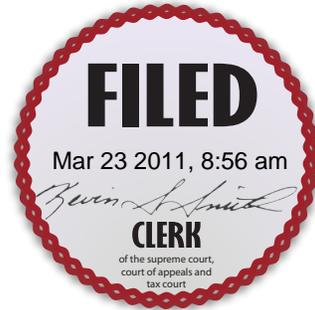


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE: THE PATERNITY OF S.A., )  
 )  
G.L., Father, )  
 )  
Appellant-Petitioner, )  
 )  
vs. ) No. 49A02-1009-JP-967  
 )  
T.A., Mother, )  
 )  
Appellee-Respondent. )

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APPEAL FROM THE MARION CIRCUIT COURT  
The Honorable Louis Rosenberg, Judge  
The Honorable Carol Terzo, Master Commissioner  
The Honorable Marie Kern, Commissioner  
Cause No. 49C01-0911-JP-54301

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**March 23, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-petitioner G.L. (Father) appeals the denial of his motion to correct error, arguing that his child support obligation is erroneous, inasmuch as appellee-respondent, T.A. (Mother), was credited for private insurance premiums which exceeded that which is considered reasonable under Indiana Child Support Guideline 7 (Guideline 7). Concluding that the trial court deviated from Guideline 7 without stating its reasons for doing so, we reverse and remand with instructions that it enter a new order establishing Father's child support obligation consistent with this opinion.

FACTS

S.A. was born to Mother and Father on September 12, 2009. Because Mother and Father were not married, Father filed a pro se petition<sup>1</sup> to establish paternity on November 30, 2009.

On February 1, 2010, the trial court held a hearing, during which Mother was represented by private counsel but Father was not. Prior to the hearing, a prosecutor met with the parties and facilitated an agreement on most issues pertaining to Father's paternity petition. When the prosecutor informed the trial court of the agreement, Father stated that they had not reached an agreement on visitation. The prosecutor responded that "the visitation issue still has to be because this Judge can't make . . . a determination. So, you have to file something upstairs on that." Tr. p. 5.

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<sup>1</sup> Father's paternity petition is not included in the record submitted to this Court.

That same day, the trial court entered a judgment of paternity and support pursuant to the parties' agreement. More particularly, Father was ordered to pay \$182 per week in child support. In calculating this amount, the trial court credited Mother with \$53 per week in health insurance premiums that she pays through her employer. Additionally, the trial court ordered Father to pay \$8 per week towards the \$1638 arrearage. As for medical support, Mother was ordered to provide health insurance and pay the first \$583 of unpaid medical expenses. Thereafter, Father would be responsible for 76% of unpaid expenses and Mother would be responsible for 24%.

Mother was granted custody of S.A. In addition, the trial court determined that the "issue of parenting time is reserved – parties to [f]ile request for hearing in Circuit Court within 30 days." Appellant's App. p. 5.

On February 23, 2010, Father hired private counsel and filed a motion to set aside the trial court's judgment of support and for parenting time. In the motion, Father alleged that he had "been ordered to pay child support, but at a rate that is not consistent with the current Indiana Child Support Guidelines, and is required to contribute to health care costs that are outside the definition of reasonable by those guidelines." Id. at 12. Additionally, Father maintained that he had health insurance available to him at a reasonable cost and requested that he be granted parenting time with S.A. that deviated from the Indiana Parenting Time Guidelines.

On April 22, 2010, Mother filed a petition for contempt, determination of additional support arrearages, and request for interest, attorney's fees and collateral relief. A hearing on both motions was set for July 8, 2010.

At the July 8 hearing, Father testified that no one conducted an analysis of the cost of insurance at the February 1 hearing. Tr. p. 35. Additionally, Father admitted that although he informed the prosecutor that he had access to medical insurance for S.A., he did not state that the insurance was free.

In the trial court's July 8, 2010, order, it concluded that it

has no authority to order Mother to cease maintaining private health insurance that she is voluntarily paying, regardless of whether it is reasonable or not. The intent behind [Guideline 7] is to require parties who have access to reasonable health insurance, but are not utilizing that health insurance, to obtain health insurance rather than relying upon other sources of health care coverage. Guideline 7 is not intended to prevent parties from maintaining health insurance for a minor child, even if it exceeds what is considered reasonable, as it is clearly in the best interests of the child to be covered by private health insurance. . . . The Court denies Father's request to modify child support, based upon the credit given to Mother for private health insurance . . . .

Appellant's App. p. 29. Accordingly, Father's child support obligation remained set at \$182 per week, with an additional \$8 per week towards the arrearage. The trial court noted that Father had only paid \$400 towards his child support obligations since the February 1, 2010, order and concluded that he was "now in arrears \$5,242.00." *Id.* at 30.

As for health insurance coverage, the trial court ordered that

Mother and Father shall both maintain medical insurance for the minor child, as long as it is accessible and reasonable. Re-iterating the Court's earlier comments, Mother is voluntarily maintaining health insurance,

which exceeds a reasonable premium. Should Mother be unable to continue to afford said insurance, Father's health insurance will be the primary coverage for the minor child and a modification of support may be warranted, in the event of those circumstances. . . . Mother shall utilize Father's insurance as secondary insurance, in an effort to reduce the annual uninsured medical expenses.

Id. at 30-31. The parents' respective responsibilities for uninsured medical expenses remained the same.

The trial court found that Father was in contempt for failure to pay child support as ordered on February 1, 2010. The trial court noted that Father had worked for UPS, and, therefore, had the means to pay support. The trial court also observed that Father's income was 70% greater than Mother's. Consequently, the trial court ordered Father to pay \$1,175 in attorney fees for Mother "as sanction for his contempt and in an effort to balance the disparity in the party's incomes." Id. at 31.

The trial court concluded that because Father had not exercised parenting time for a considerable length of time, "it is appropriate to phase-in Father's parenting time." Id. at 28. More particularly, Mother was to supervise Father's first nine visits with S.A. After that, Father could exercise unsupervised parenting time pursuant to the Indiana Parenting Time Guidelines.

On July 16, 2010, Father filed a motion to correct error, contending that "there was no final order because the Court's paternity judgment left open the potential for a different child support order by leaving the issue of a parenting time credit open for debate." Id. at 32. In addition, Father maintained that pursuant to Guideline 7, the trial

court “must order insurance if available,” and that “clearly the only accessible health care insurance as per the Guidelines is the free health care provided by [Father].” Id. at 33. Father alleged that the trial court abused its discretion by, in effect, ordering Father to pay for insurance that is superfluous and does not meet Guideline 7’s reasonable cost standard.

On August 10, 2010, the trial court issued an order on Father’s motion, concluding that its February 1, 2010 order, was, in fact, a final order on the issue of child support. The trial court pointed out that Father “clearly considered the February 1, 2010, order to be a ‘final order’ on support or he would not have filed a motion to set said judgment aside.” Id. at 36. Additionally, the trial court determined that although Father argued that Mother was given credit for health insurance which exceeded that which is deemed reasonable under Guideline 7, “Counsel did not present any precedent to support that argument.” Id. at 38. Consequently, the trial court denied Father’s motion to correct error. Father now appeals.

## DISCUSSION AND DECISION

### I. Appealable Order

As an initial matter, Father argues that the February 1, 2010, order was not a final judgment because “issues relating to child support and parenting time remained unresolved.” Appellant’s Br. p. 4. Accordingly, Father contends that the July 8, 2010, hearing on his motion to set aside the February 1 order “was the full hearing on the contested issues,” id., and that the trial court’s subsequent order is the final judgment.

A final judgment disposes of all issues as to all parties, leaving nothing for future determination and, thereby, ending the particular case. Georgos v. Jackson, 790 N.E.2d 448, 451 (Ind. 2003); see also Ind. Appellate Rule 2(H). In addition, a “judgment as to one or more but fewer than all of the claims or parties is final when the court in writing expressly determines that there is no just reason for delay, and in writing expressly directs entry of judgment.” Ind. Trial Rule 54(B). Whether an order is a final judgment governs the appellate court’s subject matter jurisdiction, which cannot be waived by the parties. Georgos, 790 N.E.2d at 451. Moreover, neither the views of the trial court nor the parties control whether an order is a final judgment. Id.

In Drwecki v. Drwecki, the mother appealed a 2001 order, which determined that she had received excess child support and ordered that the overages be credited towards the father’s future support payments. 782 N.E.2d 440, 442 (Ind. Ct. App. 2003). On appeal, the mother argued that a 2000 order had resolved all issues between the parties such that the trial court’s subsequent 2001 order was inappropriate without the father filing a petition to modify. Id.

This Court determined that the facts did not support the mother’s claim that all issues had been resolved. Id. at 446. More particularly, the 2000 order provided that in less than two months, when the oldest child turned twenty-one, the “[p]arties to exchange financial information instanter and proposed child support worksheets.” Id. (quoting appellant’s app. at 21) (emphasis in opinion). We concluded that while the 2000 order had settled a number of disagreements, it had failed to establish the amount of child

support that the father would pay after the oldest child was emancipated and was, consequently, not a final judgment. Id.

Here, at the February 1, 2010, hearing, when the prosecutor informed the trial court that the parties had reached an agreement on most of the issues, Father stated that they had not reached an agreement on visitation. The prosecutor responded that “the visitation issue still has to be because this Judge can’t make . . . a determination. So, you have to file something upstairs on that.” Tr. p. 5. Similarly, in the February 1 order, the trial court noted that the “issue of parenting time is reserved – parties to [f]ile request for hearing in Circuit Court within 30 days.” Appellant’s App. p. 5.

Furthermore, in the trial court’s August 10, 2010, order<sup>2</sup> denying Father’s motion to correct error, it concluded that

The judgment entered on February 1, 2010, by IV-D Court, was in fact, a final order on the issue of child support. The only issue contemplated by that Court as being unresolved, was that of parenting time. There was no indication that the IV-D Court considered the issue of child support to be a temporary order, based upon a possible parenting time credit to be awarded. The open issue of parenting time in no way creates a guarantee that a parenting time credit would be awarded or would substantially affect a child support calculation. Furthermore, [Father] clearly considered the February 1, 2010, order to be a “final order” on support or he would not have filed a motion to set said judgment aside.

Appellant’s App. p. 36 (emphasis added).

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<sup>2</sup> The trial court’s July 8, 2010, order denying Father’s motion to set aside the February 1, 2010, judgment did not address Father’s claim that the February 1 order was not a final judgment.

Like the 2000 order in Drwecki, the February 1 order in this case addressed most of the issues between the parties. Nevertheless, one important issue remained unresolved, namely, parenting time.

Furthermore, we find it inconsequential that Father was directed to file “something upstairs,” tr. p. 5, to secure parenting time with his daughter. Put another way, the fact that Father had to file separately for parenting time does not tilt the proverbial scales towards the February 1 order being a final judgment. It appears that the trial court reached every issue at the February 1 hearing but parenting time. And at the February 1 hearing, Father informed the trial court that the parties had not reached an agreement regarding parenting time, indicating that it was an important issue to him. We cannot agree that an order establishing child support, health insurance, medical expenses, and child custody, but does not address the parenting time sought by a noncustodial parent, is a final judgment.

Moreover, at the July 8, 2010, hearing, the trial court heard evidence regarding child support, medical insurance, and parenting time. And the trial court’s subsequent order addressed all the issues between the parties. Consequently, the February 1 order was not a final judgment, and we will proceed to consider Father’s claims on their merits.

## II. Child Support Guideline 7

Father appeals from the denial of his motion to correct error regarding his child support obligation, claiming that the health insurance premium amount that the trial court credited to Mother exceeded that which is authorized under Guideline 7. Moreover,

Father points out that the trial court failed to articulate its reasons for deviating from the Guidelines.

A trial court has broad discretion when granting or denying a motion to correct error. White v. White, 796 N.E.2d 377, 379 (Ind. Ct. App. 2003). We will reverse its decision only for an abuse of that discretion, which occurs if the decision was against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom, or if the trial court's decision is without reason or is based upon impermissible reasons or considerations. Id. Likewise, decisions pertaining to child support rest within the sound discretion of the trial court, and we will reverse only for an abuse of that discretion or if the trial court's determination is contrary to law. Painter v. Painter, 773 N.E.2d 281, 282 (Ind. Ct. App. 2002).

However, we note that Mother did not file an appellee's brief. When a party fails to submit a brief, we do not undertake the burden of developing arguments for her. In re Paternity of B.D.D., 779 N.E.2d 9, 13 (Ind. Ct. App. 2002). We apply a less stringent standard of review with respect to showings of reversible error, and we may reverse if the appellant establishes prima facie error, that is, an error at first sight, on first appearance, or on the face of it. In re Paternity of B.N.C., 822 N.E.2d 616, 618-19 (Ind. Ct. App. 2005).

Although a trial court does have discretion on issues pertaining to child support, its decision is nonetheless governed by the Indiana Child Support Rules and Guidelines, which provide a rebuttable presumption that the correct amount of child support results

from applying the guidelines. D.W. v. L.W., 917 N.E.2d 725, 727 (Ind. Ct. App. 2009); see also Ind. Child Support Rule 2. Nevertheless, “[i]f the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.” Ind. Child Support Rule 3.

Guideline 7 provides that the “court shall order one or both parents to provide private health care insurance when accessible to the child at a reasonable cost.” There are two tests to determine whether the cost of health care insurance is reasonable. First, the cost is considered reasonable “if it does not exceed five percent (5%) of the Weekly Gross Income of the parent obligated to provide medical support.” Child Supp. G. 7. Additionally, the cost of insurance is unreasonable “when it is combined with that party’s share of the total child support obligation . . . and that sum exceeds fifty percent (50%) of the gross income of the parent responsible for providing medical support.” Id. The commentary to Guideline 7 instructs that “[p]rivate health insurance coverage should normally be provided by the parent who can obtain the most comprehensive coverage at the least cost.”

In the July 8, 2010, order, the trial court concluded that it

has no authority to order Mother to cease maintaining private health insurance that she is voluntarily paying, regardless of whether it is reasonable or not. The intent behind [Guideline 7] is to require parties who have access to reasonable health insurance, but are not utilizing that health insurance, to obtain health insurance rather than relying upon other sources of health care coverage. Guideline 7 is not intended to prevent parties from maintaining health insurance for a minor child, even if it exceeds what is

considered reasonable, as it is clearly in the best interests of the child to be covered by private health insurance. . . . The Court denies Father’s request to modify child support, based upon the credit given to Mother for private health insurance . . . .

Appellant’s App. p. 29. Additionally, the trial court ordered that

Mother and Father shall both maintain medical insurance for the minor child, as long as it is accessible and reasonable. Re-iterating the Court’s earlier comments, Mother is voluntarily maintaining health insurance, which exceeds a reasonable premium. Should Mother be unable to continue to afford said insurance, Father’s health insurance will be the primary coverage for the minor child and a modification of support may be warranted, in the event of those circumstances. . . . Mother shall utilize Father’s insurance as secondary insurance, in an effort to reduce the annual uninsured medical expenses.

Id. at 30-31 (emphasis added).

Mother’s weekly gross income is \$310, and she pays a weekly health insurance premium for S.A. of \$53.00, which is 17% of her gross income. As recognized by the trial court, this is clearly unreasonable. Therefore, the trial court deviated from Guideline 7 when it ordered Mother to maintain health insurance on S.A. Furthermore, the trial court erred, inasmuch as it did not state why it had deviated from Guideline 7. Indeed, the trial court’s deviation from Guideline 7 appears perplexing in light of the fact that Father was ordered to and has obtained health insurance for S.A. that is free of charge.

Moreover, while the trial court was correct that it did not have the authority to order Mother to “cease maintaining private health insurance that she is voluntarily paying, regardless of whether it is reasonable or not,” id. at 29, it cannot then give her a credit for the unreasonable premium against her portion for S.A.’s financial support

without stating why it has deviated from Guideline 7. In light of these circumstances, the trial court erred when it denied Father's request to set aside February 1 order as it pertained to his child support obligation. Therefore, we reverse the decision of the trial court and remand with instructions that it enter a new order establishing Father's child support obligation that is consistent with Indiana Child Support Rules and Guidelines or state its reasons for deviating from them.

The judgment of the trial court is reversed and the cause is remanded with instructions.

VAIDIK, J., and BARNES, J., concur.