL FROM THE DECATUR CIRCUIT COURT
The Honorable Stephen R. Heimann, Special Judge
Cause No. 16C01-0712-DR-408

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Tracy L. Henningsen ("Mother") appeals the trial court's Modification and Citation Order. Mother raises one issue, which we revise and restate as whether the trial court erred in modifying the child support obligation of Tracy H. Henningsen ("Father"). In addition, Father raises several issues on cross-appeal, including whether the court erred in modifying his child support obligation and whether the court abused its discretion in finding Father in contempt. We affirm in part and reverse in part.

The relevant facts follow. Mother and Father were married in April 1989, separated in December 2007, and have two children together. On July 10, 2008, the trial court issued findings of fact, conclusions of law, and judgment dissolving the marriage, awarding legal and physical custody of the children to Mother, ordering Father to pay a child support obligation for both children in the amount of $373 per week,[1] dividing the marital estate, providing that Father shall maintain the life insurance policies then in effect on each of the children's lives and "shall not take any loans against such policies," and ordering Father to assume and pay "[a]ll income taxes owing by the parties prior to the taxable year 2008." Appellant's Appendix at 26, 29.

The chronological case summary ("CCS") indicates that Father filed a motion to modify custody on September 23, 2009,[2] and that after a hearing the court denied the motion on November 23, 2009. On February 24, 2010, Mother filed a Petition for Rule to Show Cause arguing that Father failed to comply with the dissolution order and specifically alleged that "it appears that [Father] has taken out a loan against the life

[1] The court's child support obligation worksheet attached to the dissolution order indicated that Father had a weekly gross income of $2,786 and Mother had a weekly gross income of $662.

[2] The record does not contain a copy of this petition.

insurance policy with [one of the children] as the insured, and [Father] has failed and refused to pay income taxes owing for the taxable year 2004" and requested a reasonable sum for her attorney fees. Appellee's Appendix at 2. On March 8, 2010, Father filed a motion for change of judge, which was granted.

On March 26, 2010, Father filed a petition to modify child support alleging that there was a change of circumstances which included a reduction in his income through no fault of his own and an increase in Mother's income due to her employment. Father also filed a response to Petition for Rule to Show Cause.

On September 3, 2010, the court held a hearing at which the parties presented evidence regarding their respective incomes. On September 17, 2010, the court issued a Modification and Citation Order, which included detailed findings regarding the parties' incomes,[3] modified Father's weekly support obligation to $302,[4] and found Father in contempt and ordered him to pay attorney fees to Mother.

I.

The first issue is whether the trial court erred in modifying Father's child support obligation. "We place a 'strong emphasis on trial court discretion in determining child support obligations' and regularly acknowledge 'the principle that child support modifications will not be set aside unless they are clearly erroneous.'" Lea v. Lea, 691

[3] The court's child support obligation worksheet attached to the order indicates that Father has a weekly gross income of $2,230 and Mother has a weekly gross income of $609.

[4] The court found that the child support obligation worksheet showed that "Father's obligation should be $336 per week," that Mother had calculated that Father's obligation "should be $302 per week," and that "it would not be equitable to order Father to pay more in child support than was requested by Mother." Appellant's Appendix at 15.

N.E.2d 1214, 1217 (Ind. 1998) (quoting Stultz v. Stultz, 659 N.E.2d 125, 128 (Ind. 1995)). "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996). A judgment is clearly erroneous if it relies on an incorrect legal standard. Menard, Inc. v. Dage-MTL Inc., 726 N.E.2d 1206, 1210 (Ind. 2000), reh'g denied. We give due regard to the trial court's ability to assess the credibility of witnesses. Id. While we defer substantially to findings of fact, we do not do so to conclusions of law. Id. 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).

The modification of a child support order is governed by Ind. Code § 31-16-8-1, which provides:

> (a) Provisions of an order with respect to child support . . . may be modified or revoked.
>
> (b) Except as provided in section 2 of this chapter, modification may be made only:
>
> (1) upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable; or
>
> (2) upon a showing that:
>
> (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines; and
>
> (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed.

Mother argues that the trial court erred in modifying Father's child support obligation because the amount ordered by the court did not differ by more than twenty percent from the amount of Father's previous support obligation. Mother also argues that the evidence does not support the court's finding that she consented to the reduction of Father's existing support obligation. In response, Father presents several arguments related to whether the trial court erred in modifying his child support obligation and appears to argue that the court did not abuse its discretion in determining that his support obligation should be modified but that the court incorrectly calculated the incomes of the parties and failed to find that he was entitled to a credit for certain payments.

We first address the trial court's findings related to the parties' incomes and then address the findings related to the calculation of Father's support obligation and whether he is entitled to any credit.

A. Mother's Weekly Gross Income

At the September 3, 2010 hearing, Mother's income tax return for 2009 and a pay stub dated July 30, 2010 were admitted into evidence. Also, Father submitted a calculation of Mother's income which included refunded tax credits not paid by Mother. In its order, the court found: "Mother's income is based upon both a base wage plus a commission. The commissions are not stable. Therefore, the Court averaged her income from 2009 and the first six months of 2010. . . . It is noted, however, that her 2010 wages come from a reliable source and are not easily manipulated." Appellant's Appendix at 13 n.3. The court further found that "Father is adding back credits [Mother] earned on her tax return for . . . 2009" and "that this is not appropriate in that tax laws change and tax

credits [change] depending on a person's circumstances each year."[5] Id. at 12. The court also found that "[i]n 2009, Mother had unearned income of $2,616 as shown on her Federal tax return" and that "Father attributes unearned income to Mother in 2010 in the sum of $8,542."[6] Id. The trial court "attributes income to Mother in the sum of $609 per week for her gross weekly income for purposes of child support calculations." Id. at 13.

Father argues that the court did not correctly calculate Mother's income. Specifically, Father argues that "Counsel for [F]ather is unable to reconcile the trial court's determination of [M]other's income with [its] explanation of how that figure was determined" and that "[i]t appears the trial court did not include investment income, agricultural payments or payments [M]other received on a contract inherited from her father." Appellee's Brief at 14. Father argues that Mother's 2009 tax return "does not reflect the contract payments which she receives as the result of her inheritance from her father's estate." Id. at 15. Father further argues that Mother's "2010 investment income was not yet available" and that "[t]he best evidence of [her] investment income was shown on her 2009 tax return . . . ." Id. Father also argues that the court should have included in Mother's income refunded tax credits. Id. at 16.

[5] The court also stated in a footnote: "It takes some chutzpah on the part of Father to try to add tax credits to Mother's income for 2009 when her tax refund was confiscated by the IRS due to back taxes which Father failed to timely pay pursuant to the Decree of Dissolution." Appellant's Appendix at 13 n.2.

[6] The court's order also found:

> Father switches back and forth between 2009 and 2010 to pick various components of Mother's income. For example, he uses 2009 interest income, royalties and ordinary dividends. Mother shows no rental income for 2009. Father uses rental income from 2010. Mother shows a farm loss for 2009, but Father uses her 2010 tobacco quota and production as income.

Appellant's Appendix at 12 n.1.

Mother argues in her reply brief that her average earnings in 2010 were $529.55 per week, that in 2009 her average earnings were $359 per week, that her average earnings for 2009 and the first half of the 2010 were $444.28 per week, and that the court added that amount to the amount of $164.29 per week, which was the amount Father had calculated for her investment income, to arrive at $608.57 per week. Mother further argues that "Father failed to present any evidence as to whether Mother would receive, for the year 2010, the same refundable tax credits she received in 2009, or any evidence as to an estimate of the amount of tax credits Mother would receive in 2010 if, in fact, Mother was eligible to receive such tax credits." Appellant's Reply Brief at 5.

Mother's 2009 tax return indicates that she earned $18,657 in wages, salaries, and tips. Mother's pay stub dated July 30, 2010 shows that Mother earned $15,356.87 during 2010 through the pay period ending July 24, 2010. Father submitted an exhibit showing a calculation of Mother's income, which included a subtotal for Mother's weekly average investment income of $164.29.[7] Based upon the evidence, we cannot say the court's finding that Mother had weekly gross income in the amount of $609 was clearly erroneous.

With respect to Father's argument that the trial court should have treated Mother's 2009 federal child tax credits as income, we note that Father has not pointed to authority for the specific proposition that a trial court must consider or adjust a party's gross

[7] The exhibit indicated that Mother's annual investment income consisted of interest of $242, dividends of $1,160, royalties of $1,214, contract payments of $4,399.92, and a tobacco quota production of $1,526.90. Father also presented a statement from the U.S. Department of Agriculture related to the tobacco quota payment.

income based upon the estimated federal tax treatment of that party. Father points to Indiana Child Support Guideline 3.A.1., which provides in part:

> Weekly gross income of each parent includes income from any source, except as excluded below, and includes, but is not limited to, income from salaries, wages, commissions, . . . gifts, inheritance, ... Specifically excluded are benefits from means-tested public assistance programs, including, but not limited to, Temporary Aid to Needy Families (TANF), Supplemental Security Income, and Food Stamps . . . .

Father also points to the commentary to Guideline 3.A., which provides in part that "[i]n calculating Weekly Gross Income, it is helpful to begin with total income from all sources," that "[t]his figure may not be the same as gross income for tax purposes," and that "[m]eans-tested public assistance programs (those based on income) are excluded from the computation of Weekly Gross Income, but other government payments, such as Social Security benefits and veterans pensions, should be included." The language in Guideline 3.A.1. and the commentary above does not expressly require any tax refund received by a party to be included in the party's gross income for the purposes of calculating child support, and we decline to impose such a requirement. The evidence indicates that Mother was making more in 2010 than she did in 2009, and the trial court found that "[t]here was no evidence presented to what, if any, income credits Mother may be entitled to in 2010 given her additional income in 2010." Appellant's Appendix at 12. Further, we note that any reduction in Mother's federal tax liability due to child tax credits is a function of the fact that she claims one of her children as a dependent, which was expressly ordered by the trial court at dissolution. We cannot say that the court clearly erred in declining to increase Mother's weekly gross income because of any

decrease of her federal tax liability due to the fact that she may have received child tax credits.

Based upon the record, we cannot say that the court erred in determining Mother's weekly gross income for child support purposes.

B. Father's Weekly Gross Income

At the hearing, as evidence of his income, Father submitted among other documents his 2009 individual income tax return, an exhibit itemizing his individual income, and the 2008 and 2009 corporate tax returns for his business as an insurance agent, Idlewild South, Inc. ("Idlewild"). Father also submitted information related to his health insurance and exhibits itemizing his 2010 commissions and operating expenses of Idlewild through July 2010.

In its September 17, 2010 order, the trial court found that Father is self-employed as an insurance agent for Farm Bureau Insurance. The court found that "Father did not purchase gifts out of his business until after the parties were separated" and that "[s]ince the separation, Father has been taking gifts as a deduction from his gross income." Appellant's Appendix at 13. The court found that "Father did very little business related traveling during the marriage" and that "Father's 2009 corporate tax return shows that Father deducted auto and truck expenses of $16,950, gifts of $3,000, and meals and entertainment expenses of $8,600." Id. The court found that Father "did not know how much of the vehicle's use was for personal use, but that he deducted all of the use as business use" and that he "did not produce records from which the Court could reasonably ascertain the amount of expenses which should be attributed to personal use

versus business use." Id. at 14. The court further found that Father took a deduction of $14,496 for self-employed health insurance on his 2009 personal tax return and that "[t]his deduction is substantially higher than what he pays for health insurance premiums according to a statement from his health insurance provider . . . ." Id. The court also found that Father "is further reducing his child support by the sum of $91.68 per week for the children's share of health insurance costs" and that "[t]o reduce gross income by the deduction taken for self-employed health insurance and then reduce ones [sic] child support by the amount paid for the children's health insurance would be double dipping." Id. at 14-15. The court held:

> [G]iven the fact that Father is self-employed and has an opportunity to manipulate income and expenses to his benefit for purposes of determining child support, and given the Court's assessment of the credibility of the witnesses and exhibits, and given the fact that Father's business income is not steady; the Court is considering Father's 2009 income based upon his taxes and averaging this with his gross income as found by the trial court in determining child support from the July 2008 Decree. The Court is weighting the 2009 income at twice the weight of the 2008 income because of trending. The Court attributes income to Father in the sum of $2,230 per week.

Id. at 15.

Father argues that the court abused its discretion in calculating his income, that "[c]ounsel for [F]ather is also unable to reconcile the income figure used by the trial court with the court's explanation of how the court arrived at [F]ather's income for child support purposes," and that "[i]t is clear that the trial court did not consider [F]ather's income, expenses and circumstances in 2010 at all." Appellee's Brief at 21. Father further argues that the court erred by disregarding certain documented business expenses, that the court gave "no consideration of the downturn in [his] income as the result of a

poor economy," and that the court's calculation of his income is punitive. Id. at 22. Mother argues that the court's determination of Father's weekly gross income is supported by the evidence. Mother asserts that "Idlewild claimed several business expense deductions which were questionable and excessive," that "[c]ontrary to the provisions of Ind. Child Support Guideline 3(B)(2), Father failed to provide the trial court with receipts, or other documentation, for purposes of verifying the business expenses claimed by Idlewild," that Father relied upon "a two page document itemizing Idlewild's income and expenses through July 31, 2010," and that "weekly gross income from self-employment may differ from a determination of business income for tax purposes." Appellant's Reply Brief at 6-7.

The record reveals that at the time of dissolution Father had a weekly gross income of $2,786 for child support purposes. Father's 2009 individual tax return indicates that that he had total income of $72,927, $15,000 of which was wages and salaries and $57,927 of which was income from Idlewild, and a self-employed health insurance deduction of $14,496. The 2009 tax return for Idlewild shows $119,514 in gross receipts or sales, $61,587 in total deductions, which included $15,000 in compensation of officers and $57,927 in ordinary business income. In addition to compensation of officers, rents, taxes and licenses, the tax return shows other deductions totaling $34,210, including an auto and truck expense of $16,950, gifts for customers of $3,000, and meals and entertainment expense of $8,600. The 2008 tax return for Idlewild shows $136,648 in gross receipts or sales, $15,000 in compensation of officers, $57,838 in total deductions, and $78,810 in ordinary business income.

An exhibit showing commissions indicates that $52,671 had been paid through July 2010. An exhibit showing Idlewild's 2010 expenses shows total operating expenses through July 31, 2010 of $15,914.72, which includes among other expenses an auto expense of $6,011, meals and entertainment expense of $3,857.14, and gifts of $1,610. In addition, a letter from Father's health insurance provider indicates that Father has "Employee plus Dependent Coverage in [its] PPO Plan," that the "[t]he Independent Contractor Agent pays a total of $679.96 per month for Agent plus Child coverage," and that "[t]he rate for an Independent Contractor Agent Only portion is $282.69." Petitioner's Exhibit 6. In addition, Father testified that he had not drawn a salary from Idlewild in 2010 because "[t]here's not enough to write myself a check." Transcript at 18. Father further testified that he had been told he did not need a receipt for anything under $75, that he had purchased gifts for clients for "say maybe a year or two, maybe 2006," and that his CPA compiled his year-to-date business expenses through July 31, 2010. Id. at 30. Father also testified that he used his automobile for personal and business transportation, that he deducted mileage as well as costs for service and maintenance, and that he traveled all over the State to meet with clients and prospective clients.

The court essentially found in its September 17, 2010 order that some of the deductions Father had taken to decrease his total income for tax purposes were questionable to the extent they also reduced Father's weekly gross income for the purpose of calculating his child support obligation. The court specifically questioned the deductions related to Father's auto and truck expenses, gifts, meals and entertainment,

and the cost of Father's self-employed health insurance,[8] and imputing or attributing all or a portion of the amounts of these deductions to Father's total personal income[9] supports the court's determination of Father's weekly gross income of $2,230 for the purpose of calculating his support obligation. Based upon the evidence, we cannot say the court's determination of Father's weekly gross income was clearly erroneous or that the amount is punitive.

To the extent Father argues that the trial court erred and did not consider the evidence related to his 2010 commissions and operating expenses, we note that the court found in part that "given the Court's assessment of the credibility of the witnesses and exhibits, and given the fact that Father's business income is not steady[,] the Court is considering Father's 2009 income based upon his taxes and averaging this with his gross income as found by the trial court in determining child support from the July 2008 Decree" and "is weighting the 2009 income at twice the weight of the 2008 income because of trending." See Appellant's Appendix at 15. We cannot say that the court's decision not to use the amounts submitted by Father regarding his commissions and expenses related to the first seven months of 2010 to calculate his support obligation was clearly erroneous under the circumstances.

[8] Idlewild's 2009 tax return shows deductions for an auto and truck expense of $16,950, gifts for customers of $3,000, and meals and entertainment expense of $8,600. Further, Father's 2009 individual tax return shows a deduction of $14,496 for self-employed health insurance while a letter from Father's health insurance provider indicates that Father "pays a total of $679.96 per month for Agent plus Child coverage" and that "[t]he rate for an Independent Contractor Agent Only portion is $282.69." Petitioner's Exhibit 6.

[9] According to Father's 2009 individual tax return and Idlewild's 2009 tax return, Father's total income from Idlewild in 2009 was $72,927 ($15,000 as wages and $57,927 as ordinary business income). According to Idlewild's 2008 tax return, Father was paid a total of $93,810 from Idlewild ($15,000 in wages and $78,810 in ordinary business income).

Based upon the record, we cannot say that the trial court erred in determining Father's weekly gross income for child support purposes.

C. Calculation of Support Obligation

We next address the trial court's calculation of Father's support obligation. Ind. Code § 31-16-8-1 provides in part that modification may be made only upon a showing "of changed circumstances so substantial and continuing as to make the terms unreasonable" or that "a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines . . . ."

In its July 10, 2008 order dissolving the marriage, the trial court ordered Father to pay child support in the amount of $373 per week. Attached to the September 17, 2010 order is the court's child support obligation worksheet, which computes Father's child support obligation to be $336 per week. In its order, the court found that the child support obligation worksheet shows that "Father's obligation should be $336 per week." Appellant's Appendix at 15. The court also found: "However, Mother calculated that Father's obligation should be $302 per week. Under the circumstances of this case, the Court finds that it would not be equitable to order Father to pay more in child support than was requested by Mother. The Court therefore finds that Father should pay the sum of $302 per week, effective as of January 1, 2010 and each Friday thereafter." Id. at 15-16 (footnote omitted).

As we affirm the trial court's findings as to the parties' incomes, we do not disturb the court's finding that Father's child support obligation would be $336 per week.

However, we note that $373, the weekly support amount Father had been ordered to pay at dissolution, does not differ by more than twenty percent from $336, the weekly support amount that would be ordered by applying the child support guidelines. Further, to the extent the trial court reduced Father's support obligation from $336 to $302, we also note that $373 does not differ by more than twenty percent from $302. We also note that the court did not expressly find a change of circumstances so substantial and continuing as to make the terms of the existing order unreasonable. As a result, we conclude that the court erred in modifying Father's support obligation under Ind. Code § 31-16-8-1,[10] and we reverse the court's modification of child support.

D. Credit for Life Insurance Premium Payments

The trial court's order dissolving the marriage of the parties ordered:

> [Father] shall maintain the life insurance policies which are currently in effect on each of the children's lives with both parties designated as equal beneficiaries hereunder. Upon the child's 23rd birthday, [Father] shall surrender the life insurance policy to such child, together with all accumulated cash value. [Father] shall not take any loans against such policies.

Appellant's Appendix at 26.

Father argues that "[b]ecause this is additional support for the children required to be paid by [F]ather, [F]ather should be given a credit against the total support obligation . . ." Appellee's Brief at 23. Father argues in the alternative that Mother should be ordered to pay one-half of the premiums since Mother would be an equal beneficiary of

[10] Because we conclude that a new weekly support amount of either $336 or $302 does not support a modification of Father's child support obligation, we do not address whether it was proper for the trial court to reduce its calculation of Father's obligation based upon Mother's calculation set forth on the child support obligation worksheet she submitted.

the insurance policies. Mother argues that Father is not entitled to deduct the premiums he paid for the policies from his support obligation because the policies do not insure a parent's life for the future support of a child but instead insure the lives of the parties' minor children.

We initially note that to the extent that Father has ownership rights in the policies which permit him to pledge them as security for debts, transfer or cash them or change beneficiaries, he has property which is subject to the court's authority. See Allen v. Allen, 477 N.E.2d 104, 107-108 (Ind. Ct. App. 1985). Here, according to the dissolution decree the policies at issue are maintained to insure the lives of the parties' children and not the lives of the parties, and we cannot say that the trial court erred or abused its discretion in not providing that Father receive a credit against his child support obligations in the amount of the premiums he pays to maintain the policies.[11]

II.

The next issue is whether the trial court abused its discretion in finding Father in contempt. Whether a party is in contempt of court is a matter within the trial court's discretion, and its decision will be reversed only for an abuse of that discretion. J.M. v. D.A., 935 N.E.2d 1235, 1243 (Ind. Ct. App. 2010) (citing Norris v. Pethe, 833 N.E.2d 1024, 1029 (Ind. Ct. App. 2005)), reh'g denied. A court has abused its discretion when its decision is against the logic and effect of the facts and circumstances before the court

[11] Further, even if the policies insured the lives of one of the parties for the children's benefit, this court has noted that "ensuring that a child has adequate *future* support in the event of a parent's death, by requiring the parent to maintain a life insurance policy, differs from ensuring that a child has adequate *current* support by requiring the non-custodial parent to pay a portion of his weekly income to the custodial parent" and that "[t]he child support guidelines are addressed to the latter type of support, not to the former." Capehart v. Capehart, 705 N.E.2d 533, 538 (Ind. Ct. App. 1999), reh'g denied, trans. denied.

or is contrary to law. Id. (citing Mitchell v. Mitchell, 871 N.E.2d 390, 394 (Ind. Ct. App. 2007)).

Contempt of court "involves disobedience of a court [order] which undermines the court's authority, justice, and dignity." Henderson v. Henderson, 919 N.E.2d 1207, 1210 (Ind. Ct. App. 2010) (citing Srivastava v. Indianapolis Hebrew Congregation, Inc., 779 N.E.2d 52, 60 (Ind. Ct. App. 2002), trans. denied). There are two types of contempt: direct and indirect. Id. Direct contempt involves actions occurring near the court that interfere with the business of the court and of which the judge has personal knowledge. Id. Contempt is indirect if it involves actions outside the trial court's personal knowledge. Id. "Willful disobedience of any lawfully entered court order of which the offender had notice is indirect contempt." Id. (citing Francies v. Francies, 759 N.E.2d 1106, 1118 (Ind. Ct. App. 2001), reh'g denied, trans. denied). The trial court here found Father to be in contempt of the dissolution order. Generally, a person who willfully disobeys any order lawfully issued by any court of record or by the proper officer of the court is guilty of indirect contempt. Id. (citing Ind. Code § 34-47-3-1). As such, this case involves indirect contempt. See id.

Indirect contempt "is the willful disobedience of any lawfully entered court order of which the offender has notice." City of Gary v. Major, 822 N.E.2d 165, 169 (Ind. 2005) (citation omitted and emphasis omitted)).

> It lies within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of its order. MacIntosh v. MacIntosh, 749 N.E.2d 626, 631 (Ind. Ct. App. 2001), trans. denied. Unlike criminal indirect contempt, the primary objective of a civil contempt proceeding is not to punish the contemnor but to coerce action for the benefit of the aggrieved party. Thompson v. Thompson, 811 N.E.2d 888, 905 (Ind. Ct.

> App. 2004), trans. denied . . . . "Nevertheless, a contempt order which neither coerces compliance with a court order or compensates the aggrieved party for loss, and does not offer an opportunity for the recalcitrant party to purge himself, may not be imposed in a civil contempt proceeding." Flash [v. Holtsclaw], 789 N.E.2d [955, 959 (Ind. Ct. App. 2003), trans. denied].

In re Paternity of M.P.M.W., 908 N.E.2d 1205, 1209 (Ind. Ct. App. 2009).

The trial court's July 10, 2008 order dissolving the marriage of the parties required Father to maintain the life insurance policies on each of the children's lives and provided: "[Father] shall not take any loans against such policies." Appellant's Appendix at 26. In addition, the court at dissolution ordered Father "to assume and pay and hold [Mother] harmless from the following debts, to wit: . . . [a]ll income taxes owing by the parties prior to the taxable year 2008, together with any damages, costs or losses, including, without limitation, attorney fees, arising from [Father's] failure to do so." Id. at 29-30.

Father argues that he did not receive proper notice because Mother's petition alleged he had taken a loan on one of his children's insurance policies when in fact he had taken a loan on the other child's policy and because he did not learn that the IRS had applied Mother's tax return to an outstanding tax liability until just prior to trial, that he did not willfully violate the court's previous order, and that he should be awarded attorney fees because Mother's allegations were frivolous.

At the hearing, Father testified that subsequent to the dissolution decree he took a loan against one of the insurance policies for living expenses but that he had repaid the loan within days after a petition for contempt was filed. On cross-examination, Father testified: "I paid it off as soon as I found out that I was in contempt cause I wasn't aware that I wasn't allowed to take policy loans out." Transcript at 37. Father also testified: "I

made a mistake. I thought I'm paying on 'em, I own 'em, it's my money, I could borrow out of 'em. But once I was made aware of it by [Mother's counsel's] office I went back and read the divorce decree and found out that I could not do it so I rectified the situation. And that is a, I am truly sorry for that." Id. at 38-39.

With respect to the income taxes owed by the parties prior to the taxable year 2008, Father's counsel stated in opening argument that he "was just told two minutes ago that a tax refund of [Mother] was applied toward the previous tax debt." Id. at 5. Father indicated that he had a payment plan with the IRS to pay those taxes and that he had complied with the payment plan. Father testified that he sends a check to the United States government each month and that "the mail got there late" on two occasions. Id. at 16. Father indicated that he resolved those issues as soon as he became aware of them. Father also indicated that he did not willfully disobey any orders of the court apart from the short loan that he had on one of the child's policies. Mother indicated that she received a letter from the IRS advising her that her 2010 tax refund had been applied to 2004 taxes which had never been paid. Mother acknowledged that she subsequently received a letter from the IRS indicating the payment plan had been reinstated.

However, notwithstanding any possible violation by Father of certain provisions of the July 10, 2008 order, we note that "[t]o avoid being purely punitive, a contempt order must offer an opportunity for the recalcitrant party to purge himself or herself of the contempt." Henderson, 919 N.E.2d at 1212 n.3. Here, the court's September 17, 2010 order did not indicate the manner in which Father could purge himself of the contempt. Accordingly, we reverse the court's order finding Father in contempt. See id. at 1210-

1212 (reversing finding of contempt and noting that the court's order did not indicate how the appellant could purge himself of the contempt). In addition, because the court indicated that its order that Father pay attorney fees in the amount of $600 was based upon its contempt finding, we also reverse that portion of the court's order related to attorney fees. We decline to award Father attorney fees in defending the contempt allegations.

For the foregoing reasons, we reverse that portion of the trial court's order modifying Father's support obligation, finding Father in contempt, and ordering Father to pay attorney fees of $600.

Affirmed in part and reversed in part.

BAKER, J., and KIRSCH, J., concur.