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ATTORNEY FOR APPELLANT:

DAVID B. MELTON  
Vouga and Melton  
Portage, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE MARRIAGE OF: )  
TODD RICHMOND, )  
 )  
Appellant-Respondent, )  
 )  
vs. ) No. 64A03-0607-CV-328  
 )  
ERIN RICHMOND n/k/a ERIN MAGER, )  
 )  
Appellee-Petitioner. )

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APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable Timothy E. Vojslavek, Temporary Judge  
Cause No. 64D01-0101-DR-536

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October 6, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

## **Case Summary**

Todd Richmond (“Husband”) appeals the trial court’s order holding him in contempt for his failure to comply with its custody, parenting time, child support, and property settlement order. We affirm.

## **Issues**

Husband raises three issues, which we consolidate and restate as follows:

- I. Whether the trial court’s contempt order is improper; and
- II. Whether the trial court abused its discretion in valuing two champagne flutes and a photo album.

## **Facts and Procedural History**

On March 7, 2002, the marriage of Husband and Erin Richmond (“Wife”) was dissolved. Husband and Wife had two minor children. On February 11, 2005, the trial court issued its order on custody, parenting time, child support, and property settlement (“the February 2005 Order”), which provided in relevant part that Husband would pay \$75.70 in weekly child support and Wife would provide health insurance coverage for the children. On September 27, 2005, Wife filed a verified petition to modify parenting time and child support and a motion for mediation. On October 24, 2005, Husband filed a verified petition for rule to show cause alleging that Wife had failed to comply with two provisions of the February 2005 Order.<sup>1</sup> On November 3, 2005, Husband and Wife filed a partial mediation agreement, in which they agreed that Husband would enroll the children in his work-related health insurance program and his weekly child support would decrease to \$70. The mediation

agreement also provided that the following issues remained to be presented to the trial court: Husband's return of Wife's personal property, Wife's request for modification of parenting time, and Husband's rule to show cause. On February 8, 2006, Wife filed a verified petition for contempt citation alleging that Husband had not enrolled the children in his work-related health insurance as agreed, and therefore, because the amount of his child support had been reduced to the extent that Husband was to provide health insurance, he had been paying insufficient child support.

On February 14, 2006, a hearing was held on the petition to modify parenting time and child support, Husband's rule to show cause, and Wife's contempt citation. On March 7, 2006, the trial court issued an order ("the March 2006 Order") denying Wife's petition to modify parenting time and child support and finding Husband in contempt of court for violating the February 2005 Order. The March 2006 Order provides in relevant part the following:

2. [Wife] contends that [Husband] is in contempt of this Court by numerous intentional violations of this Court's Order of February 11, 2005. The Court agrees. The Court hereby finds [Husband] in contempt for intentional violations of this Court's Order dated February 11, 2005, in numerous ways. [Husband] is hereby sentenced to ten (10) days in the Porter county jail. However, imposition of this sentence is withheld so long as [Husband] remains in compliance with this Court's Orders. ....
4. .... [Husband] is hereby ORDERED to return champagne flutes and photo album to [Wife] *in good condition* within fourteen (14) days from the date of this Order, or pay [Wife] Two Hundred Dollars (\$200.00), cash, within the same time period, Two Hundred Dollars (\$200.00) being what the Court finds to be the fair value of the same.

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<sup>1</sup> Husband alleged that Wife had failed to attend a family seminar as ordered and had failed to notify Husband of the children's extra-curricular activities. Appellant's App. at 45.

Appellant's App. at 23-24.

On March 16, 2006, Husband filed a motion to correct error. On March 31, 2006, Wife filed a statement in opposition to motion to correct error. Pursuant to Indiana Trial Rule 53.3, Husband's motion was deemed denied. Husband timely appeals.

### **Discussion and Decision**

Initially, we observe that Wife has not filed an appellee's brief.

When an appellee does not submit a brief, an appellant may prevail by making a prima facie case of error, a less stringent standard. Prima facie, in this context, is defined as at first sight, on first appearance, or on the face of it. The prima facie error rule protects this court and relieves it from the burden of controverting arguments advanced for reversal, a duty which properly remains with counsel for the appellee.

*Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812, 816 (Ind. Ct. App. 2005) (citations and quotation marks omitted).

#### ***I. Contempt***

Husband first challenges the trial court's contempt order.

[I]t is within the inherent power of the trial court to fashion an appropriate punishment for the disobedience of the court's order. The main objective of a civil contempt matter is to coerce action for the benefit of the aggrieved party, not to punish the contemtor. Consequently, in a civil contempt proceeding, imprisonment should be for the purpose of coercing compliance with the order.

*Williamson v. Creamer*, 722 N.E.2d 863, 867 (Ind. Ct. App. 2000) (quotation marks and citations omitted). Penalties designed to compel future compliance with a court order are considered to be coercive and avoidable through obedience. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). Thus, if the court uses imprisonment to coerce the defendant into doing an affirmative act, the court must provide the defendant

with “the key of his prison in his own pocket.” *Moore v. Ferguson*, 680 N.E.2d 862, 865 Ind. Ct. App. 1997) (quoting *Webster v. State*, 673 N.E.2d 509, 512 (Ind. Ct. App. 1996)).

Specifically, Husband asserts that the contempt order is contrary to law because it fails to specify which provision of the February 2005 Order he violated and therefore does not afford him with an opportunity to purge himself of the contempt. While the better practice would have been for the trial court to identify how Husband had failed to satisfy his obligations pursuant to the February 2005 Order, the failure of the trial court to do so here has no bearing on Husband’s ability to purge himself of the contempt. In fact, the trial court clearly stated that Husband’s sentence would be withheld “as long as [Husband] remains in compliance with this Court’s Orders.” Appellant’s App. at 24. Husband does not contend, nor do we believe, that the February 2005 Order is ambiguous or indefinite. *See City of Gary v. Major*, 822 N.E.2d 165, 170 (Ind. 2005) (“A party may not be held in contempt for failing to comply with an ambiguous or indefinite order.”). Thus, the contempt order provides Husband with an opportunity to purge himself of the contempt.

Husband next argues that the sanction imposed for contempt is contrary to law because it is impermissibly broad and punitive rather than remedial in nature. Husband contends: “The [March 2006 Order] fails to condition [his] release upon his compliance with the order upon which the contempt finding was based. In fact, the order conditions his release upon his compliance with all orders of the court.” Appellant’s Br. at 7. We think Husband’s interpretation of the contempt order is inaccurate. The trial court allows Husband to avoid imprisonment if Husband obeys “this Court’s Orders.” Appellant’s App. at 24. The “Court’s Orders” include the February 2005 Order and any order in this cause in effect at the

time of the contempt order. The record before us reveals that the only orders in effect were the February 2005 Order and the March 2006 Order.

In addressing Husband's contention that the contempt sanction is improperly punitive rather than remedial in nature, we find *MacIntosh v. MacIntosh*, 749 N.E.2d 626 (Ind. Ct. App. 2001), dispositive. In *MacIntosh*, the trial court held the wife in contempt for violating the visitation order and imposed, *inter alia*, a two-year-sentence, suspended on the condition that she comply with the general visitation order. We rejected the wife's argument that the sanction was punitive, noting that she could avoid incarceration by complying with the general visitation order, and therefore the effect of the imprisonment was to coerce wife into obeying the trial court's order. In upholding the trial court's order we stated, "The trial court was not precluded from ordering imprisonment as a condition for compliance with its order." *Id.* at 632.

Like the sanction on review in *MacIntosh*, the sanction at issue here has the effect of coercing Husband to obey the February 2005 Order and the March 2006 Order. Husband has the "key to the prison in his own pocket." We conclude that the trial court's contempt order is proper.

## ***II. Valuation***

Husband also argues that the trial court erred in valuing the champagne flutes and photo album at \$200.00.

In a dissolution action, the trial court has broad discretion in determining the value of property, and its valuation will only be disturbed for an abuse of that discretion. So long as there is sufficient evidence and reasonable inferences to support the valuation, an abuse of discretion does not occur. We will not weigh the evidence and will only consider the evidence in

the light most favorable to the judgment.

*Breeden v. Breeden*, 678 N.E.2d 423, 425 (Ind. Ct. App. 1997) (citations omitted). The record reveals that Wife's testimony supports an inference that the champagne flutes have some value. Tr. at 66. Other than that inference, there is no evidence as to the value of the champagne flutes or the photo album in the record before us. The mere inference that the champagne flutes have some value is insufficient to support the trial court's valuation. Therefore, we conclude that the trial court abused its discretion in valuing the champagne flutes and photo album at \$200.00. However, under the totality of circumstances present here, we find such error harmless. Not every error or defect in a ruling or order is ground for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Ind. Trial Rule 61. Given the *significantly* more important issues regarding the parties' parenting of their two children that the trial court's orders address, the value of two champagne flutes and a photo album is minor indeed. In fact, we admonish the parties to set aside their petty differences and concentrate on the wellbeing of their children. Furthermore, the payment of \$200 to Wife, which is required only in the event that Husband does not return the champagne flutes and the photo album to Wife, is de minimis. No further judicial resources should be expended solely for the purpose of determining the value of this personal property. Moreover, Husband had ample opportunity to produce evidence of the value of these items, and his failure to do so constitutes a waiver of this issue. *See Miller v. Miller*, 763 N.E.2d 1009, 1012 (Ind. Ct. App. 2002)("[T]he burden of producing evidence as to the extent and value of the marital assets rests upon the parties to the dissolution proceeding."). Accordingly, we

decline to vacate the portion of the March 2006 Order valuing the champagne flutes and photo album at \$200.00.

Affirmed.

BAKER, J., and VAIDIK, J., concur.