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APPELLANT PRO SE:

**A.T.S.**

Durham, North Carolina

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MARRIAGE OF )  
 )  
A.T.S., )  
 )  
Appellant-Respondent, )  
 )  
and ) No. 20A05-1008-DR-564  
 )  
B.K.T., )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable George W. Biddlecome, Judge  
Cause No. 20D03-0301-DR-11

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**September 1, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Pro-se appellant A.T.S. (“Mother”) appeals the grant of a motion to correct error regarding the amount of child support arrearage payable by B.K.T. (“Father”) and also appeals the denial of her post-hearing “Petition to Transfer,” which sought transfer from Elkhart County, Indiana to Durham County, North Carolina. We affirm the orders but remand with instructions to conduct a hearing upon Mother’s allegation that Father is in contempt of court for failure to pay a property settlement judgment.

## **Issues**

Mother has presented multiple issues, which we consolidate and restate as the following three issues:

- I. Whether the trial court abused its discretion in the calculation of child support arrearage upon motion to correct error;
- II. Whether the trial court failed to address or set for hearing Mother’s allegation that Father was in contempt of court for failure to pay a property settlement judgment; and
- III. Whether the trial court lacked continuing jurisdiction and was obligated to grant Mother’s petition for transfer.

## **Facts and Procedural History**

Mother and Father were divorced on March 26, 2001 and Father was ordered to pay child support for their three children in the amount of \$101.02 weekly. Subsequently, the parents agreed to a modification of Father’s child support, effective March 11, 2005, to \$200 weekly plus 30% of bonuses.<sup>1</sup> On August 18, 2006, upon finding that Father had not paid

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<sup>1</sup> Chrysler reported to the trial court that Father had received 2004 and 2005 profit sharing payments and was

child support on bonus income, the trial court modified Father's child support obligation to \$327 weekly (\$251.35 based upon Father's wages and \$75.65 based on imputed income, a "30 percent increase due to failure to pay bonus monies"). (App. 70.)

At some point, Father's adoption of the eldest child was set aside. However, the existing order for child support was not contemporaneously modified; pursuant to the in-gross order, child support continued to accrue at \$327 per week.<sup>2</sup> Father unilaterally elected to pay a lesser amount. Each of the parents, at various times, requested child support modifications that were not granted. In particular, Father had a history of failing to appear in court to offer evidence in support of his petitions to modify. Mother, acting pro-se, was found by the trial court on at least one occasion to have failed to offer evidence to support her petition for modification. The last modification was effective July 1, 2009, when child support was reduced to \$238 weekly (based upon two dependent children). By that time, a substantial arrearage had accrued.

At a hearing on July 31, 2009, at which both parents appeared, Father advised the trial court that he was no longer employed at Chrysler but acknowledged receiving a lump-sum retirement payment in the amount of \$65,000. Mother claimed that Father's arrearage was \$12,802.91 and the trial court ordered Father to deposit that amount with the clerk pending "hearing evidence on the arrearage." (App. 146.)

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eligible for a 2005 holiday bonus.

<sup>2</sup> When a court enters a child support order in gross, that obligation continues until the order is modified or set aside, or all the children are emancipated or all have reached the age of twenty-one. Whited v. Whited, 859 N.E.2d 657, 661 (Ind. 2007).

On September 4, 2009, the trial court found Father to be in arrears in the sum of \$13,793. On September 25, 2009, the trial court conducted a hearing and ordered Father taken into custody until he paid \$7,500. Additionally, the trial court stated an intention “to revisit the issue of the correct calculation of child support [in November].” (164.) Father filed a motion to correct error. He made a partial payment of child support arrearage and was released from custody. The November hearing was continued and the parties apparently engaged in a settlement conference without success.

On May 14, 2010, a non-recorded telephonic hearing was conducted on Father’s motion to determine arrearage and request for child support modification, as well as Mother’s request that the trial court relinquish jurisdiction and allow pending issues to be heard in North Carolina. The trial court declined to relinquish jurisdiction and scheduled a hearing on pending matters. Father was ordered to provide Mother with evidence of his current residence address.

On June 16, 2010, Mother (pro-se) and counsel for Father appeared for a hearing on Father’s motion to correct error regarding arrearage and his pending petition for modification of child support. Father’s attorney argued that arrearage of \$13,793 was excessive because the calculations had involved an overstatement of Father’s income and mathematical error.

Mother argued that the arrearage should have been calculated using \$327 as weekly support, treating Father’s \$65,000 retirement payment as a “bonus,” and adding 30% of that amount to the child support due. The trial court advised Mother that no evidence of a bonus had been submitted. Father’s attorney conceded that a document existed indicating that

Father had received \$56,000 (as opposed to \$65,000) “attendant to his separation from Chrysler.” (Tr. 37.) However, he argued that the child support award of \$200 weekly plus 30% of bonus income had been modified in 2006 to \$327 weekly.

Father’s attorney advised the trial court that Father’s current income consisted of unemployment benefits. However, Father did not appear to testify regarding his severance from Chrysler or his current income. Accordingly, the trial court declined to modify Father’s child support obligation based upon his alleged decrease in income.

On June 24, 2010, Mother filed her “Motion to Transfer.” (App. 87.) On July 23, 2010, the trial court issued an order providing that Father’s child support arrearage was \$9,695.06. On August 27, 2010, the trial court denied Mother’s “Motion to Transfer.” This appeal ensued.

## **Discussion and Decision**

### **I. Child Support Arrearage**

A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. Williamson v. Williamson, 825 N.E.2d 33, 44 (Ind. Ct. App. 2005). Furthermore, decisions regarding child support generally fall within the sound discretion of the trial court. Quinn v. Threlkel, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006). An abuse of discretion occurs if the trial court’s decision was against the logic and effect of the facts and circumstances before the court or if the court has misapplied the law. Walker v. Kelley, 819 N.E.2d 832, 836 (Ind. Ct. App. 2004).

We first note that Father has failed to file an appellee's brief. When the appellee fails to submit a brief, we need not undertake the appellee's burden of responding to arguments that are advanced for reversal by the appellant. Hamiter v. Torrence, 717 N.E.2d 1249, 1252 (Ind. Ct. App. 1999). Rather, we may reverse the trial court if the appellant makes a prima facie case of error. Id. "Prima facie" is defined as "at first sight, on first appearance, or on the face of it." Id. Still, we are obligated to correctly apply the law to the facts in the record in order to determine whether reversal is required. Mikel v. Johnston, 907 N.E.2d 547, 550 n.3 (Ind. Ct. App. 2009).

At the hearing on motion to correct error, the trial court indicated its willingness to hear arguments as to mathematical error in the calculation of child support arrearage but declined to modify child support retroactively or prospectively. On appeal, Mother asserts that her children have been denied the benefit of Father's increased income because 30% of the retirement/severance payment was not added on to the weekly child support award.

Mother correctly asserts that the Indiana Child Support Guidelines are designed to provide the children as closely as possible with the same standard of living they would have enjoyed had the marriage not been dissolved. Payton v. Payton, 847 N.E.2d 251, 253 (Ind. Ct. App. 2006). To determine whether a child support order complies with the child support guidelines, we need to know the basis for the amount awarded. Walters v. Walters, 901 N.E.2d 508, 513 (Ind. Ct. App. 2009). "Such revelation could be accomplished either by specific findings or by incorporation of a proper worksheet." Cobb v. Cobb, 588 N.E.2d 571, 574 (Ind. Ct. App. 1992). Here, the record on motion to correct error is devoid of sworn

testimony, verified exhibits, or a signed worksheet regarding the parents' current incomes. As noted by the trial court, this may be attributed to Father's lack of in-court appearance and Mother's lack of conducting discovery.

The argument of counsel, Mother's unsworn statements to the trial court, Father's testimony in a prior hearing, and some unverified documents seem to indicate the following factual circumstances. Father was employed by Chrysler for some years and retired or was otherwise separated from employment in 2008. In November of 2008, he received a retirement or severance payment of either \$56,000 or \$65,000 (an amount roughly equivalent to one of his prior years' earnings). Including this payment, Father received \$131,094.35 from Chrysler LLC and \$12,634.82 from Daimler Chrysler Corporation during a "base period" of April 1, 2008 to March 31, 2009. (Resp. Ex. 1.) For a benefit year beginning August 2, 2009, Father was entitled to unemployment benefits (payable through the Ohio Department of Job and Family Services) of \$372 weekly for one year.

Our review of the limited record does not persuade us that the trial court committed error by refusing to calculate arrearage based upon \$327 weekly basic child support plus 30% of \$65,000. First, even assuming that the retirement or severance pay would constitute a "bonus" as contemplated in the 2005 order, the chronological case summary indicates that, on September 22, 2006, Father's child support obligation was modified from \$200 weekly plus 30% of bonuses to an obligation of \$327 weekly. The increased award included imputed bonus income.

Second, it does not appear that the children received a disproportionately small share of Father's income despite the retirement payment (roughly equivalent to one year's earnings). Attendant to his separation from Chrysler, Father apparently received increased income in calendar year 2008 in compensation for decreased income in 2009 and successive years. However, in 2010 the trial court refused to modify child support based upon Father's professed decrease in income (understandably, as Father did not show up to testify). The net effect is that the children are still awarded child support as if Father had continued earning his full wages from Chrysler. We find no abuse of discretion in the trial court's decision on motion to correct error.<sup>3</sup>

## II. Property Settlement Hearing

Mother next contends that she has requested, and not received, a hearing on the issue of whether Father has failed to satisfy a property settlement judgment. On May 26, 2004, the trial court granted a request from Mother that the parties' property settlement agreement be reduced to a judgment. The trial court entered a judgment in favor of Mother for \$4,500. A right to post-judgment interest arises as a matter of statutory law. Johnson v. Johnson, 849 N.E.2d 1176, 1178 (Ind. Ct. App. 2006) (citing Ind. Code § 24-4.6-1-101). On October 19,

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<sup>3</sup> Mother also claims that the trial court should have awarded her interest upon the arrearage. The statute authorizing prejudgment interest on delinquent child support payments affords courts discretionary power. Whited, 859 N.E.2d at 664. Prejudgment interest should be awarded only where damages are readily ascertainable and can be calculated by simple mathematical computation. Id. at 665. Although we find it entirely plausible that Mother has made such a request in years past, she does not provide us with a record citation indicating that the trial court has been asked to evaluate the propriety of an award of prejudgment interest. Accordingly, we find no error on this basis.

2009, Mother filed a Rule to Show Cause,<sup>4</sup> claiming that Father had not paid anything “owed under the Property Settlement Agreement.” (App. 76.) It appears that the subsequent hearings have addressed only child support and not the property settlement. In an effort to conserve judicial resources, we direct the trial court in this instance to treat the Rule to Show Cause as a motion for proceedings supplemental and we remand for a hearing on this issue.

### III. Continuing Jurisdiction

Eight days after the hearing on motion to correct error, Mother filed a motion seeking transfer of jurisdiction over child support matters to North Carolina, where she and the children were reportedly residing since 2007. Whether there exists continuing exclusive jurisdiction to modify a child support order is a question of law reviewed de novo. Lombardi v. Van Deusen, 938 N.E.2d 219, 223 (Ind. Ct. App. 2010).

Indiana Code Section 31-18-2-5 provides:

An Indiana tribunal that issues a support order consistent with Indiana law has continuing, exclusive jurisdiction over a child support order:

(1) if Indiana remains the residence of the:

(A) obligor;

(B) individual obligee; or

(C) child for whose benefit the support order is issued; or

(2) until each individual party has filed written consent with the Indiana tribunal for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

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<sup>4</sup> We recognize that a Rule to Show Cause may be the mechanism used in some courts to enforce payment on a judgment resulting from a court-ordered property division. However, the proper procedure is to request a proceeding supplemental.

Mother asserts that Father is an Ohio resident and that she and the children are residents of North Carolina. The order denying transfer of jurisdiction provided in part:

[T]he court, having reviewed the record herein, now finds and concludes as follows ...

In recent months, Petitioner has made several oral claims to the effect that he has established his residence in the state of Indiana. He has also corresponded with the court using an Indianapolis, Indiana, address as his return address. Transfer of this cause to the state of North Carolina, as is sought by Respondent, is governed by the provisions of Ind. Code § 31-21-5-2. That statute requires, *inter alia*, that the Indiana courts retain jurisdiction over this matter until an Indiana court determines that the child, the child's parents, and any person acting as a parent of the child, no longer has a significant connection with Indiana.

Given the facts recited above, the court is unable to conclude that [Father] is no longer a resident of the state of Indiana, and lacks any significant connection with Indiana.

(App. 43-44.) Mother correctly points out that the residence of the parties is controlling. The trial court focused on "significant connection" as opposed to the statutory requirement of residency. Nonetheless, we cannot conclude, in the absence of a fact-finding hearing as to residency, and given the limited record before us, that the trial court was required to relinquish jurisdiction to North Carolina.

### **Conclusion**

Mother has demonstrated no abuse of the trial court's discretion in its ruling on the motion to correct error. The trial court was not required to relinquish jurisdiction to North Carolina. However, Mother is entitled to a hearing on her Rule to Show Cause regarding the marital property settlement judgment.

Affirmed; remanded for further proceedings.

MATHIAS, J., and CRONE, J., concur.