

NOTICE
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2014 IL App (5th) 130439-U

NO. 5-13-0439

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

TIFFANY MICHEL,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Saline County.
)	
v.)	No. 11-D-172
)	
MIKE MICHEL,)	Honorable
)	Todd D. Lambert,
Respondent-Appellant.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Welch and Justice Chapman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Circuit court did not abuse its discretion by finding respondent in contempt of court for failure to pay child support, where the evidence supports the finding that the respondent's noncompliance was willful.
- ¶ 2 The respondent, Mike Michel, appeals the August 7, 2013, order of the circuit court of Saline County that found him in contempt of court for failure to pay child support to the petitioner, Tiffany Michel, as directed in the judgment of dissolution of the parties' marriage, which was entered on November 6, 2012. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 The parties were married on May 4, 2007. Two children were born to the parties during the marriage. On December 8, 2011, Tiffany filed a petition for a dissolution of the marriage. A judgment dissolving the marriage was entered on November 6, 2012. Pursuant to the judgment, as of October 31, 2012, Mike owed Tiffany child support in the amount of \$2,283.33, and he was ordered to pay her \$500 per month in child support. On January 8, 2013, Tiffany filed petitions for rules to show cause against Mike, which alleged, *inter alia*, that Mike had not paid her any child support since the judgment of dissolution was entered. An order was entered on February 14, 2013, ordering Mike to show cause why he should not be punished for contempt of court for disobeying the November 6, 2012, judgment, by failing to pay child support to Tiffany.

¶ 5 The show cause hearing was conducted on April 24, 2013, and was continued to August 7, 2013. Testimony at the hearing was as follows. Mike testified that he has resided in Imperial, Missouri, since he and Tiffany divorced. From 2009 until the end of 2012, Mike owned his own construction and concrete company, through which he repaired roofs, built pole barns, and poured concrete. In 2011, Mike additionally worked at American Coal as a safety inspector, but he testified that he had to quit for health reasons. After the divorce, Mike worked for a concrete company in Desloge, Missouri. Mike testified that, in January 2013, he was working on a roof when he fell 12 feet and landed on his back. He sought medical attention, but he reported that he never recuperated from the pain. He explained that his hips are inflamed, he experiences

shooting pains when he bends over, his hands are numb as a result of carpal tunnel syndrome, and he has pain in his knee when he walks because his right leg is longer than his left leg. Accordingly, Mike testified that he is unable to work in the roofing and concrete industry as he did in the past. He opined that there is no employment that he is capable of performing in his present condition. He added that he lacks a high school diploma and he has not been contacted by employers such as Wal-Mart, Dollar General, Jack in the Box, and Home Depot, with whom he sought employment and submitted applications. He admitted that since January 2013, he had applied for only these four jobs.

¶ 6 Mike testified that he currently lives alone and his rent is \$500 per month, which includes his utilities and home telephone. He mows grass at three rental properties, which are owned by his landlord's father. Mike reported that the mowing amounts to \$600 in labor, \$500 of which is traded for his rent and the remaining \$100 of which he receives in cash. He also receives \$200 per month in food stamps. Based on his financial affidavit, Mike compared his monthly income to his monthly expenses and reported a monthly deficit of \$1,170. He testified that his sister, his mother, and his friends help him make up the difference.

¶ 7 Mike testified that, since the divorce, he made three child support payments in the amounts of \$55, \$60, and \$100. He noted that the \$100 payment was made with funds he received for mowing lawns. He emphasized that those payments were all he could afford, and he attributed his failure to pay child support to poverty and the pain which renders

him incapable of working. He admitted on cross-examination that he smokes a pack of cigarettes every two days but that a friend buys his cigarettes for him. He testified that he no longer has a vehicle because he was unable to make the payments, resulting in his cosigner trading in the vehicle. He added that he has a cell phone, but the bill is paid by a friend. Based on this testimony, the circuit court questioned Mike about his earlier testimony based on his financial affidavit, after which Mike clarified that his only current monthly expenses are his rent and the child support. Mike testified that he applied for social security disability in January 2013 and had undergone a physical examination but had not yet received a determination of eligibility.

¶ 8 Mike testified on cross-examination that shortly before the hearing, he and his friend, Denise, took the children to Meramec Caverns. Mike reported that the walk through the caverns lasted 45 minutes and that although his oldest child, who was five years old, walked by herself, Mike carried his youngest, who was two years old and weighed 55 pounds. He qualified that it caused him pain to carry the child and that they had to stop several times.

¶ 9 Tiffany took the stand and confirmed that Mike was ordered to pay \$500 per month in child support and that he owed her \$2,283.33 when the judgment of dissolution was entered. She testified that he paid \$60 and she had received a document indicating that he had paid \$100 on August 1, 2013. However, contrary to Mike's testimony, Tiffany stated that he had not paid \$55, but she did receive a payment of \$30 in May 2013. She testified that she had received nothing other than those payments, that Mike was eight

months in arrears on child support, and that he still owed the \$2,283.33 as ordered in the judgment of dissolution.

¶ 10 Tiffany testified that Mike informed her that he carried their son the whole time they were at Meramec Caverns. He told her that the boy was heavy and that his arms were sore from carrying him. Tiffany added that Mike did not mention being sore anywhere other than his arms. Mike testified in rebuttal that he spoke to Tiffany on a Saturday after going to Meramec Caverns and that he told her that his arms were sore, but he did not begin hurting elsewhere until the day after his conversation with Tiffany. Regarding child support, Tiffany testified that Mike told her that if he does not pay, neither she nor the courts could change that. Mike denied the same.

¶ 11 The circuit court took the case under advisement and on August 7, 2013, entered an order finding Mike in contempt of court for failure to pay child support. The court further found that his failure to pay was willful and advised him that if he wished to purge his contempt, he must pay Tiffany \$2,500 on or before October 1, 2013, provide proof of application to a minimum of 10 jobs per week, and provide the contact information of his employer, should he be hired. Mike filed a timely notice of appeal.

¶ 12

ANALYSIS

¶ 13 The sole issue on appeal is whether the circuit court erred by finding Mike in contempt of court for failure to pay child support. "The standard of review for contempt orders is abuse of discretion." *Western States Insurance Co. v. O'Hara*, 357 Ill. App. 3d 509, 515 (2005). "An abuse of discretion occurs only where no reasonable person would

take the view adopted by the trial court." *In re Marriage of Moore*, 307 Ill. App. 3d 1041, 1043 (1999).

¶ 14 The failure to pay child support under a court order or judgment is *prima facie* evidence of contempt. See *In re Marriage of Baumgartner*, 384 Ill. App. 3d 39, 62 (2008). "Where the evidence establishes that the payor-parent has failed to make support payments, the burden is on the payor-parent to show that the noncompliance was not willful." *Id.* "Whether the excuse given for noncompliance is valid is a question of fact for the court." *Id.* "Where a cause is tried by a court without a jury, a determination of the credibility of witnesses is committed to the trial court." *Shelby v. Hankerson*, 17 Ill. App. 3d 1040, 1042 (1974). "As a result, where the evidence is conflicting, a court of review will not disturb the trial court's factual findings unless they are against the manifest weight of the evidence." *Id.* "A decision is against the manifest weight of the evidence when the opposite conclusion is apparent or when the ruling is unreasonably arbitrary or not based on the evidence." *In re Marriage of Kendra*, 351 Ill. App. 3d 826, 829 (2004).

¶ 15 In this case, Mike's failure to pay child support is *prima facie* evidence of contempt. See *In re Marriage of Baumgartner*, 384 Ill. App. 3d at 62. In an attempt to show that his noncompliance was not willful, Mike testified that his failure to pay was due to poverty, being injured and unable to work, and also due to the fact that he had received no response from the companies with which he had applied for employment. However, other testimony revealed that a determination of Mike's disability had not yet

been made for him to be eligible to receive social security disability income. Moreover, Mike testified that he mows lawns to pay his rent, he carried a 55-pound child through Meramec Caverns for 45 minutes, and he applied for only four jobs in seven months. As the circuit court aptly noted, this is not a reasonable effort to obtain employment, and no evidence was provided to show that Mike could not mow more lawns to pay child support.

¶ 16 After reviewing the evidence, we cannot find that an opposite conclusion is apparent, nor is the circuit court's finding unreasonably arbitrary or not based on the evidence. Accordingly, the circuit court's finding that Mike's failure to pay was willful was not against the manifest weight of the evidence. See *In re Marriage of Kendra*, 351 Ill. App. 3d at 829. Moreover, we cannot say that no reasonable person would have taken the view adopted by the circuit court in finding Mike in contempt of court for failure to pay child support. Accordingly, the circuit court's order was not an abuse of discretion. See *In re Marriage of Moore*, 307 Ill. App. 3d at 1043.

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, the August 7, 2013, order of the circuit court of Saline County is affirmed.

¶ 19 Affirmed.