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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN RE: THE MARRIAGE OF L.S.G., | ) | |
| Appellant/Respondent, | ) | |
| vs. | ) | No. 15A01-0905-CV-223 |
| R.A.B., JR., | ) | |
| Appellee/Petitioner. | ) | |

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable Carl H. Taul, Special Judge
Cause No. 15C01-9903-DR-73

**October 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Appellant/Respondent L.S.G. ("Mother") appeals from the trial court's orders in favor of Appellee/Petitioner R.A.B., Jr. ("Father") regarding various custody, contempt, and support issues. Mother raises numerous issues on appeal, which we restate as follows:

I. Whether the trial court's April 7, 2009 order regarding custody and support issues is clearly erroneous;
II. Whether the trial court abused its discretion in finding Mother in contempt for non-payment of child support; and
III. Whether the trial court abused its discretion in ordering Mother to pay $2500 of Father's attorney's fees.

We affirm.

## FACTS AND PROCEDURAL HISTORY

Mother and Father are the parents of B.B., born February 20, 1991, and J.B., born October 17, 1995 (collectively "the children"). The parties' marriage was dissolved on March 9, 2004. Pursuant to their divorce agreement, Mother and Father shared both legal and physical custody of the children.

On February 8, 2007, the trial court awarded primary physical custody of the children to Father with Mother receiving parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court also ordered that Mother pay eighty dollars per week in child support. On March 12, 2007, Mother challenged the trial court's order that she pay eighty dollars per week in child support by filing a motion to correct error. Following the cancellation or postponement of a number of scheduled hearings, Mother's motion was deemed denied.

During all periods relevant to this appeal, Mother failed to make consistent child support payments. In light of Mother's failure to pay child support, on January 16, 2008,

Father requested that the trial court find Mother in contempt of the trial court's child support order. On March 14, 2008, Mother requested that the trial court modify the February 8, 2007 custody order. Mother subsequently requested that the trial court find Father in contempt.

On April 3, 2009, the trial court issued an order providing that Father would retain physical custody of J.B. and that B.B., who had recently reached the age of majority, could continue to live with Mother. The trial court's order adjusted the parties' child support obligation accordingly. The trial court's order also denied Mother's request that Father be found in contempt, and ordered Mother to pay $2500 of Father's attorney's fees. On May 22, 2009, the trial court issued an additional order in which it found Mother in contempt for her willful failure to pay child support. Mother now appeals.

## DISCUSSION AND DECISION

### I. Whether the Trial Court's April 3, 2009 Order Regarding Custody and Support Issues is Clearly Erroneous

Mother contends on appeal that the trial court's April 3, 2009 order regarding custody and support issues is clearly erroneous. Specifically, Mother claims that the trial court erred in denying her request for a "physical custody modification of the [c]hildren." Appellant's Br. p. 11. Mother also claims that the trial court erred in "not modifying and/or correcting" her weekly child support obligation under the February 8, 2007 order. Appellant's Br. p. 27. Initially, we note that where, as here, the trial court has entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, "we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment." *Staresnick v. Staresnick*, 830 N.E.2d 127, 131 (Ind. Ct. App. 2005).

> The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. We review conclusions of law *de novo*.

*Id*. (citations omitted).

### A. Custody

Indiana Code section 31-17-2-21 (2007) provides that a trial court may not modify a child custody order unless the modification is in the best interests of the child *and* there is a substantial change in one or more of the following factors: (1) the age and sex of the child; (2) the parents' wishes; (3) the child's wishes, with more consideration being given to the child's wishes if the child is at least fourteen years of age; (4) the child's interaction and interrelationship with his parents, sibling, and any other person who may significantly affect the child's best interests; (5) the child's adjustment to his home, school, and community; (6) the mental and physical health of all of the individuals involved; (7) evidence of a pattern of domestic or family violence by either parent; and (8) evidence that the child has been cared for by a *de facto* custodian. *See also* Indiana Code section 31-17-2-8 (2007).

#### 1. B.B.

With respect to the parties' daughter, B.B., the trial court found that "B.B. reached the age of 18 on February 20, 2009. Since she is no longer a minor, nor incapacitated, and the 'child' wishes to remain with [Mother], the Court awards physical custody to [Mother]." Appellant's App. p. 16. The trial court noted that while issues relating to the custody of B.B.

were moot, the evidence demonstrates that B.B. had shown a marked improvement in her school attendance and grades while in Father's custody. Appellant's App. pp. 17-18. The trial court concluded that with respect to custody issues, the court "has continuing jurisdiction over the children [only] until they reach [the age of] majority, *State ex rel, Werthman v. Superior Court*, 44[8] N.E.2d [680] (1983); *State ex rel Mead v. Marshall Superior Court No. 2*, 444 N.E.2d 87 (Ind. App. 1994)." Appellant's App. p. 24. Although it is undisputed that B.B. showed a marked improvement at school during the time when she resided with Father, B.B. reached the age of majority upon her eighteenth birthday on February 20, 2009, and wishes to continue living with Mother. Therefore, we cannot say that the trial court's judgment is clearly erroneous with respect to the custody of B.B.

**2. J.B.**

With respect to the parties' son, J.B., the trial court made the following factual findings:

> 9. [J.B.] has flourished under [Father's] care and the Court does not find any substantial change in any circumstance that warrants modification of the current custody order as it relates to [J.B.] The Court finds that it is in the best interest of [J.B.] to remain in [Father's] primary physical custody.
> 10. Specifically, near the time of the last custody hearing, [J.B.] had just finished fourth grade and was into the second quarter of his fifth grade. Exhibit 13 reflects 24 absences during fourth grade. Exhibit 14 reflects another 10.5 absences and 5 tardies through the second quarter of fifth grade. When [Father] was awarded primary physical custody, [J.B.] had just 4 absences and 1 tardy for the remainder of the year.
> 11. In sixth grade, [J.B.] had just one half day of absence and no tardies. The pattern continued in the seventh grade.
> 12. According to the testimony of [J.B.'s] teachers, [J.B.] has been diligent, prepared, and is making progress within his individualized education program (IEP) despite his limitations. [Father] has been and remains actively involved

with [J.B.'s] school progress. He regularly attends the parent/teacher conferences and has been involved with the IEP program.

13. On the other hand, [Mother] has elected not to be involved in the IEP program. Further, she would not attend parent/teacher conferences. [Mother] blames both [Father] and school for not permitting her to become more involved.

14. Carol Hester ([J.B.'s] teacher), Jamie Herbert ([J.B.'s] school counselor), and, Christina M. Vennemeier ([J.B.'s] principal) all confirmed [Father's] support and attitude toward [J.B.'s] education. None could corroborate [Mother's] position that the school was to blame for her inability to participate. To the contrary, [Mother's] decision not to become involved may be related to an incident wherein [Mother] swore at Ms. Vennemeier and had to be asked to leave the premises by school security. Ms. Vennemeier confirmed the incident, which is more fully described in Exhibit 6.

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17. Another issue at the time of the last custody hearing was that of over medication/doctor shopping. Exhibit 16 reflects the extent of medication being prescribed to [J.B.] through doctors selected by [Mother].

18. The issue became so pronounced that the children's lifelong pediatrician refused to continue to treat them.

19. [Mother] sought and received prescriptions from a couple of doctors who refused to communicate or cooperate with [Father]. One of these physicians was later arrested for selling drugs in Cincinnati.

20. When [Father] received primary physical custody, he successfully weaned [J.B.] from these drugs. To date, [J.B.] does not need nor is prescribed Zoloft, Ritalin or Concerta.

21. [Father] also testified that he continued with counseling for both children as ordered in February, 2007. Counseling continued with school counselors and Dearborn County Community Mental Health until it was no longer necessary.

22. Based upon the testimony of the parties, witnesses and exhibits received into evidence, the Court finds [Father] has placed a high emphasis on school attendance; has been actively involved and has a good working relationship with [J.B.'s] teachers and staff; and, he is committed to [J.B.'s] continued success.

23. [Father] has also tended to [J.B.'s] health needs and has been and continues to be involved with his extra-curricular activities.

24. Having carefully considered the statutory factors set forth in I.C. 31-17-2-8, the Court does not find that the modification is in the best interest of [J.B.] nor has there been a substantial change in one of the statutory factors which makes modification appropriate.

Appellant's App. pp. 16-19. In addition, the trial court drew the following legal conclusions with respect to custody modification:

> 1. I.C. 31-17-2-22 provides the Court may not modify a child custody order unless (1) modification is in the best interest of the child; and, there is a substantial change in one or more of the factors that the Court may consider under section I.C. 31-17-2-8.
> 2. I.C. 31-17-2-8 provides that the court shall determine custody and enter a custody order in accordance with the best interest of the child. In determining the best interest, the Court shall consider all relevant factors, including but not limited to, the child's adjustment to the child's home; school; community and the mental and physical health of the individuals involved.
> 3. The Trial Court must consider all relevant factors, not only those specifically enumerated, *Doubiago v. McClarney*, 659 N.E.2d 1086 (Ind.App. 1995).

Appellant's App. p. 24. In light of these factual findings and legal conclusions, the trial court determined that "[Mother's] Motion to Modify Custody shall be and hereby is denied. Primary physical custody of [J.B.] shall remain with [Father], subject to parenting time in favor of [Mother] according to the Indiana Parenting Time Guidelines which are incorporated by reference." Appellant's App. p. 25.

Upon review, we conclude that the trial court's factual findings relating to J.B. are supported by the record. Exhibits 13, 14, and 15 demonstrate J.B.'s school attendance improved dramatically after Father was awarded physical custody of J.B. The testimony of J.B.'s teacher, counselor, and principal indicated that J.B. had become well-adjusted, and despite a few low grades and test scores, had begun to thrive at school while under Father's care. This testimony also indicated that Mother's lack of involvement with J.B.'s education was not a result of any action by Father or school officials. Further, the parties' testimony supported the trial court's findings regarding the substantial amount of medication prescribed

to J.B. while under Mother's care, and J.B.'s apparent lack of need for such medications. The above mentioned exhibits and testimony, when considered along with the statutory considerations pertaining to a custody modification, support the trial court's determination that a modification of the custody order would not be in J.B.'s best interest. Therefore, the trial court's order is not clearly erroneous insofar as it relates to the physical custody of J.B. Mother's challenge to the trial court's custody determination relating to J.B. effectively invites us to reweigh the evidence on appeal, which we decline to do. *See Staresnick*, 830 N.E.2d at 131.

**B. Child Support Obligation**

Mother contends that the trial court's order relating to her child support obligation is clearly erroneous in two respects. First, Mother claims that the trial court's order is clearly erroneous because it does not address the alleged error of the February 8, 2007 support order or Mother's subsequent motion to correct error filed in response to the February 8, 2007 support order. Mother next claims that the trial court's order is clearly erroneous because it denied Mother's request that the trial court amend the February 8, 2007 support order nunc pro tunc. Indiana Code section 31-16-8-1(b) (2007) provides that a trial court may modify a child support order only "upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable" or "upon a showing that: (A) a party has been ordered to pay an amount in child support that differs by more than twenty percent 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 months before the petition requesting modification was filed."

The trial court made the following factual findings regarding Mother's request for modification of the February 8, 2007 support order:

> 25. [Father's] income is $1156.33 per week as reflected in Exhibits H and K.
> 26. The cost of [Father's] health insurance premium of $45.22 is reflected in Exhibit 17.
> 27. [Mother] introduced her pay stub and her 2007 tax return as Exhibits H and I. This income is substantially less than what [Mother] represented she earned when she applied for a mortgage. Specifically, while [Mother] testified that she had never earned more than $40,000.00 per year, her mortgage application (Exhibit 10), signed under oath in August, 2004, reflects self-employment income from her cleaning business of $3,310.00 per month.
> 28. [Mother] also testified she did not share expenses with her live-in boyfriend. However, her bankruptcy petition (Exhibit 9), again signed under oath, reflects a sharing of income and expenses.
> 29. [B.B.] has been residing with [Mother] since October 31, 2008.
> 30. Considering all relevant factors, the Court finds it appropriate and in the best interest of the children to use [Father's] Exhibit 19 for child support purposes.
> 31. Exhibit 19 represents a split custody worksheet. It sets forth [Father's] income at $1,156.33 per week; [Mother's] income at $650.00 per week which the Court finds should be, and hereby is, imputed to [Mother] based upon her previous income and the sharing of income and expenses with her live-in boyfriend. This worksheet also addresses the health insurance cost and credits [Father] with credit for overnights pursuant to Indiana Parenting Time Guidelines.
> 32. Effective October 31, 2008, [Father] shall pay to [Mother] as and for child support the sum of $15.48 per week.
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> *** * * ***
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> 37. In [Mother's] Motion to Modify Child Support, she avers that the support order of April 8, 2007 [sic] "may be a Scrivener's error, subject to nunc pro tunc, or a Trial Rule 60(B) motion."
> 38. [Mother] never filed an actual Trial Rule 60(B) motion. The Court finds that a general query that an earlier order "may be subject to a Trial Rule 60(B) motion" does not rise to a level of an actual Trial Rule 60(B) filing.

39. The Court further finds that there was no evidence presented suggesting that the Court's February 8, 2007 Order was the result of a Scrivener's error.
40. The Court further finds that under the authority of *Tyson v. State of Indiana*, 622 N.E.2d 457, 460-61 (1993) that "the Court may not use a nunc pro tunc entry as a way to change a ruling it made, however erroneous, or under whatever mistakes of law or fact such ruling may have been made."
41. In *Johnson v. Johnson*, 882 N.E.2d 223, 229 (Ind.App.2008), the Court was confronted with a similar factual circumstance when the wife's motion to correct error was deemed denied and then later sought to amend her Decree nunc pro tunc. The Court noted that a nunc pro tunc order is:

> "Any entry made now for something that was actually previously done, to have the effect as of the former date. The purpose of a nun pro tunc order is to correct an omission in the record of action that occurred but was omitted though inadvertence or mistake; however, the Trial Court's record must show that the unrecorded act or event actually occurred and a written memorial must form the basis for establishing the error or omission to be corrected by the nunc pro tunc order." *Id.*

The Court also noted that the dilemma that is created when such a nunc pro tunc order is granted. Namely, that by doing so, the other side is stripped of the necessary time by which to challenge such an order.

> "As an aside, we acknowledge that the facts of this case require to choose between the lesser of two evils – either holding that [Wife's] motion was deemed denied and the burden was on her to appeal within 30 days of that denial, or holding that the Trial Court's nunc pro tunc order was valid and retroactively applies to the date of the hearing. If we were to decide that the Trial Court's nunc pro tunc order is valid and retroactively applies to the date of the hearing – May 14, 2007 – [Husband] would have had to file his notice of appeal by June 13, 2007. However, the Trial Court did not issue the nunc pro tunc order until August 1, 2007 or approximately seven weeks after the deadline for [Husband] to file a notice of appeal would have expired. Such a result would be [illogical] and, as our Supreme Court recognized, would effectively amend the deadline in Rule 53.3. While Rule 53.3 may create numerous potholes into which a litigant can stumble, the burden should be on the party seeking to correct the Trial Court's alleged error to preserve its claims…The burden was on [Wife] to pursue an appeal within 30 days after her motion was deemed denied. Because [Wife] did not appeal, we reverse the Court's nunc pro tunc order.." *Id.*

> 42. There is no evidence presented as to how the Court arrived at its Feburary 8, 2007 support order. Other than the actual Order, there are no notes, worksheet, or other written memorial that would permit this Court to conclude that the computation was made in error; was the result of mistake or inadvertence; or, merely reflects a deviation of what the Court intended at that time. Without such a written memorial, the Court does not find it appropriate to modify [Mother's] child support obligation nunc pro tunc to February 8, 2007. Moreover, to do so would deprive [Father] of time to challenge such a ruling.
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> *** * * ***
>
> 44. [Mother's] attitude toward the existing Order and her lack of commitment to the financial support of her children are also relevant factors the Court has taken into account in reaching its decision herein.
>
> 45. The Court also notes that Exhibit D includes the checks drawn on a joint account maintained by [Mother] and her live-in boyfriend. This joint account contradicts [Mother's] testimony that there is no sharing of income and expenses with her boyfriend.

Appellant's App. pp. 19-22. In addition, the trial court drew the following legal conclusions with respect to child support:

> 5. I.C. 31-16-8-1 provides that child support may be modified only upon showing a change in circumstance so substantial or continuing as to make the terms unreasonable or upon showing a party that has been ordered to pay support that differs by more than 20% than the amount that would be ordered by applying the support guidelines and the order requests to be modified was issued at least 12 months before the petition requesting modification was filed.
>
> 6. I.C. 31-16-6-6 provides the duty of support shall continue until age 21 unless the child is emancipated or the child is at least 18 years of age and has not attended a post secondary school for four prior months and is capable of supporting himself or herself through employment.
>
> 7. Support guideline 3 provides that regular and continuing payments made by a family member, subsequent spouse, roommates or live-in friend that reduce the parent's cost for rent, utilities or groceries may be a basis for imputing income.
>
> 8. Support guideline 6 addresses the split custody scenario and recommends that the Court compute what each parent would pay to the other and subtract the difference.

Appellant's App. pp. 24-25. In light of these factual findings and legal conclusions, the trial court determined that "Effective October 31, 2008, [Father] shall pay to [Mother] as and for child support of both children the sum of $15.48 per week." Appellant's App. p. 25.

**1. February 8, 2007 Support Order & Subsequent Motion to Correct Error**

To the extent that Mother claims that the trial court's findings are clearly erroneous because said findings do not address the alleged error of the February 8, 2007 support order and the denial of her subsequently filed motion to correct error, we observe that Mother failed to timely challenge the trial court's February 8, 2007 order and the denial of her motion to correct error. The Indiana Supreme Court held that "if the proponent of the motion to correct error fails to timely appeal when it is deemed denied under Indiana Trial Rule 53.3(A), such proponent cannot … later raise the issues presented by its motion to correct error" on appeal. *HomEq Servicing Corp. v. Baker*, 883 N.E.2d 95, 97 (Ind. 2008) (citing *Cavinder Elevators Inc. v. Hall*, 726 N.E.2d 285, 289 (Ind. 2000)). Here, Mother timely filed a motion to correct error within thirty days of the trial court's February 8, 2007 support order. The trial court scheduled a hearing on Mother's motion to correct error for April 5, 2007. Mother, by counsel, filed a number of continuances on said motion, and the last action taken by Mother with regard to her motion occurred on April 30, 2007. Mother's motion was deemed denied on or about June 14, 2007. *See* Ind. Trial Rule 53.3 (providing that motion is deemed denied if the court fails to set a hearing on the matter within 45 days). Mother acknowledges that she did not timely appeal either the February 8, 2007 child support order or the denial of her motion to correct error pursuant to Trial Rule 53.3(A). Because Mother

has failed to timely appeal the trial court's February 8, 2007 child support order and the trial court's denial of her motion to correct error pursuant to Trial Rule 53.3(A), we need not consider her challenge on this ground. *See HomeEq Servicing Corp.*, 883 N.E.2d at 97; Ind. Trial Rule of Appellate Procedure 9(A) (providing that a party must initiate an appeal within thirty days after the entry of a Final Judgment, within thirty days after the trial court's ruling on a motion to correct error, or within thirty days after a motion to correct error is deemed denied under Trial Rule 53.3, whichever occurs first).

**2. Nunc Pro Tunc**

Mother claims that the trial court order is clearly erroneous because it denied her request to correct an alleged scrivener's error found in the February 8, 2007 support order nunc pro tunc. Specifically, Mother claims that the trial court's order contained a scrivener's error, which Mother claims is evidenced by the trial court's order setting her child support obligation at $80 per week rather than the $23.35 claimed to be proper by Mother.

As was noted by the trial court in Factual Finding 41, "a nunc pro tunc order is 'an entry made now of something which was actually previously done, to have effect as of the former date.'" *Johnson v. Johnson*, 882 N.E.2d 223, 227 (Ind. Ct. App. 2008) (quoting *Brimhall v. Brewster*, 835 N.E.2d 593, 597 (Ind. Ct. App. 2005)).

> The purpose of a nunc pro tunc order is to correct an omission in the record of action that occurred but was omitted through inadvertence or mistake; however, the trial court's record must show that the unrecorded act or event actually occurred and a written memorial must form the basis for establishing the error or omission to be corrected by the nunc pro tunc order.

*Id*.

Here, the record supports the trial court's factual finding that no evidence was presented by the parties suggesting that the February 8, 2007 support order was the result of a scrivener's error. No notes, worksheets, or other written materials were submitted relating to the February 8, 2007 support order. Mother has failed to show that the February 8, 2007 support order reflects a deviation of what the trial court determined was appropriate at the time. Again, to the extent that Mother invites us to reweigh the evidence on appeal, we decline to do so. *See Staresnick*, 830 N.E.2d at 131. The trial court's order is not clearly erroneous in this regard.

**II. Whether the Trial Court Abused its Discretion in Finding Mother in Contempt**

Mother next contends that the trial court abused its discretion in determining that she was in contempt for what it found to be her willful failure to satisfy her child support obligation pursuant to the February 8, 2007 support order. The Indiana Supreme Court has held that contempt is available to assist in the enforcement of a child support order so long as the delinquency was the result of a willful failure by the parent to comply with the support order and the parent has the financial ability to comply. *Pettit v. Pettit*, 626 N.E.2d 444, 447 (Ind. 1993). The decision as to whether a party is in contempt is left to the discretion of the trial court. *Emery v. Sautter*, 788 N.E.2d 856, 859-60 (Ind. Ct. App. 2003), *trans. denied*.

"Because the decision as to whether a party is in contempt is left to the discretion of the trial court, we will reverse a trial court's findings only if 'it is against the logic and effect of the evidence before it or is contrary to law.'" *Id.* (quoting *Mosser v. Mosser*, 729 N.E.2d 197, 199 (Ind. Ct. App. 2000)). When reviewing a contempt order, we do not re-weigh the

evidence or judge the witnesses' credibility and will uphold the order unless the record provides us with a firm and definite belief that a mistake has been made by the trial court. *Id.* at 860. The party in contempt bears the burden of demonstrating that her acts were not "willful." *Id.* at 859.

Here, Mother acknowledges that she was aware of the February 8, 2007 support order, and indicates that she chose not to fulfill her court-ordered child support obligation because of her belief that the support order was erroneous. Mother, however, did make sporadic payments of random amounts, none of which was in compliance with the February 8, 2007 support order. As of February 11, 2009, Mother had accumulated an arrearage of over $6600. Despite the fact that Mother made sporadic and random payments, Mother has failed to demonstrate that her failure to comply with her court-ordered child support obligation of $80 per week was not willful.

In addition, the parties presented conflicting evidence regarding Mother's ability to comply with the February 8, 2007 support order. Specifically, the parties presented conflicting evidence and testimony relating to Mother's actual wages earned, and whether Mother's live-in boyfriend shared household expenses. In light of the conflicting evidence presented by the parties regarding Mother's ability to comply with the February 8, 2007 support order, and the trial court's role as the finder of fact, we are not left with a firm and definite belief that a mistake was made by the trial court. Accordingly, we conclude that the trial court did not abuse its discretion in finding Mother to be in contempt of the February 8, 2007 child support order. Further, to the extent that Mother's challenge amounts to an

invitation to reweigh the evidence on appeal, we decline to do so. *See Staresnick*, 830 N.E.2d at 131.

### III. Whether the Trial Court Abused its Discretion in Ordering Mother to Pay a Portion of Father's Attorney's Fees

Mother also contends that the trial court abused its discretion in ordering her to pay $2500 of Father's attorney's fees. Under Indiana Code sections 31-15-10-1 (2007) and 31-16-11-1 (2007), in actions relating to divorce, custody, or contempt matters, a trial court has broad discretion to impose attorney's fees on either party. *Thompson v. Thompson*, 868 N.E.2d 862, 870 (Ind. Ct. App. 2007). We may reverse the trial court's decision only if it is clearly against the logic and effect of the circumstances before the court. *Id.* "The trial court may consider the resources of the parties, the financial earning ability of the parties, and 'any other factors that bear on the reasonableness of the award.'" *Id.* (quoting *Claypool v. Claypool*, 712 N.E.2d 1104, 1110 (Ind. Ct. App. 1999)). The trial court, may also consider any misconduct on the part of either of the parties that creates additional legal expenses not otherwise anticipated. *Id.*

With respect to attorney's fees, Father testified that he had expended approximately $4000 to $5000 defending Mother's various custody, child support, and contempt motions. The trial court found that "[Father] had to spend legal fees in defending [Mother's] motions, including the allegations of contempt. Considering the totality of the matter, the Court finds it reasonable to reimburse [Father] for a portion of these fees." Appellant's App. pp. 23-24. Accordingly, the trial court ordered Mother to pay $2500 of Father's attorney's fees. Appellant's App. p. 25. In light of the circumstances surrounding the instant matter,

including Mother's unsubstantiated allegation that Father was in contempt of the February 8, 2007 custody order, we cannot say that the trial court's order that Mother pay $2500 of Father's attorney's fees is clearly against the logic and effect of the circumstances before the court. Therefore, we conclude that the trial court did not abuse its discretion in this regard.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.