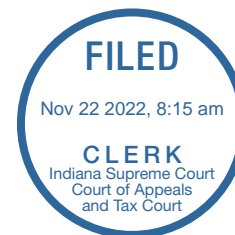


## MEMORANDUM DECISION

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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Carmel, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Brooke Moreland,  
*Appellant-Respondent,*

v.

Todd Williams,  
*Appellee-Petitioner*

November 22, 2022

Court of Appeals Case No.  
22A-DR-708

Appeal from the Marion Superior  
Court

The Honorable Marshelle Dawkins  
Broadwell, Judge

The Honorable Regina Tidwell,  
Magistrate

Trial Court Cause No.  
49D16-1608-DR-28002

**Crone, Judge.**

## Case Summary

- [1] On appeal from an order addressing cross petitions for rule to show cause in a post-dissolution matter, Brooke Moreland (Mother) challenges the trial court's finding of contempt against her plus an award of attorney fees for Todd Williams (Father). The order also required that Father receive makeup parenting time, instituted full parenting time thereafter, set out a default midweek visit, and outlined pickup/drop-off locations. Finding that the court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] Mother and Father married in 2011, had two children (S.T.W. in 2014 and R.B.W. in 2016), then divorced in 2017. Mother was granted sole legal custody of both children and was deemed the primary custodial parent. The parties agreed to deviate from the Indiana Parenting Time Guidelines (IPTG) due to Father's irregular work schedule. Specifically, they agreed in their dissolution decree "to communicate to find the best days/weekends/holidays that [Father] can spend time with [S.T.W. and R.B.W.]." Appellant's App. Vol. 2 at 22. Parenting time was inconsistent. In October 2018, Father filed a petition to modify his parenting time due to new employment resulting in more regular hours. Parenting time continued to be inconsistent.
- [3] In March 2019, following mediation, the parties reached a temporary agreement, which stipulated that Father could exercise parenting time, supervised by his grandmother or other mutually agreeable third party, on

alternating Saturdays from 10:00 a.m. until 6:00 p.m.; that the parties would participate in a parenting time evaluation with the Domestic Relations Counseling Bureau (DRCB); that Father would begin paying \$97 of weekly support; and that the parties would work on determining his arrearage for a final hearing. *Id.* at 32.

[4] The parties completed the DRCB evaluation in September 2019. In October 2019, DRCB submitted a twenty-page report, including a lengthy recitation of Father’s long history of serious mental illness<sup>1</sup> plus detailed recommendations to the court. Of note:

It is recommended [Father] exercise parenting time pursuant to the [IPTG], provided he is mentally stable as confirmed by the results of a mental health assessment and he is actively following through on any recommendations for medication and/or therapy, if any. Until [Father] completes the assessment, obtains results and is compliant with all treatment recommendations including medication and/or therapy, he should continue to exercise supervised parenting time per the current order. [Father] should submit this documentation to [Mother] directly or through her legal representative should she have one. *If [Father] is exercising unsupervised parenting time and experiences a documented psychotic episode such as hospitalization, suicide attempt or mental health decline, then his parenting time should be supervised until which time he becomes stabilized and is compliant with any*

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<sup>1</sup> Per Father’s admission during the DRCB evaluation, he has been “afflicted with mental health problems since he was age sixteen when he experienced a drug induced psychosis.” Appellant’s App. Vol. 2 at 51. He has been “diagnosed with Paranoid Schizophrenia and Generalized Anxiety, has had several inpatient hospital admissions, outpatient counseling and prescribed various medications.” *Id.* He has “a history of inconsistently taking medication and being noncompliant with recommended treatment” and during such times has suffered a decline in mental health. *Id.*

recommended treatment stemming from such an event. Should [Mother] suspect he is experiencing an active psychotic episode, she may request [Father] be assessed by a mental health provider prior to exercising his parenting time. In such an event, once [Father] becomes re-stabilized, he may exercise make up parenting time. Any documentation related to the stability of [Father's] mental health during such occasions should be provided to [Mother]. Once the children can converse by phone, [Father] may exercise phone contact with them biweekly with dates and times to be agreed upon by the parents.

*Id.* at 52 (emphasis added). The DRCB report also noted that per Father, his new wife, and his grandmother, Father had been mentally stable and not taking any medication for approximately one year.

[5] Thereafter, Father completed a mental health evaluation, and the examining clinical psychologist issued a report, which was filed with the court in early November 2019. *Id.* at 55-59. That report recommended that Father participate in therapy “in part to manage the frustrations through the ongoing custody process” and noted that he is “likely to benefit from having a space where his reality testing can be monitored and appropriate treatment recommendations can be made, as he seems motivated to underreport any concerns.” *Id.* at 59. Additionally, the psychologist recommended a psychiatric consult to “gauge whether or not at this time a more medication-based intervention would be appropriate to help promote stability and prevent decompensation.” *Id.*

[6] In February 2020, the court held a hearing and issued an order stating that while Father “has a history of mental health issues and for at least the last two

years has been untreated by medical providers and/or medicines[,]” he has “done well in the last two years with no *incidents of mental health issues*[.]” *Id.* at 61 (emphasis added). As such, the court found that a substantial and continuing change in circumstances had occurred thus entitling Father to “unsupervised Parenting Time with the children on alternating Saturdays from 10 a.m. until 6 [p.m.]” effective in March 2020. *Id.* Further,

9. In the event that this revised schedule is followed and there are no incidents, Parenting Time is to be increased to one Saturday overnight per month effective [in June 2020].

10. In the event that this revised schedule is followed and there are no incidents, Parenting Time is to be increased to full Indiana Parenting Time guidelines effective [in November 2020].

*Id.*

[7] In late April 2021, Mother filed a pro se “Complaint: Impacts to Minor Child’s Education” in which she alleged inter alia that Father was not ensuring that S.T.W. complete homework stemming from his individualized education program. *Id.* at 63-68. She also claimed that Father and she were not communicating well and reiterated his past mental health problems. *Id.* In mid-May 2021, Mother filed a pro se “Complaint: Persuading School Officials to Violate FERPA” in which she alleged that Father and his new wife were attempting to obtain school records of S.T.W. with the goal of placing him in a different school. *Id.* at 69-73. In addition, she rehashed communication

problems and Father’s prior mental illness and requested an update on his mental health. *Id.*

[8] Approximately five days later, Mother submitted two additional pro se filings. The first, titled “Complaint: Refused to Return the Minor Children After Arranged Weekday Visitation,” alleged that Father was not going to return the children during a midweek visit,<sup>2</sup> reiterated communication issues, and again cited Father’s mental illness. *Id.* at 74-87. The second, titled “Complaint: Petitioner Experiencing Active Psychotic Episode; Respondent Requesting Documentation of Stability,” questioned Father’s mental health and reiterated prior communication issues. *Id.* at 88-92. In June 2021, Mother filed a pro se “Complaint: Petitioner Requests No Phone Communication From the Respondent Following Mental Health Court Submission” in which she claimed that Father communicated that Mother not call his phone anymore and she repeated her request for an update of Father’s mental health. *Id.* at 93-97.

[9] The court originally scheduled a hearing in November 2021. However, three filings in early July prompted the hearing to be moved up to August 2021. Father, via counsel, filed an “Emergency Motion for Rule to Show Cause,” citing the February 2020 order, reiterating that his work hours had become

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<sup>2</sup> This episode seemed to stem from Father’s misunderstanding of a school schedule, Mother’s belief that he was having a delusion, and Mother’s call to law enforcement. In the end, the children were returned to Mother’s home within fifteen minutes of the agreed-upon time, while Mother traveled to Father’s home, arriving around the same time as responding officers. The police spoke with the parties, made no arrests, and departed.

more conducive to seeing the children, stating he had experienced no mental health lapses in eight years, and claiming that Mother was improperly keeping the children from him. *Id.* at 98-101. Father sought makeup parenting time, regular parenting time in the future, and attorney’s fees. In response, Mother filed her pro se “Complaint: Petitioner/Petitioner’s Attorney Appearance Perjury in Submitted Court Documents to Persuade Emergency Hearing.” *Id.* at 102-17. Two days later, Mother filed her pro se “Motion for Rule to Show Cause Against Petitioner/Father, Summer Parenting Time, and Parenting Time Per the Indiana Parenting Time Guidelines.” *Id.* at 118-33.

[10] Due to the COVID-19 pandemic, the hearing, which spanned portions of three days, was held remotely. Mother represented herself on the first day, and the presiding magistrate strongly encouraged her, moving forward, to retain legal representation. Mother secured counsel to represent her on the second and third days. Father was represented by counsel all three days.

[11] In October 2021, the court issued an order summarizing the February 2020 order that had amended Father’s prior parenting time to a “phased-in” schedule of eight hours for approximately three months, then overnights for approximately five months, and “if no incidents occurred,” then parenting pursuant to the IPTG. *Id.* at 138. Also, within the October 2021 order, the court denied Mother’s rule to show cause and found in relevant part as follows:

3. The DRCB entered recommendations to the Court, in which Father would exercise parenting time pursuant to the IPTG, provided he is mentally stable as confirmed by the results of a

mental health assessment, and he is actively following through on any recommendations for medication and/or therapy, if any. The DRCB further recommended that if Father experiences a documented psychotic episode, such as hospitalization, suicide attempt, or mental health decline, then his parenting should be supervised until he is stabilized.

4. Father filed an Emergency Petition ... on July 6, 2021 alleging that Mother had withheld visitation with the minor children without legal basis for approximately seven weeks at the time of filing.

5. Mother filed a Rule to Show Cause on July 7, 2021 alleging that Father has voluntarily not arrived for scheduled visitations since May 13, 2021. Mother also alleges that Father was showing signs of psychotic episodes on or about May 13, 2021.

6. Father's testimony and Exhibit 5 demonstrate that Father visited with a healthcare professional on the following dates January 21, 2021; February 19, 2021; March 4, 2021; May 18, 2021 and is currently prescribed and taking Olanzapine as recommended by his treating physician Juan Jaramillo, MD.

7. Dr. Juan Jaramillo stated on May 19, 2021 that Father "keeps scheduled appointments and is following treatment recommendations and his condition is under good control at this point". See Petitioner's EXHIBIT 5.

8. Neither Mother [n]or Father presented any relevant or recent documentation regarding periods of Father's alleged hospitalization or suicide attempts which would preclude immediate visitations with the children pursuant to the [IPTG].



9. The Court, having considered the testimonial evidence presented, including evidentiary exhibits ... [and] having had the opportunity to assess the parties' and witnesses' demeanors and judge their credibility, and having taken the matter under advisement hereby finds and orders as follows:

10. That Mother shall be found in contempt for withholding the two minor children from their Father from May 2021 to August 2021.

11. That Father shall receive makeup parenting time from Mother withholding the children from Father for half the summer of 2021.

12. That Father shall have the minor children for *all* of next summer (2022) to make up for the time that Mother kept the children from their Father during his half of the summer in 2021. The date shall start from the kids['] first day of summer break to the Friday prior to their first day of school in the Fall of 2022.

13. That Father shall resume and continue full parenting time per the IPTG.

14. That Father and Mother shall agree on a midweek visit per the IPTG and if there is no agreement, the default day shall be Wednesdays.

15. That beginning of any visitation for pick up/drop off shall occur at Fire Station 15 and the end of the visitation pick up/drop off shall occur at Fire Station 42.

16. That Mother is ordered to pay \$500 in attorney fees for this contempt action, due to Father's Counsel within sixty (60) days of the signed court order.

*Id.* at 138-40.

[12] In November 2021, Mother, by counsel, filed three motions. The first was a “Verified Information and Motion for Rule to Show Cause,” alleging that Father had the children baptized, took them to a doctor, and attempted to enroll them in educational programs, all without consultation with Mother, who has primary physical custody and sole legal custody of the children. *Id.* at 142-44.<sup>3</sup> Contemporaneously, Mother filed her “Motion for Change of Judge” to replace the magistrate who had presided over the case throughout 2021. *Id.* at 145. Three days later, Mother filed her “Motion to Amend Findings and Judgment and Motion to Correct Errors.” *Id.* at 146-55. The court granted Mother’s motion for change of judge, and Judge Marshelle Dawkins Broadwell was appointed special judge. In February 2022, Mother, by counsel, filed a request for a hearing regarding the motions she filed in November 2021.

[13] On the last day of February, Judge Broadwell issued an order denying the request for a hearing and explaining:

There is no valid issue to set for hearing in this cause. The parties may not use a change of judge to simply obtain a “do-over” on a matter decided by Mag. Tidwell as a way to circumvent filing an appeal.

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<sup>3</sup> In March 2022, Mother filed an “Amended Verified Information and Motion for Rule to Show Cause” regarding these new allegations. Appellant’s App. Vol. 2 at 170-71. The parties were ordered to submit the new allegations for mediation; hence, the new allegations are not a part of the current appeal. *Id.* at 19.

It is inappropriate for Judge Broadwell to reconsider or rule on a motion to correct errors related to a matter fully heard by another judicial officer, as that is not a proper use of a Change of Judge Motion. The parties may choose to appeal the prior ruling.

*Id.* at 160. Mother, by counsel, immediately filed a “Motion to Reconsider Request for Hearing on Pending Motions,” alleging that valid issues necessitating a hearing and asking for clarification as to whether the court denied the “Motion to Amend Findings and Judgment and Motion to Correct Error.” Shortly thereafter, she filed her notice of appeal. *Id.* at 161-63.

## **Discussion and Decision**

[14] Mother asserts that the record does not support a finding of contempt against her for denial of parenting time. She contends that Father’s unsupervised parenting time was conditioned on no “incidents” occurring. She claims that the order did not define “incidents,” and she was merely requesting documentation of Father’s compliance with treatment for severe mental health concerns. Additionally, Mother challenges the award of makeup parenting time and attorney fees because she claims that Father failed to appear for parenting time and that Father and his counsel requested Mother not contact him.

[15] As an initial matter, we note that Father has not filed an appellee’s brief in this appeal. When an appellee fails to submit a brief, we will not develop an argument for the appellee but instead will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error. *Salyer v. Wash. Regular Baptist Church Cemetery*, 141 N.E.3d 384, 386 (Ind. 2020). 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).

[16] Whether a party is in contempt is “soundly within the discretion of the trial court[.]” *Reynolds v. Reynolds*, 64 N.E.3d 829, 832 (Ind. 2016). The trial court has the inherent power to maintain its dignity, secure obedience to its process and rules, rebuke interference with the conduct of business, and punish unseemly behavior. *Id.* (citation and quotation marks omitted). On appeal, we will consider the evidence and all reasonable inferences drawn therefrom that support the trial court’s determination, and we will not reweigh evidence or judge the credibility of the witnesses. *Deel v. Deel*, 909 N.E.2d 1028, 1032 (Ind. Ct. App. 2009). We reverse a trial court’s contempt determination “only if there is no evidence or inference therefrom to support the finding.” *Reynolds*, 64 N.E.3d at 832; *see also Bessolo v. Rosario*, 966 N.E.2d 725, 730 (Ind. Ct. App. 2012) (noting that only when trial court’s decision is clearly against logic and effect of facts and circumstances is reversal of contempt appropriate), *trans. denied*.

[17] Contempt of court generally involves disobedience of a court or court order that “undermines the court’s authority, justice, and dignity.” *Reynolds*, 64 N.E.3d at 832 (citation omitted). Indirect contempt involves those acts committed outside the presence of the court that nevertheless tend to interrupt, obstruct, or prevent the due administration of justice. *Id.* A person who is guilty of any willful disobedience of any process, or any order lawfully issued by any court of

record, is guilty of indirect contempt of the court that issued the process or order. Ind. Code § 34-47-3-1.

[18] Here, the magistrate heard Mother’s characterization of Father as exhibiting concerning behavior and her perception that he failed to show up for his parenting time. Yet, the magistrate also heard testimony from multiple witnesses that painted a different picture outlined as follows. Parenting time arrangements worked “fairly well” from November 2020 through early May 2021. Tr. Vol. 2 at 13. Father asked to keep the children late or overnight on May 13, 2021, but upon learning they had school the following day, he returned them. Father was scheduled to have the children for weekend parenting time on May 20, 2021, but Mother refused to allow it and communicated that his visitation would not resume until he provided documentation about his mental health.

[19] Father sent Mother a May 19, 2021 letter from Dr. Juan Jaramillo stating that he keeps his appointments, follows treatment recommendations, and is under good control of his condition at this point. Although the parties communicated weekly thereafter, Mother would not allow him parenting time and instead stated he was free to call and FaceTime the children. Approximately one week before the August court date, Mother emailed Father asking about fall break visitation. He replied that “of course” he wanted the children for fall break, that she had “held them from” him since May, and that he had been “more than

ready to see them.” *Id.* at 30.<sup>4</sup> And, perhaps the most compelling evidence presented to the court was that Father has not had a schizophrenic episode since November 2014, routinely takes medication, and sees his doctor on a regular basis.

[20] In sum, evidence was presented that Father displayed no recent mental health issues, and yet Mother prohibited him from court-authorized parenting time. This constituted willful disobedience<sup>5</sup> of the court order. Accordingly, the trial court acted within its discretion in entering a contempt finding. To conclude otherwise would be to second-guess the trial court’s assessments of credibility and weighing of evidence, and that is not our role upon appeal.

[21] Having concluded that the trial court did not err in finding Mother in indirect contempt, we turn to address the sanctions imposed. “[I]t is within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of the court’s order.” *Bechtel v. Bechtel*, 536 N.E.2d 1053, 1056 (Ind. Ct. App. 1989). Sanctions in a contempt proceeding “may seek both to

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<sup>4</sup> Even assuming that at some point Father instructed Mother not to call him on his phone, he did not cease communications with her. Given the contentious nature of the relationship between Mother and Father, his attorney may well have advised him to maintain electronic communication with Mother but to direct her phone inquiries to Father’s attorney. Indeed, the court, in its October 2021 order specifying exactly where pickup and drop-off would occur and a default day of the week, seemed to recognize the wisdom in decreasing the number of times that Mother and Father would be required to communicate.

<sup>5</sup> To the extent Mother argues that the term “incident” was unclear and therefore that her disobedience was not willful, we are unpersuaded. Throughout the proceedings, “incident” was used to refer to a mental health issue, such as hospitalization, suicide attempt, or mental health decline. Regardless of any claimed confusion over the term, evidence was presented that when pressed, Father provided Mother with documentation supporting his current mental health. However, she still denied him parenting time.

coerce behavior and to compensate an aggrieved party.” *MacIntosh v. MacIntosh*, 749 N.E.2d 626, 631 (Ind. Ct. App. 2001), *trans. denied*. We review the imposition of contempt sanctions for an abuse of discretion. *Hunter v. State*, 102 N.E.3d 326, 328 (Ind. Ct. App. 2018). We will reverse an award of monetary sanctions to compensate the other party for injuries, such as attorney fees, incurred as a result of the contempt “only when there is no evidence to support the award.” *Witt v. Jay Petroleum, Inc.*, 964 N.E.2d 198, 204 (Ind. 2012).

[22] In the present case, at a minimum, Father’s attorney (1) prepared and filed the July 2021 emergency petition, (2) prepared for, and represented him at, the hearing that spanned portions of three days, and (3) drafted a proposed order. These tasks would not have been necessary absent Mother’s contempt. Accordingly, we find that the court did not abuse its discretion in ordering Mother to pay \$500 toward Father’s attorney fees. Further, the court wisely specified that the payment be sent directly to Father’s counsel.

[23] As for the propriety of awarding Father additional parenting time during the summer of 2022 to make up for the parenting time he was denied the previous summer, the matter is arguably moot at this late date. Nevertheless, given that evidence supported the determination that Mother improperly precluded Father from parenting time from late May 2021 until August 2021, we cannot say that the trial court abused its discretion in fashioning this sanction.

[24] Affirmed.

May, J., and Weissmann, J., concur.