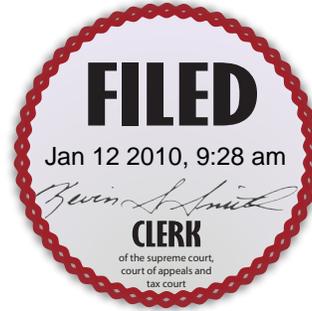


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE PATERNITY OF: G.H.W.,)
)
H.A.F.,)
)
Appellant,)
)
vs.) No. 82A04-0908-JV-483
)
Y.K.W.,)
)
Appellee.)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
The Honorable Renee Allen Ferguson, Magistrate
Cause No. 82D01-0301-JP-34

January 12, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BARNES, Judge

Case Summary

H.F. (“Mother”) appeals the trial court’s calculation of child support to be paid by Y.W. (“Father”). We reverse.

Issue

Mother raises one issue, which we restate as whether the trial court properly calculated Father’s weekly child support obligation.

Facts

G.W. was born out-of-wedlock to Mother in November 2002. In March 2003, Father’s paternity of G.W. was established. Pursuant to the agreement of the parties, Mother was granted primary physical and legal custody of G.W. Father was ordered to pay \$150.00 per week in child support. In May 2004, Father was granted joint legal custody of G.W.

In January 2008, Mother filed notice of her intent to relocate to Texas. On June 5, 2008, the trial court held a hearing on this issue. On July 9, 2008, the trial court entered an order in which it refused to permit Mother to move G.W. to Texas. The trial court’s order also provided that if Mother continued to reside in the Evansville area, Mother and Father should share joint physical and legal custody. The court also concluded that if Mother did not move to Texas, neither party would be required to pay child support. In a July 23, 2008 supplemental order, the trial court clarified that Father was to pay for “controlled expenses,” such as school uniforms, school supplies, and extracurricular expenses. App. p. 26. The trial court also explained that the parties were required to equally divide G.W.’s parochial school tuition.

Although Mother did not move to Texas, she appealed the trial court's order. In a memorandum decision, we affirmed the modification of the custody arrangement, required the trial court to conduct another hearing if, at some future time, Mother decided to move to Texas, and reversed the trial court's termination of Father's child support. In re Paternity of G.H.W., No. 82A05-0807-JV-431 (Ind. Ct. App. March 11, 2009). On remand, the parties submitted memoranda on the issue of child support to the trial court. On July 17, 2009, the trial court held a summary hearing on the child support issue. The chronological case summary shows that, on July 31, 2009, the trial court ordered Father to pay \$53.00 per week in child support. The trial court also ordered each party to pay 50% of daycare and uninsured medical expenses. Mother now appeals.

Analysis

Mother argues that the trial court abused its discretion when it calculated Father's child support obligation. "Decisions regarding child support generally fall within the sound discretion of the trial court." Quinn v. Threlkel, 858 N.E.2d 665, 670 (Ind. Ct. App. 2006). "Reversal of a trial court's child support order is merited only where the determination is clearly against the logic and effect of the facts and circumstances before the court." Id. On appeal, we consider only the evidence and reasonable inferences favorable to the judgment. Id. Further, although a trial court has broad discretion to tailor a child support award in light of the circumstances before it, "this discretion must be exercised within the methodological framework established by the guidelines." Id. (quoting McGinley-Ellis v. Ellis, 638 N.E.2d 1249, 1251-52 (Ind. 1994)).

The trial court's decision was based on evidence from the 2008 hearing. The parties agree that pursuant to the 2008 child support obligation worksheet, Father's weekly adjusted income is \$1,357.56 and Mother's weekly adjusted income is \$572.00. Thus, Father's percentage share of the total weekly adjusted income is approximately 70% and Mother's share is approximately 30%. Pursuant to the worksheet, Father's recommended support obligation is \$182.93, and Mother's recommended obligation is \$77.07.

As we explained in our memorandum decision:

The Indiana Child Support Guidelines do not specifically address joint physical custody situations. In fact, the Guidelines "are based on the assumption the child(ren) live in one household with primary physical custody in one parent who undertakes all of the spending on behalf of the child(ren)." Ind. Child Support Guideline 6, cmt. However, this court has held that in joint physical custody situations, it is appropriate to look to the Guideline commentary addressing split custody situations, i.e. where there are multiple children and each parent has custody of one or more of them. See Freese v. Burns, 771 N.E.2d 697, 702 (Ind. Ct. App. 2002), trans. denied; Sanjari v. Sanjari, 755 N.E.2d 1186, 1190 (Ind. Ct. App. 2001). This commentary provides:

In those situations where each parent has physical custody of one or more children (split custody), it is suggested that support be computed in the following manner:

1. Compute the support a father would pay to a mother for the children in her custody as if they were the only children of the marriage.
2. Compute the support a mother would pay to a father for the children as if they were the only children of the marriage.

3. Subtract the lesser from the greater support amount. The parent who owes the remaining amount pays the difference to the other parent on a weekly basis.

Child Supp. G. 6, cmt.^[1] “However, the Guidelines do not foreclose a different support calculation method, for example, ordering each parent to pay one-half the child support he or she would owe as a non-custodial parent, with appropriate credits for extraordinary expenses paid by that parent.” Freese, 771 N.E.2d at 702.

G.H.W., No. 82A05-0807-JV-431, slip op. at 11-12. Thus, under the Guidelines, after subtracting Mother’s weekly support obligation from Father’s weekly support obligation, Father would owe \$106.00 per week in child support. Applying the alternative approach described in Freese, Father claims that the trial court properly calculated his weekly child support obligation at \$53.00.²

Although a child support calculation other than that provided by the Guidelines may be permitted under certain circumstances, there is no indication that such circumstances are present in this case. As we explained in Freese, “Absent some evidence that one of the parents is incurring an extraordinary and necessary expense on behalf of the children, the ‘split custody’ formulation of the Guidelines may appropriately be applied to the equal-time ‘joint physical custody’ situation.” Freese, 771 N.E.2d at

¹ The Indiana Child Support Guidelines have been amended, effective January 1, 2010. These amendments are not applicable to the trial court’s 2008 and 2009 orders.

² As Father explained in his memorandum, he would owe \$91.50 ($\$183.00 \div 2$), and Mother would owe 38.50 ($\$77.00 \div 2$). After subtracting Mother’s half from Father’s half ($\$91.50 - \38.50), child support would be calculated at \$53.00.

702. There is no evidence that Father is incurring extraordinary and necessary expenses on G.W.'s behalf so as to justify deviation from the Guideline formation.³

Further, in advocating for the application of the alternative formulation described in Freese, Father points out that he has maintained health insurance coverage pursuant to the 2008 order and that these premiums were not included in the child support worksheet. He argues that his payment of health insurance premiums supports the trial court's order. Under these facts, we disagree. Although the 2008 order required Father to continue to provide medical insurance of G.W. so long as it is "reasonably available through his employer," the trial court found, "there is no weekly health care premium specifically charged for the child." App. pp. 22, 17. In light of this finding, we cannot infer that the trial court took health insurance premiums into account when it calculated Father's child support obligation at \$53.00 per week.

Father also argues that the trial court heard substantial testimony about the living situations and financial affairs of both parties at the June 5, 2008 hearing and only heard summary arguments on remand. Regardless, none of the findings in the 2008 order support the trial court's decision to calculate child support in a manner different than what the Guidelines suggest.⁴

Generally, we agree with Father that trial courts have substantial discretion in calculating child support and that our decision in Freese intended that all relevant factors

³ In his memorandum to the trial court, Father argued that the trial court should adopt the Freese formulation of \$53.00 per week because he was solely responsible for "controlled expenses" related to G.W. App. p. 26. Under the trial court's July 31, 2009 order, however, Father is no longer required to pay these controlled expenses.

⁴ The parties did not include the transcript from the 2008 hearing in the record on this appeal.

be taken into account when calculating child support. Nevertheless, Father offers no explanation for the \$53.00 per week difference between the Guideline formulation for calculating child support and the Freese formulation for calculating child support. This is especially relevant when considering, as we did in our memorandum decision, that “Mother will still incur substantial expenses for having custody of G.W. half of the time, including fixed expenses for suitable housing and fluctuating expenses for things such as food.” G.H.W., No. 82A05-0807-JV-431, slip op. at 12. In the absence of some evidence supporting such a reduction, we conclude that the trial court abused its discretion in deviating from the Guideline formulation. The trial court should have applied the Guideline formulation and calculated child support at \$106.00 per week.

Conclusion

In the absence of evidence to support a deviation from the Guideline formulation, the trial court improperly ordered Father to pay \$53.00 per week in child support. The trial court should have ordered Father to pay \$106.00 per week in child support. We reverse.

Reversed.

MATHIAS, J., concurs.

BROWN, J., dissents with opinion.

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BROWN, Judge, dissenting

I respectfully dissent from the majority, concluding that neither case law nor the Indiana Parenting Time Guidelines prohibit the trial court from appropriately exercising its discretion as it did in this case. I would therefore affirm the trial court's decision.