

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Danny R. DeBaun,
Appellant-Respondent,

v.

Cathy L. DeBaun,
Appellee-Petitioner

September 27, 2021

Court of Appeals Case No.
21A-DR-576

Interlocutory Appeal from the
Switzerland Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-1910-DR-303

Crone, Judge.

Case Summary

- [1] In this interlocutory appeal, Danny R. DeBaun (Husband) challenges a March 2021 contempt order, which was issued due to his failure to comply with a 2006 decree dissolving his marriage to his ex-wife Cathy L. DeBaun (Wife) and a 2007 agreed order entitling Wife to half of his retirement account distributions upon his retirement. Among other things, he claims that the trial court erred in finding him in contempt and ordering him to satisfy a money judgment from exempt sources of income. We affirm.

Facts and Procedural History¹

- [2] Husband and Wife were married in 1984 and divorced in 2006. At the time of the divorce, Husband was a member of the Indiana Teachers Retirement Fund, which is part of the Public Employees Retirement Fund (PERF). The 2006 dissolution decree states that Husband’s retirement funds “shall be equally divided with each party to receive a one half share of it as valued on December 31, 2005, their date of separation.” Appellant’s App. Vol. 2 at 16-17. In 2007, the trial court and parties executed an agreed order requiring that, upon Husband’s date of eligibility to receive withdrawals from his PERF accounts, he would be required to pay Wife half of the \$33,901.78 value of the PERF

¹ At the outset, we note that Husband’s brief does not conform to Indiana’s Rules of Appellate Procedure in a few different respects. For example, the cover page of the brief does not “conform substantially to Form #App.R. 43-1[,]” as required by Appellate Rule 43(I), and his statement of the case section includes argument and does not include a description of the course of the proceedings, as outlined in Appellate Rule 46(A)(5).

Annuity as of the date of separation, i.e., \$16,950.39, as well as half of his monthly pension (PERF Pension) payments. Husband did not appeal the decree or agreed order.

[3] In January 2016, Husband became eligible to receive his PERF Annuity and PERF Pension. He withdrew the full balance from his PERF Annuity but did not pay Wife her portion. Instead, he used the full balance to purchase a home for himself and his new wife. He also failed to pay Wife her one-half share of his monthly PERF Pension disbursements.

[4] In November 2019, Wife filed a motion for rule to show cause why Husband should not be held in contempt for willful noncompliance with the dissolution decree and agreed order. On February 14, 2020, the trial court granted Wife's motion and entered a money judgment for \$22,537.24 on the PERF Annuity and \$32,400.00 on the PERF Pension.² Appellant's App. Vol. 2 at 25-26. In the same order, the court issued a qualified domestic relations order (QDRO) directing the administrator of Husband's PERF Pension to withhold one half of the monthly payment for Wife, with a provision requiring him to pay \$497.32 to the court clerk each month until the QDRO took effect. Husband did not appeal this judgment.

[5] In March 2020, Wife filed a motion for writ of attachment. The trial court granted the motion, and Husband was arrested. Husband filed a motion to

² Each figure represented the principal owed, plus prejudgment interest.

reconsider, which was denied. He then filed a motion to stay the trial court's attachment order. Following a hearing in July 2020, the writ of attachment was canceled. The chronological case summary (CCS) reflects that between March and August 2020, Husband made six payments of \$497.32 each, for a total of \$3,978.56. *See id.* at 14.³ He made no further payments toward the arrearages after August 2020. Nor did he pay Wife half of his monthly PERF Pension disbursements going forward.

[6] In October 2020, Wife filed another motion for rule to show cause. In November 2020, the trial court conducted a hearing. Meanwhile, Wife filed a motion to freeze Husband's bank accounts, which the trial court granted. She filed a motion for release of funds from Husband's financial institutions, but she was unable to recover because Husband had closed the accounts. When she was unable to secure any payment, she filed motions for rule to show cause and garnishment of one half of Husband's PERF pension and/or social security benefits.

[7] In March 2021, the trial court conducted a hearing via Zoom and issued an order finding Husband in contempt of its orders to provide copies of certain motor vehicle titles and to pay Wife her one-half share of his monthly PERF Pension disbursements. The court ordered that Husband pay the clerk of the

³ Although the CCS states that these payments were applied toward his \$16,950.39 obligation to Wife, which was the PERF Annuity balance, the amount of each payment is consistent with the \$497.32 ordered to be paid monthly toward his PERF Pension arrearage. Appellant's App. Vol. 2 at 14.

courts, for Wife's benefit, within five days of each monthly disbursement and imposed a daily penalty for nonpayment. The court also ordered that Husband pay \$300 to Wife's counsel for attorney's fees. This interlocutory appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

Section 1 – The trial court acted within its discretion in finding Husband in contempt for willful disobedience of court orders to provide Wife with copies of his vehicle titles and pay her one half of his monthly pension disbursements.

[8] Husband maintains that the trial court erred in finding him in contempt for willful disobedience of court orders. As a preliminary matter, we note that this marital property division spans fifteen years and two cause numbers. In that time, the trial courts have issued several orders addressing the division of Husband's PERF accounts and enforcement of payments therefrom. *See, e.g.*, Appellant's App. Vol. 2 at 15-19, 25-27, 34-35. Until now, Husband has not appealed any of those orders. As such, our review is limited to the appealed order dated March 5, 2021. To the extent that Husband attempts to challenge aspects of certain unappealed orders, we cannot oblige, as he is foreclosed from challenging orders that he did not appeal. *See Edwards v. Edwards*, 132 N.E.3d 391, 397 (Ind. Ct. App. 2019) (unappealed prior order was res judicata as to the parties and precluded further litigation on same issue), *trans. denied*. That said, we will address the previous orders as relevant to our review of the appealed order.

[9] In family law matters, we have a well-established preference “for granting latitude and deference to our trial judges,” recognizing that the judge has seen the witnesses and observed their demeanor. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). We review a contempt finding for an abuse of discretion and will reverse it only if there is no evidence or reasonable inference to be drawn therefrom that supports the finding. *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016). We neither reweigh evidence nor reassess witness credibility. *Steele-Giri*, 51 N.E.3d at 124. Where, as here, the parties have entered into a contract (here, the agreed order), we apply a de novo standard of review in interpreting its provisions. *Ferrill v. Ferrill*, 143 N.E.3d 350, 355 (Ind. Ct. App. 2020). “Unless the terms of the agreement are ambiguous, they will be given their plain and ordinary meaning, but if there is an ambiguity, we may consider extrinsic evidence to resolve it, with the aim of carrying out the parties’ likely intent.” *Id.*

[10] We note that Wife has failed to file an appellee’s brief. When an appellee fails to submit a brief, we will not undertake the burden of developing her arguments. *Meisberger v. Bishop*, 15 N.E.3d 653, 656 (Ind. Ct. App. 2014). Rather, we apply a less stringent standard of review and will reverse if the appellant establishes prima facie error. *Id.* Prima facie error is error “at first sight, on first appearance, or on the face of it.” *Solms v. Solms*, 982 N.E.2d 1, 2 (Ind. Ct. App. 2012).

[11] Husband claims that the trial court abused its discretion in finding him in contempt. A party who willfully disobeys a court order may be held in

contempt of court, and it is he who bears the burden of showing that his disobedience was not willful. *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 202 (Ind. 2012). “[T]he purpose of civil contempt is to coerce action by the contemnor for the benefit of the aggrieved party[.]” *Reynolds*, 64 N.E.3d at 835. Contempt falls into two categories: (1) direct contempt, where a party’s conduct occurs in court and undermines the court’s authority, justice, and dignity; and (2) indirect contempt, where, as here, actions of a party are committed outside the court’s presence but which nevertheless “interrupt, obstruct, embarrass or prevent the due administration of justice.” *Id.* at 832 (quoting *In re A.S.*, 9 N.E.3d 129, 131 (Ind. 2014)). “Notwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by: (1) contempt; (2) an income withholding order; or (3) any other remedies available for the enforcement of a court order; except as otherwise provided[.]” Ind. Code § 31-15-7-10.

[12] Here, the trial court specifically found Husband in indirect contempt for willfully “failing to provide copies of his motor vehicle titles” to Wife and “failing to pay one-half of his monthly pension benefit” to Wife. Appealed Order at 1. With respect to the former, Husband was previously ordered to provide Wife with the vehicle titles. The record reflects that the way in which Husband chose to structure his assets made the titles important, as the vehicles may have been among the few assets not placed beyond Wife’s reach. During the March 2021 virtual hearing, Wife’s counsel questioned Husband as to whether he had provided Wife or Wife’s counsel with the vehicle titles, and his

responses were equivocal. *See* Tr. Vol. 2 at 4 (“I was thinking we had given you those”; “I was thinking we passed them on to you”; “I am relatively sure, yes ma’am, I’m sure we did”). Wife’s counsel indicated to the trial court that she had never received those titles, and Husband’s counsel could not confirm having forwarded the titles but merely assured the trial court that he would double check and search his files. *Id.* at 11. A reasonable inference supports the trial court’s finding that the titles were not provided to Wife or her counsel, and the way in which they were titled raises a reasonable inference of a willful pattern of conduct. We may not reweigh evidence or reassess witness credibility. *Steele-Giri*, 51 N.E.3d at 124.

[13] With respect to Wife’s portion of Husband’s monthly pension payments, the court found that Husband “agreed to this [monetary] obligation[,] and the Court approved and ordered the same on November 7, 2007.” *Appealed Order* at 1. The 2007 agreed order, signed by Husband, reads in pertinent part: “4. [Husband] shall also pay one-half (1/2) of his monthly account to [Wife] upon his being eligible to receive his monthly pension. Said payment shall be made to the Clerk of Courts each month.” *Appellant’s App.* Vol. 2 at 18. The 2007 agreed order clearly and unambiguously specifies the percentage that Husband was required to pay Wife, the place for making payments on Wife’s behalf, the frequency of those payments, and the start date for the payments. Husband admits that he became eligible for his monthly PERF Pension disbursements in January 2016 and that he did not take half of each monthly disbursement and pay it to the clerk of the court for Wife’s benefit.

[14] Husband eventually made six small payments toward the four-year arrearage on his PERF Pension obligation but admits that he discontinued those payments and did not pay Wife her current monthly share. He claims that his nonpayment is due to health problems and the ensuing struggle to pay his bills. While we are sensitive to the budgetary constraints that often stem from medical bills, we do not find Husband's nonpayment to be any less willful; he simply made a choice to pay other obligations instead of meeting his court-ordered obligations to Wife and indicated in court his intent to continue doing so. *See* Tr. Vol. 2 at 4 (“Q. You’re about to be paid again her[e] in the next two weeks. If Judge Coy tells you to pay [Wife] half, are you going to pay her half? A. At this time, I’ll have to say no[.]”). Moreover, the record reflects that in January 2016, when Husband became both eligible (for his funds) and obligated (to pay Wife half of both funds), he developed a pattern of excluding Wife from her half and using all the money as he pleased; in some cases, he used it to purchase property that was not titled in his name or was titled as marital property with his new wife. For example, Wife, through counsel, attempted to collect from Husband's bank accounts, but he closed them and directed that all incoming funds, whether from his PERF Pension or Social Security, be placed on a debit card. Even then, Husband did not make cash withdrawals from the card in order to make his court-ordered monthly payments to Wife. The court found this conduct to be probative of willful noncompliance with the 2007 agreed order. We agree.

[15] Husband also maintains that he cannot be held in contempt because the trial court entered a final money judgment in February 2020. At first glance, this claim appears meritorious. See *Whittaker v. Whittaker*, 44 N.E.3d 716, 720 (Ind. Ct. App. 2015) (if final money judgment for fixed sum is entered, contempt is not available as remedy for noncompliance). However, the trial court's February 2020 entry of a money judgment pertained only to Wife's half of the PERF Annuity and the PERF Pension *arrearage* as of that date. It did not include the monthly payment obligations that continued to accrue after the date of the order. Simply put, Husband continued his pattern of nonpayment of his monthly PERF Pension obligations to Wife and can be held in contempt for his willful disobedience concerning those obligations. The trial court acted within its discretion in entering a contempt finding.

[16] We note that Husband also included in his brief challenges to the trial court's imposition of daily fines and \$300 in attorney's fees. However, he has failed to develop cogent argument with citations to pertinent authority, as required by Indiana Appellate Rule 46(A)(8). Therefore, he has waived review of these claims. *Basic v. Amouri*, 58 N.E.3d 980, 984 (Ind. Ct. App. 2016).

Section 2 – The appealed order does not involve an order of direct payment or garnishment from exempt sources of income or contrary to statute.

[17] Husband also contends that the trial court erred in ordering him to satisfy his monetary obligations to Wife by direct payment or garnishment of his PERF accounts and/or Social Security benefits. We remind him that garnishment

through a QDRO was not addressed in the order that he has appealed, and he did not appeal the February 2020 order, which included enforcement of the money judgment for *arrears* via garnishment through a QDRO on his PERF Pension account. We are limited to reviewing the order that was appealed, i.e., the order entered March 5, 2021, which states that having found Husband in contempt, as discussed above,

2. The Court orders [Husband] to pay one-half of his monthly pension benefit to the Clerk of the Court for the benefit of [Wife]. [Husband] agreed to this obligation and the Court approved and ordered the same on November 7, 2007.

3. If [Husband] fails to pay the Clerk of the Court one-half of his monthly pension benefit within five (5) days of receipt of the same, [Husband] shall pay a daily penalty of \$10.00 for each day that the payment is late. The late penalty shall not exceed \$30.00 per month.

Appealed Order at 1.

[18] Husband asserts that the trial court's order that he pay Wife her half of his PERF Pension through the clerk of the courts is contrary to law. As support, he cites several statutes pertaining to his rights as a member of the Indiana Teachers Retirement Fund. Among those are Indiana Code Section 5-10.4-5-14(a), which states, in pertinent part, "The benefits payable from the fund are exempt from seizure or levy on attachment, supplemental process, and all other processes[,]" and Indiana Code Section 5-10.4-5-14.5, which states, in relevant part, "A member's transfer of a benefit payment is void." He also cites Indiana

Code Section 24-4.5-5-105, which addresses limits on the percentage of a debtor's income that can be made subject to garnishment. We reiterate that the present appealed order does not involve the garnishment of Husband's PERF Pension through a QDRO. Husband did not appeal the February 2020 order that imposed the garnishment through a QDRO on his PERF Pension, and we find nothing in the record to indicate that the QDRO was ever actually filed with the administrator of Husband's PERF accounts.

[19] The March 2021 appealed order does not purport to seize, levy, or garnish Husband's PERF Pension. Nor does it amount to an order for a member transfer through the fund; rather, it simply sets the amount of Husband's monthly obligation to Wife (half of his monthly total disbursement) and requires Husband to pay Wife her portion (through the clerk) within five days *after* he has received the deposit onto his debit card. We agree with the trial court's conclusion that "once it's in his pocket ... it becomes his." Tr. Vol. 2 at 11. If Wife were not entitled to direct monthly payments from Husband simply because the accounts from which they originated were exempt from a QDRO, the result would be

a windfall to [Husband], who agreed as part of the dissolution of his marriage to [Wife] to share a portion of his pension benefits when he began receiving them. And ... even if the statute[s] ... did bar the entry of a QDRO ... all that would mean is that [Wife] was not entitled to receive her share of the benefits directly from [Husband's] pension plan. She would still be entitled to payment of those amounts directly from [Husband] pursuant to the terms of the [agreed order].

Ryan v. Janovsky, 999 N.E.2d 895, 901 (Ind. Ct. App. 2013), *trans. denied* (2014).

[20] In short, the appealed order is not an order of garnishment from Husband's PERF Pension. As such, the trial court did not misapply the statutes exempting PERF benefits from seizure, levy, or member transfer or placing limitations on garnishments. Rather, the trial court simply ordered Husband to make direct monthly payments to Wife through the clerk of the courts, in keeping with the 2007 agreed order. Accordingly, we affirm.

[21] Affirmed.

Bailey, J., and Pyle, J., concur.