

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR10-949

ANTHONY HOLCOMBE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered May 11, 2011

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CR06-301-1]

HONORABLE GRISHAM A.
PHILLIPS, JR., JUDGE

AFFIRMED

RAYMOND R. ABRAMSON, Judge

In August 2006, Anthony Holcombe pleaded guilty to nonsupport. The circuit court sentenced him to 120 months' probation and ordered him to pay \$15,958 in restitution at a rate of \$133 per month. Holcombe was also ordered to stay current with his ongoing child-support obligation and to pay a \$25 per-month supervision fee. The State filed a revocation petition in February 2010 alleging that Holcombe failed to meet these financial obligations. After a hearing, the circuit court found that Holcombe had violated the terms and conditions of his probation and sentenced him to 60 months' imprisonment. Holcombe appeals, arguing that the evidence was insufficient to revoke his probation. We affirm.

The circuit court can revoke a defendant's probation if it finds by a preponderance of the evidence that the defendant inexcusably failed to comply with one of his probation conditions. Ark. Code Ann. § 5-4-309(d) (Supp. 2009). When the alleged violation is that

the defendant failed to pay restitution or some other financial obligation, the State has the burden of proving that the defendant's failure to pay was inexcusable. *Burkhart v. State*, 2010 Ark. App. 462, at 4. But once the State introduces evidence of nonpayment, it is then up to the defendant to provide some reasonable excuse for his nonpayment, though the ultimate burden of proving that the defendant's failure to pay was inexcusable always remains with the State. *Id.* at 4–5. Our statutes set out certain factors for the circuit court to consider in making its determination. Ark. Code Ann. § 5-4-205(f)(3) (Supp. 2009). On appeal, we reverse if the circuit court's findings are clearly against the preponderance of the evidence. *Burkhart*, 2010 Ark. App. 462, at 3. We give due deference to the circuit court's credibility and weight-of-the-evidence determinations in our analysis. *Id.*

At the June 2010 revocation hearing, Terry Dailey, from the Office of Child Support Enforcement, testified that Holcombe owed \$133 monthly in restitution and that on February 23, 2009, Holcombe's weekly child-support obligation had been increased from \$24 to \$97. The State introduced two payment ledgers. Dailey explained that in 2009, Holcombe owed \$4,365 in current child support, but only paid \$1,255. In addition, Holcombe only paid \$865.50 in restitution. Dailey testified that much of that money came from a "tax intercept." Dailey also testified that so far in 2010, Holcombe owed \$2,134 in current child support, but had only paid \$540. Holcombe had made no restitution payments in 2010. Dailey said that, in total, Holcombe was \$14,083.11 in arrears in his child support.

Dailey testified that, to his knowledge, Holcombe was currently self-employed, but

had previously worked at Well Built Boats. According to Dailey, Holcombe had not worked at Well Built since February or March 2009, when Holcombe quit after an argument with his employer. Before Holcombe's child-support obligation was increased in February 2009, Dailey said that Holcombe asked him what his child-support obligation would be if he did not have a job. Dailey agreed that prior to Holcombe's child-support obligation increasing and him quitting his job, he had only fallen behind in his payments by just more than \$400.

Holcombe also testified at the hearing. He denied having quit his job to avoid paying child support and said that he has tried to make a payment each week. Holcombe said that he is now self-employed and does work for several elderly people. Holcombe also testified that he had spoken with his previous employer at Well Built Boats about coming back to work and that there was still a job there for him. In fact, Holcombe said that he lived on Well Built's premises and knew the owner very well. He said that he left his employment with Well Built after he had argued with a fellow employee because they "disagreed on a few things." Holcombe also testified that he owned a boat (and had for three years), which he planned to sell. Holcombe said that he would put the proceeds toward his child-support payments and restitution. Holcombe said that he had not put in any job applications anywhere else.

Here, the State introduced evidence of nonpayment. And though Holcombe attempted to offer excuses for his failure to pay, it was up to the circuit court to weigh the evidence, to determine whether Holcombe was credible, and to decide whether Holcombe's

failure to pay was inexcusable. The evidence and testimony showed that Holcombe quit his job due to a disagreement with a fellow employee, that he owned a boat, which he could have sold to help meet his obligations, that he failed to seek out other employment, and that he had not attempted to get his old job back despite his testimony that his former employer would rehire him. Based on the evidence and testimony presented at the hearing, the circuit court's decision—that Holcombe inexcusably failed to pay his financial obligations, thereby constituting a violation of his probation conditions—is not clearly against the preponderance of the evidence.

Affirmed.

WYNNE and BROWN, JJ., agree.