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FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

FEB 09 2018

NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION I

IN RE THE MARRIAGE OF [REDACTED]

[REDACTED] and [REDACTED]:

[REDACTED]

Petitioner/Appellee,

vs.

[REDACTED]

Respondent/Appellant.

Filed (date)	2/9/2018
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Distro	TS
Posted	yes

Case No. [REDACTED]

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE TAMMY BRUCE, TRIAL JUDGE

AFFIRMED

Patrick H. McCord,
N. SCOTT JOHNSON &
ASSOCIATES, P.L.L.C.
Tulsa, Oklahoma,

For Petitioner/Appellee,

Carol L. Swenson,
Brian R. Swenson,
SWENSON & SWENSON, PLLC,
Tulsa, Oklahoma,

For Respondent/Appellant.

OPINION BY ROBERT D. BELL, PRESIDING JUDGE:

¶1 In his appeal of a judgment for indirect contempt of court, [REDACTED] Respondent/Appellant (Father) proposes that, based on the evidence, the trial court erroneously concluded he failed to tender child support payments to [REDACTED] Petitioner/Appellee (Mother). He also argues the order is invalid because the purge fee was calculated arbitrarily. We affirm because appellate courts do not review fact questions made in contempt proceedings and because the form of the order is proper.

I.

¶2 Two motions must first be determined. When he filed his brief-in-chief, Father filed an appendix of exhibits. Mother moves the court to strike the appendix and to dismiss the appeal because of deficiencies in the record.

MOTION TO STRIKE APPENDIX

¶3 On October 2, 2017, Father filed an appendix of exhibits and referred to them in his appellate brief. By an order filed October 4, 2017, the Supreme Court notified Father that his appendix contains items not permitted by Sup. Ct. Rule 1.11(i) and it directed him to show cause why it should not strike the appendix. Father filed a timely response and Mother filed a brief that included a motion to strike. The Court deferred consideration of the matter until the

decisional stage of the appeal and assigned this case to the Court of Civil Appeals on December 19, 2017.

¶4 An appendix to a brief may be filed only in accordance with Sup. Ct. Rule 1.11. Five types of attachments are permitted by that rule, among them, “attachments provided by Rule 1.11(e)(1) relating to complaints about admission or exclusion or insufficiency of evidence.” One of the propositions in Father’s brief is that Mother did not meet her burden of proof. He asserts therefore, that the appendix is acceptable to show insufficiency of evidence.

¶5 We disagree. An appendix is an option for identifying pertinent *record testimony* when it would be inefficient to set it out in the summary of the record within the appellate brief. Rule 1.11(e). An appendix is not a substitute for properly designating the record. The motion to strike the appendix is granted. This court will not consider Appellant’s Appendix that was improperly filed October 2, 2017.

MOTION TO DISMISS APPEAL

¶6 Within her answer brief, Mother requests dismissal of the appeal, arguing there are material omissions in the record. At trial, the parties presented testimony and other evidence but there was no court reporter and no transcript exists. A *Narrative Statement of the Case* was filed June 9,

2017, and a *Narrative Statement of the Proceedings* was filed June 13, 2017. Although these narratives are substantially in compliance with Sup. Ct. Rule 1.30, they were not designated by the parties. At this Court's direction, the Tulsa County District Court Clerk added these documents to the record on appeal by an amendment to the record filed January 29, 2018. The motion to dismiss is denied.

II.

¶7 In a contempt proceeding questions of fact are not reviewed. *Kerr v. Clary*, 2001 OK 90, ¶18, 37 P.3d 841, 845. In his brief, Father concedes, "This case is very fact and evidence driven."

¶8 Mother testified that Father was ordered to pay child support in the sum of \$200.00 per week and she maintained a hand-written log of all child support owed and received. She utilized the log to create a spreadsheet showing Father's missed payments. The hand-written log and the spreadsheet were admitted into evidence. Both Mother and Father testified that some of the payments were made in cash. Mother stated Father failed to pay the principal sum of \$2,960.00.

¶9 Father testified he had made each child support payment during the time period in question, and Mother had simply not credited the cash

payments. Mother disputed this. Father admitted into evidence his bank statements, handwritten notations of payments he made, and copies of electronic messages from Mother requesting payments in cash. Father also testified he was unemployed for a couple of weeks and there were changes in his earnings. The trial court filed an order finding Father guilty of indirect contempt of court for his willful failure to pay child support.

¶10 On appeal, Father argues the clear evidence does not support the court's order. He suggests: "At the very least, simply comparing Appellant's evidence and testimony to Appellee's deficient records should have made it clear the Appellee's clear and convincing burden of proof has not been met." Because questions of fact are not reviewed in contempt proceedings, we are obligated to reject this proposition of error.

¶11 Father's next contention is that the order must be vacated due to errors in the amount of the judgment and purge fee. The court found Father 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. It added interest of \$241.27 for a judgment of \$3,201.27. The court sentenced Father to incarceration in the county jail for six months plus a fine of \$500.00, subject to a payment in the

amount of \$3,100.00 (\$2,600.00 purge and \$500.00 fine). Father paid the purge fee and was not incarcerated.

¶12 Father contends the order is deficient because it lacks detail. He claims the court was obligated to indicate the dates and amounts of each missed payment. He points to a minute order entered the day before the judgment which notes Father had not made child support payments “for 3 months.” Further, he notes the principal amount of the judgment is \$2,960.00 which is different from the purge fee of \$2,600.00. Father cites *Rook v. Rook*, 2001 OK CIV APP 19, 34 P.3d 660, and argues the purge fee is arbitrary because the judgment is insufficiently clear.

¶13 In setting a purge fee, the court should consider the extent of the pecuniary injury suffered by a party. *Rook*, ¶9. No particular language or form of words [are] necessary in rendering and recording a judgment of conviction in a criminal cause. *Greenwood v. State*, 1962 OK CR 129, 375 P.2d 661, 664. In cases of indirect contempt the substance of the offense must be set forth in the order whenever a person shall be imprisoned. 21 O.S. §568. Here, the order was clear that Father’s indirect contempt was for willful failure to pay child support. The purge fee (\$2,600.00) was lower than the principal sum of the judgment, (\$2,960.00) a fact that suggests the court took

into account the pecuniary injury involved. We hold that a judgment for indirect contempt for failure to pay child support is not invalid solely because it does not detail which dates and/or amounts were unpaid.

¶14 The Order is AFFIRMED.

JOPLIN, J., and BUETTNER, J., concur.