

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Jonathan Russell,
Appellant-Petitioner

v.

Keri Russell,
Appellee-Respondent

March 14, 2024

Court of Appeals Case No.
23A-DC-2344

Appeal from the Dearborn Superior Court
The Honorable Sally A. McLaughlin, Judge

Trial Court Cause No.
15D02-1906-DC-34

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

- [1] Jonathan Russell (“Father”) appeals the trial court’s calculation of his child support arrearage owed to Keri Russell (“Mother”). Father argues that the trial court erred when it calculated his child support arrearage as \$57.04. We conclude Father has failed to demonstrate that the trial court’s calculation is clearly erroneous. Accordingly, we affirm.

Issue

- [2] Father raises one issue, which we restate as whether the trial court’s child support arrearage calculation was clearly erroneous.

Facts

- [3] Father and Mother were married in 2007, and they had two children. In June 2019, Father filed a petition for dissolution of marriage. The trial court entered a provisional order in which the parties agreed that, in lieu of paying child support, Father would pay certain debts during the pendency of the proceedings. In the final dissolution decree issued on August 11, 2021, the trial court ordered Father to pay child support of \$194 per week beginning on August 20, 2021.¹

¹ The parties filed motions to correct error, and the trial court later issued an order, which did not impact the child support obligation calculation.

- [4] On August 13, 2021, Father filed a petition to modify child support due to his loss of employment, and the trial court granted the petition in January 2022. The trial court ordered that Father pay \$44 per week retroactive to August 31, 2021.
- [5] In February 2022, Mother filed a petition to modify child support due to Father's new employment. In March 2022, the parties agreed that Father's child support would be modified to \$171.12 per week effective March 18, 2022.
- [6] On February 14, 2023, an income withholding order was issued, and on March 13, 2023, the trial court calculated Father's child support arrearage to be \$838 as of March 3, 2023.
- [7] In April 2023, Mother and the State of Indiana, by the Dearborn County Title IV-D prosecutor, as intervenor, filed a petition to modify Father's child support. The trial court held a hearing on the petition on July 27, 2023. Although several other motions were also pending, the only issue addressed at the hearing was Father's child support arrearage. Mother and the Dearborn County Prosecutor's Office presented a chart and a ledger from the Indiana Support Enforcement Tracking System ("ISETS") demonstrating that Father had an arrearage of \$313.72 as of July 25, 2023. Father, who was pro se, however, contended that he was current on his child support and that the alleged arrearage was a "timing" issue with ISETS because his payments were not being immediately processed and posted to ISETS. Tr. Vol. II p. 7.

[8] On August 18, 2023, the trial court granted each party ten days “to file an entry with supporting documents for the purpose of determining [Father’s] arrearage, if any, as of the date of this Order.” Appellant’s App. Vol. II p. 90. The State filed documents demonstrating that Father’s arrearage on July 25, 2023, was \$313.72, and that his arrearage on August 22, 2023, was \$57.04. Father submitted his email exchange with the Dearborn County Prosecutor’s Office and contended that he was current on his child support as of July 10, 2023, and that further payments were timely because they were made through the income withholding order. Thus, Father argued that he was current on his child support obligation.

[9] On September 5, 2023, the trial court entered findings of fact and conclusions thereon as follows:

1. Petitioner owed the sum of \$800.38 as of March 3, 2023. (Exhibit A – Arrearage Calculation by IV-D - submitted into evidence on July 27, 2023)

2. Petitioner’s last payment prior to the July 27, 2023 Hearing was July 18, 2023. (Exhibit B - ISETS printout from July 27, 2023 - submitted into evidence on July 27, 2023)

3. Petitioner failed to make any child support payments for significant periods of time, including from September 29, 2022 to November 14, 2022, December 9, 2022 to January 2, 2023, and January 24, 2023 to February 26, 2023. (Exhibit B – ISETS printout from July 27, 2023 - submitted into evidence on July 27, 2023)

4. That Petitioner still owed an arrearage amount in the sum of \$313.72 as of July 25, 2023. (Exhibit C - Arrearage Calculation by IV-D - submitted into evidence on July 27, 2023; See also, Notice of Filing of Supporting Documents Regarding Child Support Arrearage filed on August 22, 2023, and attached hereto as Exhibit 1)

5. That Petitioner still owed an arrearage amount in the sum of \$57.04 on August 22, 2023. (See, Notice of Filing of Supporting Documents Regarding Child Support Arrearage filed on August 22, 2023, and attached hereto as Exhibit 1)

6. All other outstanding issues in this matter, including out-of-pocket health care expenses owed by Petitioner for 2021 and 2022, payment of Petitioner's share of the bill to Dr. Elder, attorney's fees concerning child support and out-of-pocket health care expenses that were not up to date by hearing on July 27, 2023, child support modification, and Respondent's Verified Petition for Rule to Show Cause and Request for Sanctions with respect to Nonpayment of Expenses due to Parenting Coordinator is set for hearing on December 14, 2023 at 9:00 a.m.

Appellant's App. Vol. II pp. 26-27. Father now appeals.

Discussion and Decision

[10] Father argues that the trial court erred in calculating his child support arrearage.² “[A] trial court’s calculation of child support is presumptively

² Mother argues that we should dismiss this appeal because the child support arrearage order is not a final judgment. Although Father’s Notice of Appeal asserts that the trial court’s order was a final judgment, the order did not dispose of all issues. See Ind. Appellate Rule 2(H) (defining “final judgment”). We have held, however, that a child support order is an order for the payment of money pursuant to Indiana Appellate Rule

valid.’” *Bogner v. Bogner*, 29 N.E.3d 733, 738 (Ind. 2015) (quoting *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008)). “Upon review of a modification order, ‘only evidence and reasonable inferences favorable to the judgment are considered.’” *Id.* (quoting *Kinsey v. Kinsey*, 640 N.E.2d 42, 44 (Ind. 1994)). The order will only be set aside if clearly erroneous. *Id.* Clear error is error that which “leaves us with a definite and firm conviction that a mistake has been made.” *Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015).

[11] Because neither party filed a written request for findings of fact and conclusions thereon, the trial court’s findings of fact are controlling only as to issues they cover. *In re Adoption of I.B.*, 32 N.E.3d 1164, 1169 (Ind. 2015). “We limit our review of those matters to whether the evidence supports the findings and then whether the findings support the judgment, reversing the findings only if they are clearly erroneous.” *Id.* “On all other matters, the general-judgment standard applies, and we will affirm on any legal theory supported by the evidence.” *Id.* The trial court’s conclusions of law and any constitutional challenges are reviewed de novo. *Id.*

[12] Father argues that the ISETS documentation submitted by Mother was unreliable because ISETS was not processing and recording his checks in a timely manner. Father also asserts, based on his email exchanges with the Dearborn County Prosecutor’s Office, that he was current on his child support

14(A)(1), and is, thus, an interlocutory order appealable as a matter of right. *See Snyder v. Snyder*, 62 N.E.3d 455, 458 (Ind. Ct. App. 2016). Accordingly, we will address Father’s arguments.

as of July 10, 2023, and, thus, had to be current as of the trial court's order on September 5, 2023, because his payments were being processed through an income withholding order.

[13] In support of his arguments, Father relies upon *Richardson v. Hansrote*, 883 N.E.2d 1165 (Ind. Ct. App. 2008), in which this Court reversed a trial court's determination that the father had a child support arrearage of \$510 and remanded for a recalculation. We held that no evidence was presented to establish a provisional child support arrearage and that the clerk applied two of the father's payments to another parent's records. In doing so, we noted that the timing of child support payments made pursuant to an income withholding order was beyond the father's control. Further, "the clerk is not charged with calculating arrearages;" "the clerk occasionally makes mistakes;" and "the records are not conclusive and are subject to impeachment." *Richardson*, 883 N.E.2d at 1174.

[14] *Richardson*, however, is not persuasive here. Here, the documentation submitted by Mother and the Dearborn County Prosecutor's Office demonstrated that Father failed to pay child support from February 2022 through June 2022 and again in October 2022, resulting in an arrearage. The income withholding order went into effect in February 2023, and Father made extra payments, which reduced his arrearage. According to Mother's chart and the ISETS documentation, as of August 22, 2023, Father's arrearage was \$57.04. Father, however, submitted emails from the Dearborn County

Prosecutor's Office to claim that he was current on his child support as of July 10, 2023, and as of the trial court's order.

- [15] Both Mother and Father submitted evidence regarding Father's alleged child support arrearage. Other than a minor issue with the timing of the processing of some payments through ISETS, Father has not identified any errors in the ledger. Any discrepancies between the evidence presented by Mother and Father's emails with the Dearborn County Prosecutor's Office regarding the arrearage were for the trial court to weigh. On appeal, we cannot reweigh the evidence. Accordingly, we conclude that Father has failed to demonstrate clear error in the trial court's calculation of a child support arrearage of \$57.04 on August 22, 2023.

Conclusion

- [16] Father has failed to demonstrate that the trial court's child support arrearage calculation is clearly erroneous. Accordingly, we affirm.
- [17] Affirmed.

Mathias, J., and Weissmann, J., concur.

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