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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

IN RE THE MARRIAGE OF:

LORI WILLIAMS,

Plaintiff/Appellee,

vs.

ROBERT WILLIAMS,

Defendant/Appellant.

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Case No. 122,296

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE SHARON WIGDOR BYERS, SPECIAL JUDGE

AFFIRMED

Timothy D. Beets
MIDTOWN ATTORNEYS, P.C.
Oklahoma City, Oklahoma

For Defendant/Appellant

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Robert Williams appeals to this Court from a decision of the district court finding him guilty of indirect contempt for willfully failing to pay child support.

Upon review, we affirm.¹

¹ The appellee, Lori Williams, did not file an answer brief or enter an appearance in this appeal. However, we note that reversal is never automatic on appellee's failure to file an answer brief. *Needham v. Hays*, 1967 OK 124, ¶ 2, 431 P.2d 441, 443. The trial court's decision is presumed correct until the contrary has been shown by the record. *Hamid v. Sew Original*, 1982 OK 46, ¶ 7, 645 P.2d 496, 497.

BACKGROUND

Lori and Robert married in 1998 and had three children. On January 12, 2016, they were granted a decree of dissolution of marriage. The decree provided that Robert was to pay \$95.48 a month in child support.

On March 14, 2018, a journal entry from the court reflects that Robert's child support obligation was increased to \$843.50 a month, effective as of June 1, 2017. Additionally, the court found that Robert was in arrears for child support from June 2016 through March 2018. The arrearage totaled \$6,856.50 and the court ordered that Robert was to pay the support arrearage over the next forty-eight months in the amount of \$127.45 per month until the arrearage was paid in full. The current and arrearage payment totaled \$970.95 per month.

On June 14, 2019, the court approved the parties' agreed order in which the parties agreed that Robert was guilty of indirect contempt and owed Lori \$2,695.56 for the children's school tuition. The agreed order stipulated that Robert would pay an additional \$100 a month until the tuition arrearage was paid in full.

On November 20, 2019, Lori filed an application for indirect civil contempt, arguing that Robert had failed to pay the \$100 a month towards school tuition arrearage, that he failed to pay his half of the children's current tuition and is in arrears for \$3,404.93, and that he had failed to pay his child support obligation of \$970.95 each month and was now in arrears to Lori the amount of \$5,610.54. Lori requested a trial on the issues.

On November 21, 2019, the court issued Robert an indirect civil contempt citation and set his arraignment for January 15, 2020. It appears that Robert failed to appear on that date and a bench warrant was issued. On October 21, 2021, Robert was picked up and held in county jail. On June 22, 2022, Robert was arraigned, pled not guilty to contempt, and waived his right to jury trial.

On July 5, 2022, Robert filed a motion to modify child support. He alleged that there had been a material and substantial change in circumstances as the parties' oldest child had graduated from college and was employed in the state of Louisiana. Lori filed a response, objecting to any modification.

On August 24, 2022, the court held a hearing on the contempt issues. It does not appear that a transcript of this hearing was made, and in any event, one does not appear in the appellate record. The court found that Robert was not guilty of failure to pay \$100 per month towards tuition arrearage and not guilty of failure to pay his half to the children's current tuition in the amount of \$3,404.93. The court did find, however, that Robert was guilty of failure to pay child support of \$970.95 each month for a total amount of \$5,610.54 plus interest, for a total arrearage of \$11,775.68. Sentencing was deferred and the court requested the parties to submit an agreed purge plan before sentencing.

Robert filed a purge plan to which Lori objected. Robert later filed an amended purge plan on February 16, 2023, which the court approved. On March 27, 2024, Robert filed a motion to purge contempt, amend his income assignment, and determine if he had overpaid his purge plan and child support. On May 31, 2024, the court found that Robert had substantially complied with

the court's purge plan and that he "had fully purged himself of contempt." Robert now appeals the court's decision finding him guilty of contempt for willfully failing to pay child support.²

STANDARD OF REVIEW

"In a contempt proceeding, questions of fact will not be reviewed." *Kerr v. Clary*, 2001 OK 90, ¶ 18, 37 P.3d 841, 845. As a result, we confine our review to questions of law which we examine *de novo*. See *Southon v. Okla. Tire Recyclers, LLC*, 2019 OK 37, ¶ 4, 443 P.3d 566, 568.

ANALYSIS

On appeal, Robert first argues that the court abused its discretion by finding that he willfully failed to pay \$970.95 per month in child support because he was never "ordered to pay \$970.95 per month in child support and had lost his employment." *Brief-in-Chief*, 5. We note as Robert did in his brief that "[t]he maximum amount ever ordered for Child Support was \$843.50. The arrearage payment was \$127.45, and together they equaled \$970.95." Robert's total monthly child support obligation, including current and past due payments, was \$970.95. Thus, while Robert was never ordered to pay \$970.95 per month as a then current support obligation, Robert owed \$6,865.50 in past due child support, which the court ordered to be paid at \$127.45 a month. This arrearage payment for *past due* child support coupled with the *current* obligation at the

² Robert, having never been sentenced, was only able to appeal the order finding him in contempt upon the successful completion of his purge plan. See *Lay v. Ellis*, 2018 OK 83, ¶ 21, 432 P.3d 1035, 1042.

time of \$843.50 per month equaled \$970.95. Thus, the court did not err in determining Robert had previously failed to pay his *total* (present and past due) child support obligation of \$970.95 per month.

Additionally, the record reflects that Robert lost his job in June 2019. He did not file a motion to modify child support at that time. The record reflects that Robert first filed a motion to modify child support in 2022.³ Thus, by suggesting that he should not have been paying \$970.95 a month in total child support due to lost employment, Robert effectively asks us to retroactively modify his child support even though he did not file a motion to modify when his employment changed or take up the matter with the court at the time of his change in circumstances. “It is well settled that a modification of a child support order must be prospective in its application and cannot be retroactive.” *Hicks v. Hicks*, 1966 OK 91, ¶ 14, 417 P.2d 830, 832. Thus, even if Robert was entitled to a reduction in child support based on a change in his employment at that time, there is nothing the trial court could do to retroactively change the amount Robert owed prior to the date of his motion to modify.⁴

Next, Robert argues that the court committed reversible error by not modifying his monthly support obligation in its June 14, 2019, order “which failed to include a ‘current child support calculation’ in violation of 43 O.S.

³ In his motion, Robert contended that child support should be modified because the eldest child had graduated from college and was gainfully employed in Louisiana. There is no reference to Robert being unemployed or underemployed at this time.

⁴ Robert’s fourth proposition of error is that the court abused its discretion by failing to acknowledge that he was unemployed or underemployed during the time period for which the court found him to be in contempt. We find that this argument fails for the same reasons addressed in this paragraph.

§ 112.” *Brief-in-Chief*, 5. Title 43 O.S. § 112 provides that when the parties divorce, a court may “modify or change any order whenever the circumstances render the change proper either before or after final judgment in the action.” We note that the June 14, 2019, order was an agreed order. Thus, the court did not commit reversible error by “failing” to modify his monthly support obligation, as Robert agreed to the contents of the order and failed to address or request a modification. The record reflects that Lori had filed a motion to modify custody, visitation, and child support, as well as her application for indirect civil contempt. The court issued the agreed order after a hearing on those issues. The order specifically reads that the court “approves the parties (sic) agreement and finds and orders as follows.” ROA 28. Thus, if Robert wished to have his support obligation modified, he should have filed a motion with the court or conferred with counsel to include a provision in the order modifying his support obligation. Instead, he agreed to an order which did not reference his current monthly obligation in any way. Further, 43 O.S. § 112 makes clear that a court *may* modify or change an order but is not required to do so.⁵

⁵ In his petition in error, Robert argued that the court committed reversible error by failing to follow the divorce decree, “which stated that [Robert’s] child support obligation ‘shall be modified as each child attains the age of majority.’” We find that, “[c]hild support orders may be modified upon a material change in circumstances which includes, but is not limited to ... when one of the children in the child support order reaches the age of majority.” 43 O.S. § 118I. Oklahoma courts have interpreted this provision to mean, “child support is not automatically modified as each child reaches majority Absent specific authorizing language in the decree, a party seeking to reduce child support because one or more of his children has reached majority must request a modification hearing.” *Ward v. Ward*, 2010 OK CIV APP 13, ¶ 11, 231 P.3d 733, 736. The relevant provision of the parties’ decree reads as follows, “[Robert] shall pay child support until the minor children reach the age of majority, or until further order of the Court, provided however, that said child support shall be modified as each minor child attains the majority.” ROA 3. We find this language entitles

Next, Robert contends that the court committed reversible error by finding him to be in arrears for \$11,775.68 “due to the fact that the court did not require a New Child Support Computation in the June 14, 2019, Agreed Order.” *Brief-in-Chief*, 5. Further, he argues that *if* the court had entered a current child support calculation in June of 2019 for \$619.00, he would have eventually overpaid Lori. This argument fails for the same reasons articulated above. The court was not required to include a new child support computation in the absence of a motion to modify, let alone when the order complained of was agreed to by both parties. If Robert wished to modify his child support to \$619.00 a month, he could have moved to do so. Additionally, Robert did not have to agree to the terms in the order, but for whatever reason, decided to present it to the court. Further, as stated above, child support orders are not retroactive. While Robert effectively asks this court to go back and find that he should have only been paying \$619.00 in child support, based on our well-settled caselaw and 43 O.S. §112, we cannot.

Robert also argues that the court abused its discretion by failing to acknowledge that his support payments, which were garnished from his check pursuant to income assignments, were well in excess of any child support order. The first income assignment in the record reflects that Robert’s then-employer was required to deduct \$843.50 per month from his income for current child

Robert to request a modification of child support as his children reach majority, but is not specific enough to merit an automatic termination of child support without notifying the court that a child has reached the age of majority, especially when, as is the case here, there are three minor children and only one has aged out.

support and \$127.45 per month for past-due child support. ROA 24. Pursuant to the court's March 14, 2018, order, this is exactly the amount Robert was required to pay per month in current and past-due child support. ROA 21. The second income assignment, dated July 2, 2019, provides for exactly the same deductions. ROA 33. Thus, we find that because Robert did not move to modify his child support obligation until 2022, years after these two income assignments, the deductions in his paycheck were not in excess of the March 18 order requiring Robert to pay the precise figures that were remitted.

Finally, Robert contends that the court committed reversible error by ordering him to pay an "additional" \$11,775.68 to Lori to purge his contempt while he had "overpaid already" in the amount of \$1,848.74. *Brief-in-Chief*, 14. In its order finding Robert guilty of contempt, the court found that he failed to pay child support of \$970.95 each month for a total of \$5,610.54. The court found that interest was owed, calculated pursuant to 43 O.S. § 114, for a total arrearage of \$11,775.68, with the arrearage period ending on July 1, 2022. While Robert has argued throughout this appeal that he should not have owed \$970.95 per month in child support, due to the reasons articulated above, we find that argument to be without merit.⁶ Thus, we find the court's total calculation based on Robert's failure to pay \$970.95 per month to be correct.

⁶ Robert contends throughout this appeal that he was unemployed or underemployed and as a result, he should have never been required to pay as much as \$970.95 because he could not afford it and any failure to pay was not willful. However, as discussed below, in the absence of any transcript or record of evidence that Robert produced on this issue, we cannot now adequately review whether Robert's failure to pay child support was willful or not or whether his child support obligation should have been that amount in the first

Further, there is no support in the record for Robert's contention that he overpaid Lori in the amount of \$1,848.74. We have no transcript of the May 8, 2024, contempt hearing and therefore have no record of what evidence was presented to the court regarding Robert's child support payments. "It is the duty of the appealing party to procure a record that is sufficient to obtain the corrective relief sought." *Chamberlin v. Chamberlin*, 1986 OK 30, ¶ 7, 720 P.2d 721, 724. This court will not presume error from a silent record, *Hamid v. Sew Original*, 1982 OK 46, ¶ 6, 645 P.2d 496, 497; therefore, in the absence of a record from the hearing, we find that the court did not err in determining that there was no overpayment of child support.

Ultimately, we find that the court did not err in finding Robert guilty of failure to pay child support in the amount of \$970.95 per month, totaling \$5,610.54. While the record reflects that Robert was, perhaps, entitled to modify his child support obligation in 2019 when he lost his employment, when he was subsequently underemployed, or when his oldest child aged out, for reasons unclear to this Court, Robert did not move to modify his child support obligation until 2022. In the absence of such a motion, this Court cannot retroactively modify Robert's support obligation and in turn cannot find error in the decision finding him in indirect contempt for failure to pay child support and arrearage

instance. See *Chamberlin v. Chamberlin*, 1986 OK 30, ¶ 7, 720 P.2d 721, 724. Further, to the extent Robert has presented the question of whether he was actually able to afford the payment, he presents a factual matter that is not reviewable in this context. *Kerr v. Clary*, 2001 OK 90, ¶ 18, 37 P.3d 841, 845 ("In a contempt proceeding, questions of fact will not be reviewed.").

as contemplated by the March 14, 2018, order of the court and the June 14, 2019, agreed order.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

October 1, 2025