

## 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

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Jeremy M. Walker,  
*Appellant-Petitioner,*

v.

Renisha R. Walker,  
*Appellee-Respondent*

September 30, 2021

Court of Appeals Case No.  
21A-DR-602

Appeal from the Clark Circuit  
Court

The Honorable Daniel E. Moore,  
Judge

Trial Court Cause No.  
10C01-0910-DR-237

**Crone, Judge.**

## **Case Summary**

- [1] Renisha R. Walker (Wife) filed a motion to enforce a court-approved mediation agreement with her ex-spouse, Jeremy M. Walker (Husband). Wife alleged that Husband was in arrears on his monthly obligation to pay her a share of his military retirement income, and she also requested attorney's fees. After a hearing, the trial court issued an order finding Husband in contempt and ordering him to pay the arrearage, a credit toward a future payment, and attorney's fees. Husband now appeals, arguing that the trial court lacked authority to hold him in contempt because it did not issue a rule to show cause. We affirm.

## **Facts and Procedural History**

- [2] The relevant facts are undisputed. Husband and Wife had three children, one of whom is currently entitled to child support. Their marriage was dissolved in Hawaii, and the dissolution decree was domesticated in Indiana in 2009. In June 2020, the parties attended mediation and executed an agreement that modified Husband's child support obligation and required him to pay Wife \$475 per month starting in June 2020 "as property settlement payments for her net share of [Husband's military] retirement pay pursuant to the Hawaii Decree.... Payments shall be due on the 25<sup>th</sup> of each month and shall continue so long as both parties survive." Appellant's App. Vol. 2 at 32. The trial court approved the agreement on June 22.

- [3] In September 2020, Wife filed a motion to enforce the agreement, alleging that Husband owed her \$149 for June and July and had yet to make a payment for August. Wife requested a hearing, enforcement of the agreement, and an award of attorney's fees "incurred by her as a result of [Husband's] refusal to comply with court orders." *Id.* at 36. The trial court initially set a hearing for November 19 but ultimately continued it to March 3, 2021. The hearing was held virtually, and Husband and Wife appeared in person and by counsel.
- [4] Wife's counsel started questioning Husband about child support payments, and Husband's counsel interjected, "Judge, I believe the motion to enforce the agreement was about the property division, and so I guess, I just don't want to go outside the scope." Tr. Vol. 2 at 7. Wife's counsel replied, "Judge, I can move on, but we'll have to file a contempt following this[.]" *Id.* The court stated, "Well, why don't you move on." *Id.* Wife's counsel then questioned Husband about the retirement payments. Husband acknowledged that he did not make the first payment until July 28, and he attributed that late payment and subsequent late payments to the military payroll system.
- [5] Wife testified that Husband still owed her \$149 as of the hearing date. She also acknowledged that "there's been a lot of contempts" filed against Husband during "the history of this case," the most recent of which resulted in an order to pay an unspecified obligation. *Id.* at 31. Wife's counsel submitted, but the trial court did not formally admit, an exhibit detailing Husband's outstanding child support and retirement payment obligations. Husband's counsel told the court, "I don't have any objection if you want to go ahead and take [Wife's

counsel's] calculation on support. My goal today is, [...] we don't need to come back on another hearing[.]” *Id.* at 45.

[6] At the close of evidence, the trial court stated,

Let's stick with the retirement issue here today, okay, because that's how we started.[...] Now, I can't really find language in [the mediation agreement, Husband], that says any of these payment obligations are dependent upon the military pay system. I just can't find the language there. And your obligation ought to be predictable. You worked it out. It's not my deal, it's your deal. And you settled it. So, we're here at an enforcement stage because something's not going right here.[...] So, I'm going to find you in contempt for not making regular consistent payments of child support<sup>[1]</sup> and for not being in compliance with the agreement that you made. Now, how do we remedy this so you don't have to come back again? Alright. So, here's what I'm going to do: [...] the [\$149] as part of your sanction for the contempt finding must be paid through [Wife's counsel's] office within fifteen (15) days. Borrow it from some place, but it's not dependent on the military pay system one way or the other.

*Id.* at 47-48. After soliciting input from the parties, the court ordered Husband to set up an automatic monthly transfer from his bank account to Wife's bank account, as well as to make an additional payment of \$475, “which will be an ongoing credit in that account, so that these kind of mix-ups, and mistakes, and misunderstandings don't happen again.” *Id.* at 51. The court also ordered Husband to pay \$1,250 within sixty days to Wife's counsel's office “toward

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<sup>1</sup> Contrary to Husband's suggestion on appeal, this reference to child support was clearly inadvertent.

attorney's fees for having to collect.” *Id.* at 52. The order was reduced to writing, and this appeal ensued.

## Discussion and Decision

[7] Husband argues that the trial court erred in holding him in contempt. “Contempt of court involves disobedience of a court which undermines the court’s authority, justice, and dignity.” *Indy Diamond, LLC v. City of Indianapolis*, 132 N.E.3d 417, 424 (Ind. Ct. App. 2019) (quoting *S.W. ex rel. Wesolowski v. Kurtic*, 950 N.E.2d 19, 21-22 (Ind. Ct. App. 2011)). “Contempt falls into two categories—direct and indirect. Whereas direct contempt involves actions occurring near the court and of which the court has personal knowledge, indirect contempt involves actions outside the court’s presence and personal knowledge.” *Id.* (citation omitted). “A person who willfully disobeys a lawfully issued court order is guilty of indirect contempt.” *Id.* (citing Ind. Code § 34-47-3-1). Here, the order in question is the court-approved mediation agreement between Husband and Wife.

[8] Indiana Code Section 34-47-3-5 provides,

(a) In all cases of indirect contempts, the person charged with indirect contempt is entitled:

(1) before answering the charge; or

(2) being punished for the contempt;

to be served with a rule of the court against which the contempt was alleged to have been committed.

(b) The rule to show cause must:

(1) clearly and distinctly set forth the facts that are alleged to constitute the contempt;

(2) specify the time and place of the facts with reasonable certainty, as to inform the defendant of the nature and circumstances of the charge against the defendant; and

(3) specify a time and place at which the defendant is required to show cause, in the court, why the defendant should not be attached and punished for such contempt.

(c) The court shall, on proper showing, extend the time provided under subsection (b)(3) to give the defendant a reasonable and just opportunity to be purged of the contempt.

(d) A rule provided for under subsection (b) may not issue until the facts alleged to constitute the contempt have been:

(1) brought to the knowledge of the court by an information; and

(2) duly verified by the oath of affirmation of some officers of the court or other responsible person.

“If no rule to show cause is issued in compliance with this statute, a court *may* lack the authority to hold a person in contempt.” *In re Paternity of J.T.I.*, 875 N.E.2d 447, 451 (Ind. Ct. App. 2007) (emphasis added). “Strict compliance with the rule to show cause statute may be excused if it is clear the alleged

contemnor nevertheless had clear notice of the accusations against him or her, for example because he or she received a copy of an original contempt information that contained detailed factual allegations, or if he or she appears at the contempt hearing and admits to the factual basis for a contempt finding.” *Id.*

- [9] Husband asserts that the trial court lacked authority to hold him in contempt because it did not issue a rule to show cause. But Wife’s motion to enforce the mediation agreement gave Husband clear notice of the accusations against him, and those accusations were fully litigated at the hearing. More than once, Wife’s counsel mentioned “hav[ing] to file *another* contempt” on the issue of child support, with no objection from Husband. Tr. Vol. 2 at 25 (emphasis added); *id.* at 7, 30. Husband had been subjected to multiple contempt proceedings in this action, and he did not challenge the court’s authority to hold him in contempt when he was at the hearing. “It is well settled that ‘[a] party may not sit idly by, permit the court to act in a claimed erroneous manner, and subsequently attempt to take advantage of the alleged error.’” *Linenburg v. Linenburgh*, 948 N.E.2d 1193, 1197 (Ind. Ct. App. 2011) (quoting *Lumbermens Mut. Cas. Co. v. Combs*, 873 N.E.2d 692, 721 n.28 (Ind. Ct. App. 2007), *trans. denied* (2008)). Clearly, Husband was under no illusions about the nature of the

proceeding, and he cannot now be heard to complain that the trial court lacked authority to hold him in contempt.<sup>2</sup>

[10] Moreover, none of the trial court’s sanctions were contingent on a finding of contempt. The court did not order a fine and/or imprisonment pursuant to Indiana Code Section 34-47-3-6(c), and the court was well within its discretion to enforce the mediation agreement via the payment provisions in its order and its award of attorney’s fees. *See* Ind. Code § 31-15-7-10 (providing that “all orders and awards contained in a dissolution of marriage decree ... may be enforced by” contempt or “any other remedies available for the enforcement of a court order”); Ind. Code § 31-15-10-1(a) (providing that court may order party in dissolution proceeding “to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney’s fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.”); *Piercey v. Piercey*, 727 N.E.2d 26, 31 (Ind. Ct. App. 2000) (stating that trial courts enjoy “broad discretion” in awarding fees). So even if the trial court erred in finding Husband in contempt, it did not err in

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<sup>2</sup> Husband asserts that Wife’s “underlying pleadings merely requested enforcement of the mediation agreement with no reference to contempt.” Appellant’s Br. at 14. Although Wife’s motion does not include the word “contempt,” it does request an award of attorney’s fees “incurred by her as a result of [Husband’s] refusal to comply with court orders[,]” which is contempt. Appellant’s App. Vol. 2 at 36. Husband also asserts that “the Trial Court’s order setting the hearing did not reference contempt.” Appellant’s Br. at 14. Husband is correct, but all relevant chronological case summary entries refer to the hearing as a “Hearing on Direct [sic] Contempt.” Appellant’s App. Vol. 2 at 26-28.



granting Wife relief. Husband makes no other cogent argument, and therefore we affirm.

[11] Affirmed.

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