

County Criminal Court: CRIMINAL LAW—Probation. The record supports the trial court’s order finding Appellant in violation of probation for failure to meet financial obligations of probation, where Appellant paid \$1200 toward a new vehicle during the probationary period. Affirmed. *Kenneth Bradley Nail v. State of Florida*, No. 15-CF-1943-WS (Fla. 6th Cir. App. Ct. January 19, 2016).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY
APPELLATE DIVISION**

KENNETH BRADLEY NAIL,
Appellant,

UCN: 512015CF001943A000WS
Appeal No: CRC15001943CFAWS
L.T. No: 2013-MM-1847-WS

v.

STATE OF FLORIDA,
Appellee.

_____ /

On appeal from County Court,
Honorable Frank Grey,
Thomas McLaughlin,
for Appellant,

Office of the State Attorney,
for Appellee.

ORDER AND OPINION

The Court finds no error with the trial court’s order finding Appellant in violation of probation for failure to meet financial obligations of probation. The order of the trial court is AFFIRMED.

STATEMENT OF THE CASE AND FACTS

Appellant pled no contest to domestic battery and was sentenced to thirty days in jail followed by 11 months of probation. State filed an affidavit of violation of probation, alleging Appellant failed to report to a probation appointment, was driving with a suspended license, failed to enroll in and complete the Batterers Intervention Program, and failed to pay certain fees and costs which were conditions of probation. At the hearing in the matter, the testimony was that Appellant paid \$250 out of \$605 owed

toward costs of supervision, but did not meet other financial obligations, including \$625 owed in court costs, a \$100 public defender fee, \$78 investigation fee, and \$25 payment plan fee. Appellant attended around 8 of the 26 required BIP classes, but did not have the money to complete the classes, which are \$30 per class. Appellant alleges at his June, 2014 probation appointment Appellant was told he would be violated for a driving without a license charge, and Appellant missed the July probation appointment. A probation officer familiar with Appellant's case testified Appellant never requested adjustment of fees or communicated that he was having issues making payments. Appellant testified that he informed the office at each of the meetings that he was having difficulty meeting financial obligations.

Appellant testified he was unemployed at the time he was released from jail, but by October, 2013, he was working 35-40 hours a week, making \$14 per hour as a mechanic. Appellant testified to making approximately \$525 per week, or \$2,100 per month. Appellant's expenses through February, 2014, were approximately \$2,005.50. After February, 2014, Appellant's expenses were approximately \$2,455.50. Appellant paid \$1200 toward a new car during the probationary period. Appellant testified to having knee problems. Appellant testified he did not complete community service instead of paying fines because he could not find a place that would allow him to only work on Sundays. The trial court found Appellant in violation for failure to meet financial obligations of probation and for failure to report to the probation office after Appellant's June 9, 2014, meeting.

STANDARD OF REVIEW

The trial court must find a willful and substantial violation of conditions of probation, supported by competent evidence, prior to revoking probation. *Savage v. State*, 120 So. 3d 619, 623 (Fla. 2d DCA 2013); *Sanders v. State*, 675 So. 2d 665, 665-66 (Fla. 2d DCA 1996). When reviewing an order revoking probation, this Court reviews the record for competent evidence to support a finding of a substantial and willful violation, and then determines "whether the trial court abused its discretion in revoking probation." *Savage*, 120 So. 3d at 622, 624. See *Russell v. State*, 982 So. 2d 642 (Fla. 2008).

LAW AND ANALYSIS

The record supports the trial court's finding of ability to pay and a willful and substantial violation of conditions of probation. When determining whether to revoke probation, the trial court should "consider probationer's employment status, earning ability, financial resources, willfulness of failure to pay, and any other special circumstances." *Del Valle v. State*, 80 So. 3d 999 (Fla. 2011). A court may revoke probation for failure to pay despite a defendant's indigent status, when there is sufficient evidence that defendant has not made bona fide efforts to acquire the resources to make payments. See *Clark v. State*, 510 So. 2d 1202, 1203 (Fla. 2d DCA 1987). State presented evidence that Appellant was employed full time during the majority of the probationary period, that Appellant did not exercise the option to perform community service to satisfy financial obligations, and did not contact his probation officer to ask for assistance or notify the officer of difficulties paying obligations to the court. Further, Appellant paid \$1200 towards a new vehicle during the probationary period. The trial court's finding that Appellant had the ability to pay at least a portion of the costs during the probationary period and willfully failed to do so is supported by the record.

CONCLUSION

The Court finds no error with the order of the trial court finding a violation of probation based on ability to pay and a willful and substantial violation of conditions of probation. The order of the trial court is AFFIRMED.

It is ORDERED AND ADJUDGED that the order of the trial court is AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this 19th day of January, 2016.

Original order entered on January 19, 2016, by Circuit Judges Linda Babb, Susan Barthle and Daniel D. Diskey.