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SUPREME COURT
STATE OF OKLAHOMA
NOV 13 2017

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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Petitioner/Appellee,)
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vs.)
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_____)
)
Respondent/Appellant.)

Case No. _____
Tulsa County Case No. _____

Received: 11-13-17
Docketed: _____
Marshal: _____
COA/OKC: _____
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PETITIONER/APPELLEE'S ANSWER BRIEF

APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, OKLAHOMA
CASE NO. _____
THE HONORABLE TAMMY BRUCE

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November 13, 2017

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INDEX

<u>REQUEST FOR DISMISSAL</u>	1
<i>Gowens v. Barstow</i> , 2015 OK 85, 364 P.3d 644	4
<i>Kerr v. Clary</i> , 2001 OK 90, 37 P.3d 841	3
<i>Matter of Estate of Fields</i> , 1998 OK CIV APP 129, 964 P.2d 955	1, 2
OKLA. SUP. CT. R. 1.6	1, 3
OKLA. SUP. CT. R. 1.11	2, 3
OKLA. SUP. CT. R. 1.28	3
<i>Powers v. District Court of Tulsa County</i> , 2009 OK 91, 227 P.3d 1060.....	1
<i>Seifried v. State</i> , 1939 OK 28, 86 P.2d 1008	3
<u>APPELLEE’S SUMMARY OF THE RECORD</u>	4
<u>PROVISIONAL SUMMARY OF THE RECORD</u>	6
<u>STANDARD OF REVIEW</u>	8
<i>Bruner v. Timberlane Manor Ltd. Partnership</i> , 2006 OK 90, 155 P.3d 16.....	9
<i>Chaney v. Chevrolet</i> , 2015 OK CIV APP 55, 350 P.3d 170.....	9
<i>Fent v. Oklahoma Natural Gas, Co.</i> , 2001 OK 35, 27 P.3d 477	9
<i>Harmon v. Craddock</i> , 2012 OK 80, 286 P.3d 643.....	9
<i>In re BTW</i> , 2008 OK 80, 195 P.3d 896	9
<i>Kerr v. Clary</i> , 2001 OK 90, 37 P.3d 841	8, 9
<i>Lerma v. Wal-Mart Stores, Inc.</i> , 2006 OK 84, 148 P.3d 880.....	9
<i>Merritt v. Merritt</i> , 2003 OK 68, 73 P.3d 878.....	8
<i>Parnell v. Parnell</i> , 2010 OK CIV APP 74, 239 P.3d 216.....	9

<i>Routh v. Routh</i> , 1942 OK 371, 130 P.2d 1000.....	9
<i>Seifried v. State</i> , 1939 OK 28, 86 P.2d 1008	8
<i>Watkins v. Watkins</i> , 2007 OK CIV APP 122, 177 P.3d 1114	8

ARGUMENT AND AUTHORITIES

<u>PROPOSITION I</u>	10
-----------------------------------	-----------

**APPELLANT’S ASSIGNMENTS OF ERROR PRESENT ONLY
QUESTIONS OF FACT NOT REVIEWABLE BY THIS COURT**

<i>Kerr v. Clary</i> , 2001 OK 90, 37 P.3d 841	10
--	----

<u>PROPOSITION II</u>	10
------------------------------------	-----------

THE TRIAL COURT’S JUDGMENT IS SUPPORTED BY THE RECORD

<i>Adams v. Hansford</i> , 1928 OK 88, 265 P. 762.....	11
<i>Collins v. Collins</i> , 1995 OK CIV APP 56, 898 P.2d 1316	11
<i>Cooper v. Cooper</i> , 2009 OK CIV APP 73, 220 P.3d 36.....	13
<i>Gowens v. Barstow</i> , 2015 OK 85, 364 P.3d 644	11
<i>Hamid v. Sew Original</i> , 1982 OK 46, 645 P.2d 496.....	13
<i>Huchteman v. Huchteman</i> , 1976 OK 174, 557 P.2d 427	12
<i>McCrary v. McCrary</i> , 1986 OK 49, 723 P.2d 268	11
<i>Muskogee Electric Traction Co. v. Cooper</i> , 1920 OK 327, 193 P. 39	11
OKLA. STAT. TIT. 21, § 566.1.....	11

PROPOSITION III..... 13

**APPELLANT’S ARGUMENT THAT ATM WITHDRAWALS ARE “PROOF” OF
CHILD SUPPORT ACTUALLY PAID TO APPELLEE IS UNTETHERED FROM
FACT AND LOGIC, AND LACKS ANY SUPPORT IN THE RECORD**

PROPOSITION IV..... 14

**APPELLANT’S CHALLENGE TO THE CALCULATION OF THE
ARREARAGE JUDGMENT AMOUNT WAS NOT RAISED AT THE TRIAL COURT
LEVEL AND, THEREFORE, IS NOT PROPERLY PRESERVED FOR APPEAL. NEVERTHELESS,
THE TRIAL COURT’S ESTABLISHMENT OF APPELLANT’S ARREARAGE JUDGMENT IS
SUPPORTED BY THE RECORD AND THE PURGE FEE IS WITHIN STATUTORY LIMITS**

Alonzo v. Alonzo, 1996 OK CIV APP 48, 917 P.2d 101416

Bailey v. Bailey, 1994 OK 6, 867 P.2d 126714

Midland Savings & Loan Co., v. Donohoo, 1937 OK 563, 74 P.2d 114716

OKLA. DIST. CT. R. 8.3.....15

OKLA. STAT. TIT. 12, § 611.....16

Pettit v. American Nat. Bank of Austin, 1982 OK 85, 649 P.2d 52514, 17

Rook v. Rook, 2001 OK CIV APP 119, 34 P.3d 66016

Smith v. Harrod, 1911 OK 192, 115 P. 1015.....16

PROPOSITION V 17

**THE PUBLIC POLICY OF THE STATE OF OKLAHOMA
REQUIRES THE AFFIRMATION OF THE TRIAL COURT’S JUDGMENT**

Aguero v. Aguero, 1999 OK CIV APP 38, 976 P.2d 108817

OKLA. STAT. TIT. 21, § 566.1.....17

OKLA. STAT. TIT. 43, § 112.....17

CONCLUSION.....18

Fent v. Oklahoma Natural Gas, Co., 2001 OK 35, 27 P.3d 47718

In re BTW, 2008 OK 80, 195 P.3d 896.....18

Kerr v. Clary, 2001 OK 90, 37 P.3d 84118

Lerma v. Wal-Mart Stores, Inc., 2006 OK 84, 148 P.3d 880.....18

CERTIFICATE OF SERVICE20

REQUEST FOR DISMISSAL

Pursuant to Rule 1.6 of the Oklahoma Supreme Court Rules, “[a]ny party may seek dismissal of an appeal by motion filed during the preliminary stages of the appellate process *or by request for dismissal included in the answer brief.*” OKLA. SUP. CT. R. 1.6(c)(1) (emphasis added). Motions or requests for dismissal may be entertained at any stage of the proceedings. Grounds for dismissal include “failure to comply with these rules or order of the Court, or other grounds deemed appropriate by the Court.” *Id.*

Appellee asserts multiple grounds for dismissal of Appellant’s appeal. First and foremost, this Court will note the scarcity of material in the Record on Appeal. The parties waived a court reporter at trial of Appellee’s *Application for Citation for Contempt*. Thus, there is no transcript upon which this Court can rely. During the pendency of this appeal, the parties’ submitted Narrative Statements to the Court; however, same were not included in the Record on Appeal. The burden “to produce a record sufficient to review assigned error is on the party assigning the error.” *Powers v. District Court of Tulsa County*, 2009 OK 91, ¶ 10, 227 P.3d 1060. Here, that burden fell to Appellant; yet, no steps were taken to insure that the Narrative Statements were included in the Record.

Similar situations have been addressed by appellate Courts in Oklahoma. In *Matter of Estate of Fields*, the Court of Civil Appeals held that the absence of a stenographic record coupled with the absence of a narrative statement submitted in accordance with Oklahoma Supreme Court Rule 1.30 was fatal to the Appellant’s quest for reversal, stating

We note, however, that the Designation of Record filed by Gaddis indicates that no stenographic record was made at the April 8, 1997 hearing and no narrative statement in accordance with Okla. Sup.Ct. *959 R. 1.30, 12 O.S.Supp.1997, Ch. 15, App. 1, or statement in accordance with Okla. Sup.Ct. R. 1.31, 12 O.S.Supp.1997, Ch. 15, App. 1, is contained in the record transmitted

on appeal. The party appealing has the duty to procure a record sufficient to demonstrate the error of the trial court. *Chamberlin v. Chamberlin*, 1986 OK 30, 720 P.2d 721. In the absence of a complete record, we must presume the trial court did not err. *Hamid v. Sew Original*, 1982 OK 46, 645 P.2d 496.

Matter of Estate of Fields, 1998 OK CIV APP 129, ¶ 12, 964 P.2d 955, 958–59. The situation at hand is identical to that of *Fields* – there is no stenographic record and no narrative statements are contained in the record transmitted to this Court on appeal. Thus, Appellant has not diligently prepared this appeal so as to produce for this Court a record upon which his alleged points of error can be reviewed. As such, his appeal should be dismissed.

In an apparent effort to correct this fatal error, Appellant filed with his *Brief in Support* an *Appendix*. This *Appendix* included various documents, some of which are not included in the Record. In doing so, Appellant clearly violated the Oklahoma Supreme Court Rules. Rule 1.11 expressly prohibits the filing of Appendices except in very specific, enumerated circumstances. OKLA. SUP. CT. R. 1.11(i). None of the circumstances provided by this Rule are present in this matter. Appellee hereby adopts and incorporates by reference the arguments and authorities set forth in her *Response to Appellant's Show Cause Brief and Motion to Strike*, filed October 23, 2017, herein. Appellee further urges this Court to disallow the Appellant from benefitting from a flagrant violation of the Rules of this Court. On this basis, Appellant's appeal should be dismissed. Alternatively, the entire *Appendix*, and all references thereto in his *Brief in Support*, should be stricken and not considered by this Court.

Furthermore, Rule 1.11 requires that the moving party's Brief-in-Chief

contain a Summary of the Record, setting forth the material parts of the pleadings, proceedings, facts and documents upon which the party relies, together with such other statements from the record as are necessary to a full understanding of the questions presented to the Court for Decision. **Facts stated in the Summary of the Record must be supported by citation to the record where such facts occur.**

OKLA. SUP. CT. R. 1.11(e)(1) (emphasis added). Here, Appellant does not set forth a “Summary of the Record,” but rather includes a “Statement of Facts” setting forth his position as to the contents of the record. Semantics aside, Appellant’s offering does not comport with Rule 1.11(e) insofar as there are very few actual citations to the Record on Appeal. Rather, Appellant cites to his improperly-filed *Appendix*, which again, includes materials not indexed and compiled in the Record on Appeal. Appellant has failed to abide by this portion of Rule 1.11 and, thus, his appeal should be dismissed for failure to comply with the Rules of this Court. Alternatively, the entire *Appendix*, and all references thereto in his *Brief in Support*, should be stricken and not considered by this Court.

Subject to and without waiving the foregoing argument, Appellee recognizes that this Court is empowered to order the parties’ respective Narrative Statements pursuant to OKLA. SUP. CT. R. 1.28(h). In the event this Court invokes this authority, Appellee suggests that only the Narrative Statements, filed June 9, 2017, and June 13, 2017, respectively, be permitted into the record. R. at 77, Entries of 06/09/2017 & 06/13/2017. The remainder of Appellant’s *Appendix* should be stricken.

Finally, Rule 1.6 provides that “[a]n alleged absence of substantive merit will not be regarded by the Court as grounds for dismissal on motion but may be raised in the brief of a party for consideration at the decisional stage.” OKLA. SUP. CT. R. 1.6(c)(1). Here, Appellant appeals from an adverse ruling in an action for the enforcement of child support sounding in contempt. Oklahoma law is clear that in contempt proceedings, only questions of law are subject to appellate review. *Kerr v. Clary*, 2001 OK 90, ¶18, 37 P.3d 841, citing *Seifried v. State*, 1939 OK 28, ¶20, 86 P.2d 1008, 1011 (“The standard of review is clear; in a contempt proceeding, questions of fact will not be reviewed.”). Interestingly, all of Appellant’s challenges and assignments of error are based

upon challenges to the weight and sufficiency of evidence, or whether the trial court erred as a matter of fact. The effect of and weight assigned to testimony and evidence is a question of fact not reviewable on appeal in a contempt action. *See, Gowens v. Barstow*, 2015 OK 85, ¶ 26, 364 P.3d 644, 653 (The credibility of witnesses and the effect of and weight given to their testimony, as well as the resolution of conflicting or inconsistent testimony, are questions of fact to be determined by the trier). This appeal should be dismissed for lack of reviewable error and substantive merit.

APPELLEE'S SUMMARY OF THE RECORD

The parties to this action are currently in the midst of a dissolution of marriage action in Tulsa County, filed August 5, 2015. R. at 1-5, 77. The parties have two (2) minor children. R. at 1-5. On August 18, 2015, the parties entered into, and the trial court approved, a *Temporary Order Agreement* which, in pertinent part, provided that Appellant “is the Obligor as is ordered to pay the sum of \$200.00 per week beginning on August 24, 2015.” R. at 12. Approximately one (1) year later, Appellee filed her *Application for Citation for Contempt*, alleging that Appellant had failed to pay various child support payments since entry of the *Temporary Order Agreement*. R. at 16-19.

Appellee’s *Application for Citation for Contempt* came on for trial on December 16, 2016. R. at 77, Minute Entry of 12/16/2016. Only the parties testified and no stenographic reporting of the proceedings was made. Appellee offered, and the trial court admitted, three (3) exhibits in support of her claims at trial. R. at 76. “Petitioner’s Exhibit 1” memorialized and accounted for the payments actually received by Appellee from the date of entry of the *Temporary Order Agreement* through the date of filing of her *Application for Citation for Contempt*. *Id.* Said Exhibit also set forth an interest calculation based upon Appellee’s accounting. *Id.* “Petitioner’s Exhibit 2” is Appellee’s hand-written accounting of child support

received from Appellant, recorded contemporaneously with the receipt of child support. Same was admitted as supporting/source documentation of “Petitioner’s Exhibit 1.” *Id.* “Petitioner’s Exhibit 3” is the Appellant’s income history and most recent paystub as of the date of trial. *Id.* Said Exhibit clearly demonstrates that the Appellant was possessed of sufficient funds to pay child support at all relevant times after entry of the *Temporary Order Agreement*. *Id.*

In defense of Appellee’s claims, Appellant offered, and the trial court admitted, five (5) trial exhibits. R. at 76. “Respondent’s Exhibit 6” is the only verifiable proof of child support payments made by Appellant submitted at trial. All of said payments are accounted for in “Petitioner’s Exhibit 1,” referenced above. Appellant also submitted “Respondent’s Exhibit 2” in defense of Appellee’s claims, arguing that ATM withdrawals are somehow proof of child support paid to Appellee. *Id.* Appellant summarized the various ATM withdrawals in “Respondent’s Exhibit 1.” *Id.*

Contrary to Appellant’s assertion in his “Statement of Facts” that Appellee refused to accept child support in forms other than cash, “Respondent’s Exhibit 3A” at page 4 clearly demonstrates that Appellee was willing to accept PayPal transfers provided they were made in a timely fashion. R. at 76, Respondent’s Exhibit 3A. Appellant cherry-picked a portion of Appellee’s text message to Appellant on this Exhibit to mislead this Court into believing Appellee simply refused to accept anything other than cash payments.

At the conclusion of trial, Appellant was recognized back to a subsequent date for the pronouncement of the trial court’s decision. *Id.* On January 6, 2017, the trial court rendered its decision, found the Appellant guilty of indirect contempt for failure to pay child support, sentenced Appellant to six (6) months in the Tulsa County Jail, subject to a purge fee in the amount of \$2,600.00, fined the Appellant \$500.00, and executed sentence that day. *Id.*, Minute

Entry of 01/06/2017. The *Order* memorializing the trial court's decision, approved on February 6, 2017, and thereafter filed on February 7, 2017, provides that

the Court, having reviewed the file and appearance docket, having heard the testimony of two (2) witnesses sworn in open Court, having received evidence and heard the arguments of counsel, and otherwise being fully advised in the premises, hereby FINDS and ORDERS as follows:

...

II.

That the Respondent is Guilty of Indirect Contempt of Court for his willful failure to pay child support. The Court hereby finds Respondent Guilty of Indirect Contempt of Court and sentences Respondent to incarceration in the Tulsa County Jail for a period of six (6) months, along with a \$500.00 fine, subject to a purge fee in the amount of \$3,100.00 (\$2,600.00 purge and \$500.00 fine). Said sentence is executed instanter.

III.

That the Court further finds that Respondent has failed to pay child support in the principal amount of \$2,960.00 for the time period of August 24, 2015 through July 25, 2016, exclusive of statutory interest. Interest on said principal amount is determined to be \$241.27 through the month of November 2016. Said amount is hereby reduced to judgment in favor of Petitioner and against Respondent in the total amount of \$3,201.27. Statutory interest shall continue to accrue on any unpaid portions of said judgment until same is paid in full

R. at 30-35.

Appellant paid the purge fee, in full, the very day the trial court rendered its judgment. R. at 28-29, 77, Minute Entry of 01/06/2017.

PROVISIONAL SUMMARY OF THE RECORD

This Court will note that Appellant has cited to his improperly filed *Appendix* at various points in his "Statement of Facts." Appellee re-urges her objection to same and requests that this Court disregard same. Without prejudice to her objection and insofar as this Court has deferred

ruling on whether Appellant's *Appendix* shall remain in the record and/or be considered in the Court's analysis, it would be folly for Appellee to not comment on the Narrative Statements and other materials set forth therein.

Importantly, Appellee's *Narrative Statement of Proceedings*, approved by the trial court and filed June 13, 2017, establishes that the following testimony and evidence was presented at trial:

- That Appellee maintained a written log of all child support owed and received;
- That Appellee reduced her written log to a summary spreadsheet, admitted at trial as "Petitioner's Exhibit 1." R. at 76;
- That each cash payment received was recorded and accounted for in "Petitioner's Exhibit 1." *Id.*;
- That Appellant failed to pay child support in the total amount of \$2,960.00 for the time period August 24, 2015, through July 25, 2016;
- That Appellant's defense rested in the proposition that ATM withdrawals from his bank account, regardless of the date or amount, were tantamount to proof of payment of child support;
- That on cross examination, Appellant testified:
 - o That he did not have an independent recollection of each cash payment;
 - o That the dates reflected in his exhibits were inaccurate;
 - o That his records were not accurate;
 - o That he was consistently employed for nearly all of the time-frame in question and that but for two (2) weeks in November of 2015, he had the ability to pay child support.

See, Appellee's *Narrative Statement of Proceedings*, filed June 13, 2017.

Surprisingly, Appellant's *Narrative Statement of the Case*, does little to support his position. It memorializes his admission that "he made child support payments when he could" and that "he gave [Appellee] money every week when he could." *See* Appellee's *Narrative*

Statement of the Case, filed June 9, 2017, ¶ 3. Importantly, it contains no memorialization of any testimony that Appellant actually paid child support, in full, each time it was due. Appellant’s testimony does not refute Appellee’s claims, but rather, essentially admits that he was in contempt of court.

STANDARD OF REVIEW

Generally, issues arising from dissolution of marriage proceedings are matters of equitable cognizance. A trial court’s decision will not be disturbed in the absence of an abuse of discretion or a finding clearly contrary to the weight of evidence. *Merritt v. Merritt*, 2003 OK 68, 73 P.3d 878; *Watkins v. Watkins*, 2007 OK CIV APP 122, 177 P.3d 1114.

Here, however, the scope of this Court’s review is very limited. The issue at hand is an indirect contempt of court proceeding for the enforcement of child support. In contempt proceedings, only questions of law are subject to appellate review. *Kerr*, 2001 OK 90 at ¶ 18, citing *Seifried*, 1939 OK 28 at ¶20 (“The standard of review is clear; in a contempt proceeding, questions of fact will not be reviewed.”). Interestingly, all of Appellant’s challenges and assignments of error are factually based, which would require this Court to delve into the testimony and evidence in the record, and determine whether the trial court’s analysis of said testimony and evidence was sufficient to sustain the judgment. *Kerr* expressly prohibits such an analysis. Insofar as no question of law has been raised by Appellant, his assignments of error must fail.

Appellant further misapprehends the standard of review in this matter in his assertion that “considering the error of the trial court, this court’s standard of review of the case at bar is *de novo*, without deference to the trial court’s decision.” *See*, Appellant’s *Brief in Support*, p. 8. Notably but unsurprisingly, Appellant offers absolutely no authority for this assertion. The proposition that simply because a trial court has erred, this Court can conduct a *de novo* review, is erroneous. Only

under certain circumstances is a *de novo* review appropriate. Oklahoma law is clear that questions of law are reviewed *de novo*. *Harmon v. Craddock*, 2012 OK 80, 286 P.3d 643. Obviously, if there are no questions of law raised, a *de novo* standard of review does not apply.

As will be demonstrated below, Appellant raises only questions of fact which are not reviewable in this situation. *Kerr*, 2001 OK 90 at ¶ 18. Furthermore, if this Court determines that any questions raised are mixed questions of law and fact, same are subject only to deferential review standards with significant weight afforded to the trial court's judgment. *Chaney v. Chevrolet*, 2015 OK CIV APP 55, ¶ 10, 350 P.3d 170, citing *Bruner v. Timberlane Manor Ltd. Partnership*, 2006 OK 90, ¶ 8, 155 P.3d 16, 20 (Where the facts are controverted, mixed questions of fact and law . . . require [the application of] deferential review standards). Such a review requires this Court to afford great deference to the trial court's determinations. Only where it can be demonstrated that the trial court carried out a "manifestly unreasonable act, supported by untenable grounds or reasons" or where "there is no rational basis in the evidence for the decision" can the trial court's judgment be scrutinized. *Lerma v. Wal-Mart Stores, Inc.*, 2006 OK 84, ¶ 6, 148 P.3d 880; *Fent v. Oklahoma Natural Gas, Co.*, 2001 OK 35, ¶ 12, 27 P.3d 477, 481; *In re BTW*, 2008 OK 80, ¶ 20, 195 P.3d 896. The burden of proof falls to the party filing the appeal to show that the trial court's findings and judgment are against the clear weight of the evidence. *Routh v. Routh*, 1942 OK 371, ¶ 6, 130 P.2d 1000; *Parnell v. Parnell*, 2010 OK CIV APP 74, ¶ 6, 239 P.3d 216.

ARGUMENT AND AUTHORITIES

PROPOSITION I

**APPELLANT'S ASSIGNMENTS OF ERROR PRESENT ONLY
QUESTIONS OF FACT NOT REVIEWABLE BY THIS COURT**

As highlighted above, in contempt proceedings, only questions of law are subject to appellate review. Questions of fact will not be reviewed. *Kerr*, 2001 OK 90 at ¶ 18. Appellant's first assignment of error - that the Appellee failed to prove her case by clear and convincing evidence - is a question of fact and would require this Court to re-weigh the evidence presented at trial. Such scrutiny is prohibited by Oklahoma law. *Id.*

Similarly, Appellant's second assignment of error – that the trial court miscalculated or improperly calculated the arrearage judgment and purge fee – is a question of fact requiring this Court to reexamine the testimony and evidence presented at trial. Again, in contempt proceedings, only questions of law are subject to appellate review. Appellant has raised no questions of law, thus, the trial court must be affirmed.

PROPOSITION II

THE TRIAL COURT'S JUDGMENT IS SUPPORTED BY THE RECORD

Even if this matter were subject to appellate review under an abuse of discretion and/or clearly erroneous standard (which, by law, it is not), Appellant's position is without merit and a challenge to the weight and/or sufficiency of evidence must fail. Oklahoma law is well established that

[t]he sufficiency of the evidence to sustain a judgment in an action of legal cognizance is determined by an appellate court in light of the evidence tending to support it, together with every reasonable inference deducible therefrom, rejecting all evidence adduced by the adverse party which conflicts with it. If there is any competent evidence tending to support the findings and judgment of the trial court at a bench trial of a law case, the findings and judgment will not be disturbed, even if the record might also support a

conclusion different from that reached by the trial court. **The credibility of witnesses and the effect of and weight given to their testimony, as well as the resolution of conflicting or inconsistent testimony, are questions of fact to be determined by the trier. It is not for this Court to weigh the evidence.**

Gowens, 2015 OK 85 at ¶ 26 (internal citations omitted, emphasis supplied). As such, challenges to the credibility of witnesses and exhibits cannot be addressed on appeal. Such issues are reserved exclusively for the determination of the trial court. In matters

[w]here the evidence is sharply conflicting, the credibility of witnesses being a matter lying peculiarly within the province of the trial court . . . , the Supreme Court cannot pass thereon on appeal without invading the province of the trial court.

Adams v. Hansford, 1928 OK 88, 265 P. 762, citing *Muskogee Electric Traction Co. v. Cooper*, 1920 OK 327, 193 P. 39. Appellant's various comments/arguments that Appellant's testimony and evidence was credible while Appellee's was not, are of no consequence. This Court's review cannot address those issues.

At trial, all the Appellee is charged with demonstrating is: 1) that the order allegedly disobeyed or ignored was clear enough to give the charged party "reasonable notice of the court's intent;" and 2) that the disobedience of the order was "willful in that the charged party could have, but refused, to comply." *Collins v. Collins*, 1995 OK CIV APP 56, 898 P.2d 1316, citing *McCrary v. McCrary*, 1986 OK 49, 723 P.2d 268, 271. More specifically, in contempt actions for the enforcement of child support, "[p]roof of noncompliance with the order, shall be prima facie evidence of an indirect civil contempt of court." OKLA. STAT. TIT. 21, § 566.1(A)(2).

Great deference must be afforded to the factual determinations of the trial court. Clearly, Appellee's testimony of Appellant's noncompliance, coupled with her contemporaneously-maintained accounting of child support was sufficient to convince the trier of fact that Appellant did not pay child support as ordered. *See*, Appellee's *Narrative Statement of Proceedings*, filed

June 13, 2017; R. at 76, Petitioner's Exhibit 1. Furthermore, the undisputed proof of Appellant's income demonstrating regular income ranging from \$600.00 up to \$4,893.00 **per week**, with total earnings of \$75,760.00 for calendar year 2016, sufficiently established Appellant's ability to pay. R. at 76, Petitioner's Exhibit 3. Thus, the trial court's determination that Appellant had willfully failed to pay child support during the time period in question, as alleged in Appellee's *Application for Citation for Contempt*, is proper and not subject to appellate scrutiny.

Once Appellee successfully established that Appellant had failed to pay child support while at the same time having the financial wherewithal to maintain his obligations, the burden then shifted to Appellant to demonstrate that "he was unable to comply with the child support order and made honest effort to do so." *Huchteman v. Huchteman*, 1976 OK 174, 557 P.2d 427, 429. In his *Response to Petitioner's Application for Contempt for Nonpayment of Child Support*, Appellant raised the sole defense of inability to pay, stating in a verified pleading that he "is still dutifully trying to make sure he supports the children." R. at 22. At trial, Appellant pivoted and took the position that he had made his child support payments, but that the Appellee had simply failed to properly account for them. As support for this position, Appellant submitted little more than bank statements, making the novel argument that ATM withdrawals are evidence of child support payments made. R. at 76, Respondent's Exhibit 2. No explanation was offered as to the inconsistency of the withdrawals. Some were in amounts exceeding his child support obligation while others were for less than his obligation. There was also little consistency in **when** Appellant made his withdrawals. Most importantly, there was no proof whatsoever that monies withdrawn from his account were ever tendered to Appellee.

The trial court determined, **as a matter of fact**, that Appellant had willfully failed to pay child support, despite having the ability to do so. The record supports this conclusion and this

Court must presume that the trial court's determination is correct. *Cooper v. Cooper*, 2009 OK CIV APP 73, ¶ 6, 220 P.3d 36, citing *Hamid v. Sew Original*, 1982 OK 46, ¶6, 645 P.2d 496, 497 (“Trial court error is never presumed, but must be affirmatively shown. Absent an appellate record showing otherwise, [this Court] presume[s] the trial court did not err.”). The trial court's judgment should be affirmed.

PROPOSITION III

APPELLANT'S ARGUMENT THAT ATM WITHDRAWALS ARE “PROOF” OF CHILD SUPPORT ACTUALLY PAID TO APPELLEE IS UNTETHERED FROM FACT AND LOGIC, AND LACKS ANY SUPPORT IN THE RECORD

Appellant's explanation of his “routine pattern of conduct” showing verifiable payments is anything but routine or verifiable. All that Appellant's evidence demonstrates is that money was withdrawn from his checking account via an ATM. His own evidence shows that these withdrawals occurred with varying frequency, in varying amounts. This is not routine. If Appellant truly engaged in a routine of withdrawing funds to deliver directly to Appellee, why are the majority of the withdrawals for more than Appellant's child support obligation? Why are some withdrawals made on Mondays, others on Tuesday, others on Wednesday, and so on? Why are some ATM withdrawals during the time period in question arbitrarily “designated” as child support while others are not? Appellee suggests that the frequency of Appellant's ATM withdrawals (approximately 125 in total spanning from August 23, 2015 through October 22, 2016) created an opportunity for Appellant to craft a novel argument in his attempt to avoid a finding of guilt – he simply took the number of payments Appellee alleged he missed, poured through his bank statements, found ATM withdrawals in amounts close to the amount of his child support obligation, and falsely claimed that some of those funds flowed to Appellee. R. at 76, Respondent's Exhibit 2.

Additionally, Appellant has offered no explanation whatsoever as to why Appellee would dutifully account for twenty-seven (27) separate and distinct cash payments during the time period in question, while simultaneously alleging that fourteen (14) specific payments had been missed and seven (7) others had been in amounts less than the amount ordered. R. at 76, Petitioner's Exhibit 1. In this regard, the Court will note that the three (3) "underlined" payments which Appellant accuses Appellee of failing to account for are actually reflected and credited to Appellant in Appellee's evidence. *Id.* Appellant's position defies logic and reason.

Most importantly, no evidence whatsoever was submitted that Appellee ever received a dime of what was withdrawn from Appellant's account. Absent that evidence, the trial court was correct in finding Appellant guilty of willfully failing to pay child support. Appellant further offers no authority whatsoever to suggest that money flowing out of an account is proof of those same monies flowing into the hands of another. Appellant's argument is without merit and consequently, the trial court's judgment should stand as rendered.

PROPOSITION IV

APPELLANT'S CHALLENGE TO THE CALCULATION OF THE ARREARAGE JUDGMENT AMOUNT WAS NOT RAISED AT THE TRIAL COURT LEVEL AND, THEREFORE, IS NOT PROPERLY PRESERVED FOR APPEAL. NEVERTHELESS, THE TRIAL COURT'S ESTABLISHMENT OF APPELLANT'S ARREARAGE JUDGMENT IS SUPPORTED BY THE RECORD AND THE PURGE FEE IS WITHIN STATUTORY LIMITS

Generally, "issues not presented to the trial court will not be considered on appeal." *Pettit v. American Nat. Bank of Austin*, 1982 OK 85, ¶ 9, 649 P.2d 525. Furthermore, the appealing party bears the burden of presenting the appellate court with a record on appeal in support of the assignment of error. *Bailey v. Bailey*, 1994 OK 6, 867 P.2d 1267, 1272. Here, for the first time on appeal, Appellant challenges the arrearage judgment calculation and the trial court's establishment of a purge fee.

Contrary to Appellant's assertions, the record is quite clear as to how the trial court calculated Appellant's arrearage. Appellant asserts that the trial court found Appellant to be "in arrears for 'three months.'" Here, Appellant relies on the Minute Entry within the Docket Sheet. The *Order* rendered and approved by the Court contains no such indication. To the contrary, the *Order on Contempt Citation and Order Reducing Child Support Arrearage to Judgment* provides

[t]hat the Court further finds that Respondent has failed to pay child support in the principal amount of \$2,960.00 for the time period of August 24, 2015 through July 25, 2016, exclusive of statutory interest. Interest on said principal amount is determined to be \$241.27 through the month of November 2016

R. at 30-35, paragraph III. These figures track precisely with Appellee's Child Support Arrearage Summary. R. at 76, Petitioner's Exhibit No. 1. Thus, the record establishes the individual missed payments and underpayments which the trial court determined had actually been missed or underpaid, and establishes the interest amounts applied on a monthly basis. *Id.*

Appellant also challenges the purge fee established by the trial court, but fails to cite to any portion of the record where Appellant objected to or challenged that purge fee, or requested a purge fee hearing to determine Appellant's capability to pay. Such relief is available to Appellant, though he chose not to invoke same. *See*, OKLA. DIST. CT. R. 8.3(b). The same Rule permits trial courts discretion in fixing purge fees as "the full amount of the arrearage, or some portion thereof, as a lump sum" for persons found guilty of indirect contempt of court for failure to pay child support. *Id.* Said lump sum amount cannot "exceed 40% of the contemnor's current gross monthly income." OKLA. DIST. CT. R. 8.3(c). Here, per Appellant's income information submitted at trial, his gross weekly paychecks averaged \$1,632.69 per week during the time period of December 7, 2015 through November 14, 2016. This equates to \$7,074.99 per month,

forty percent (40%) of which is \$2,829.99. R. at 76, Petitioner's Exhibit 1. The purge fee of \$2,600.00 established by the trial court is below 40% of Appellant's gross monthly income and, therefore, is compliant with the Rules for District Court of Oklahoma.

Appellant's reliance upon the *Rook* decision is misplaced. In *Rook*, the Court of Civil Appeals cites to the very Rule explained above and dictates that the guidelines set forth in said Rule should be followed in fixing purge fees. *Rook v. Rook*, 2001 OK CIV APP 119, ¶ 7, 34 P.3d 660. Here, the trial court's purge fee is well within those guidelines. Simply because the record does not specifically reflect detailed findings of fact or a "purge table," as suggested by Appellant, does not establish that error has occurred. In fact, a trial court is not required to publish any specific findings of fact unless requested by a party **before** rendition of judgment.

In the absence of a statutory requirement to state specific findings of fact,

[u]pon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except generally, for the plaintiff or defendant, **unless one of the parties request it**, with the view of excepting to the decision of the court upon the questions of law involved in the trial.

OKLA. STAT. TIT. 12, § 611 (emphasis supplied). Such requests must be made *prior* to the Court's pronouncement of judgment. *Smith v. Harrod*, 1911 OK 192, 115 P. 1015; *Alonzo v. Alonzo*, 1996 OK CIV APP 48, 917 P.2d 1014. Where there is no request for specific findings of fact, the general findings of the trial court are sufficient and any necessary specific findings of fact are deemed addressed by the general finding in favor of either party. *Midland Savings & Loan Co., v. Donohoo*, 1937 OK 563, 74 P.2d 1147, 1148. Here, neither before nor after the trial court's rendition of its findings and judgment did either party request specific findings of fact or conclusions of law. Particularly, upon rendition of judgment, Appellant did not request specific findings as to the trial court's purge fee amount, nor did he request a hearing pursuant to Rule

8.3. Consequently, Appellant waived any arguments regarding specific findings of fact and failed to properly preserve the issue on appeal. *See, Pettit*, 1982 OK 85 at ¶ 9.

PROPOSITION V

THE PUBLIC POLICY OF THE STATE OF OKLAHOMA REQUIRES THE AFFIRMATION OF THE TRIAL COURT'S JUDGMENT

The public policy of the State of Oklahoma is indisputable – children are entitled to support by their parents. *See, OKLA. STAT. TIT. 43, § 112(E); Aguero v. Aguero*, 1999 OK CIV APP 38, ¶ 34, 976 P.2d 1088. From this policy came laws and procedures designed to ensure the timely payment of child support by those obligated to pay. For example, Tulsa County has an entire docket dedicated to the enforcement of child support which provides a forum where child support obligees can expeditiously enforce child support obligations on behalf of their children. As referenced above, once these obligees demonstrate noncompliance with a child support order, they have established their prima facie case, and the burden then passes to the obligor to either disprove the obligee's allegations or prove compliance via a showing of actual payment. OKLA. STAT. TIT. 21, § 566.1(A).

Permitting the novel argument proffered by Appellant to pass muster as a defense to the payment of child support would create a slippery slope impeding the obligees from enforcing child support Orders in this State and, thereby, eroding the well-established public policy of this State. Imagine if Appellant's argument were blessed as a valid defense to Appellee's claim - all an obligor would have to prove was that there was an ATM withdrawal from his or her account, in an amount somewhat close to the total obligation, within a few days of the due date. Every obligor cited for indirect contempt of Court would offer this as a defense.

There must be more than a mere showing of money withdrawn from an account – actual payment (i.e. that the obligee actually received the funds) must be demonstrated. Anything less

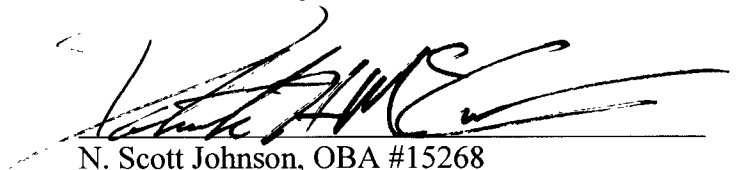
represents an unraveling of Oklahoma's public policy and a perversion of the processes and burdens established by law. The trial court should be affirmed.

CONCLUSION

None of Appellant's challenges to the trial court's judgment raise questions of law. Only questions of fact are addressed. Some are not reviewable by this Court. *Kerr*, 2001 OK 90 at ¶ 18.

Notwithstanding the foregoing, even if this Court were to review this matter for an abuse of discretion, none can be found. The weight and sufficiency assigned by the trial court to the testimony and evidence adduced at trial is nearly sacrosanct. This Court cannot call into question the trial court's determinations as to the credibility of the testimony and evidence presented. Further, great deference is afforded to the trial court's determination as to the overall weight and sufficiency of the evidence. It will only be disturbed where there is demonstrable proof in the record of a "manifestly unreasonable act, supported by untenable grounds or reasons" or where "there is no rational basis in the evidence for the decision." *Lerma*, 2006 OK 84 at ¶ 6; *Fent*, 2001 OK 35 at ¶ 12; *In re BTW*, 2008 OK 80 at ¶ 20. There is support for the trial court's judgment in the record. This Court need look no further than the Exhibits submitted by Appellee at trial. R. at 76. The trial court's judgment should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Scott Johnson', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Petitioner/Appellee's Answer Brief was mailed on the 13th day of November, 2017, to:

Brian R. Swenson, Esq.
SWENSON & SWENSON, PLLC
1719 East 71st Street
Tulsa, OK 74136
Attorney for Respondent/Appellant

by depositing it in the U.S. Mails, postage prepaid.

I further certify that a copy of Petitioner/Appellee's Answer Brief was filed with the Office of the Court Clerk of Tulsa County on the 13th day of November, 2017.



Patrick H. McCord